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Revisiting Remand Imprisonment within Biopolitics:
A Study on Turkey's Juvenile Justice System through
Legislative, Judiciary and Executive Powers

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April 2016

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Criminology

Table of Contents

Supervisors	v
Declaration	vi
Public presentations based on the work of this thesis	vii
Acknowledgements	viii
Abstract	ix
Chapter I :Introduction.....	1
Remand imprisonment worldwide.....	1
Problematizing youth remand imprisonment in Turkey	2
Traditional procedural approach to remand imprisonment.....	5
Rationalities of punishment	6
Two theses	7
<i>A. Punitiveness?</i>	<i>7</i>
<i>B. Security concerns?</i>	<i>9</i>
Situating remand imprisonment in penal politics through governmentality studies.....	10
What does studying imprisonment and specifically remand imprisonment offer in broader social terms and where does the researcher stand?	16
An interpretative understanding of social action/Verstehen in Gramscian understanding of bureaucracy	16
Methods to comprehend governance of youth in conflict with the law	18
<i>Youth remand prison research.....</i>	<i>18</i>
<i>Courthouse research.....</i>	<i>19</i>
Interpretation.....	20
Structure of the thesis	21
Chapter II: Revisiting remand imprisonment within governmentality.....	24
Introduction	24
The striking numbers and ratios.....	26
Careful with definitions and comparisons	26
The language of rights in formulating problems	29
<i>The language of rights</i>	<i>30</i>
Situating remand imprisonment in the revisionist theories of imprisonment	38
<i>The (ir)relation between labour supply and imprisonment</i>	<i>39</i>
<i>Discipline and imprisonment: the element of labour.....</i>	<i>39</i>
<i>Paying for crime by ‘doing time’: the element of time</i>	<i>40</i>
<i>Deprivation of liberty through spatial confinement: the element of space.....</i>	<i>41</i>
Understanding Turkey’s youth prisons through the essential elements of imprisonment: labour/discipline, time and space	42
Appeal of the term of ‘risk management’ in the literature	43
Remand imprisonment with trends in the Anglo-Saxon world and discussion about New Penology.....	45
<i>England and Wales</i>	<i>45</i>
<i>Australia.....</i>	<i>46</i>
<i>Canada.....</i>	<i>46</i>
<i>The USA</i>	<i>47</i>
State’s sovereign power in Biopolitics	50
Concluding remarks.....	53
Chapter III: The context in which remand imprisonment gains a central role in the youth justice system	54
Introduction	54

Prison history in Turkey: Transformations in prison design and architecture and its implications	55
<i>Rise and decline of labour-based prisons in the ward system era: 1930s—1950s</i>	<i>57</i>
<i>From the ward system to room system: a response to prisoners' resistance and claims built on prisoners' rights</i>	<i>58</i>
Parallels between high-security F-type prisons for political prisoners and Children and Young People's Institutions for Execution of Punishment	60
Anti-terror law and imprisonment of armed and unarmed youth	60
Imprisonment by numbers	62
The issue of remand imprisonment	64
Transformation in the imprisonment of young people	66
<i>The Juvenile Education Houses receiving sentenced youth</i>	<i>67</i>
<i>From open type prisons for sentenced youth to closed type prisons for youth on remand ..</i>	<i>69</i>
The ethos of law making: civilization	75
Political economy and social security	76
Institutionalization of social work and child protection	80
Birth of the juvenile court	82
Transformation in the understanding of social work from the 1990s onwards	90
The compatibility of rights discourse within neoliberalizing governmentality	92
A bundle of social reforms since the 2000s and Child Protection Law from 1979 to 2005 ..	92
The role of non-governmental organizations in today's system and inspection	100
Concluding remarks.....	101
 Chapter IV: Methodology - Researching imprisonment for young prisoners in limbo between courtrooms and prisons and as numbers in graphics.....	103
Introduction	103
Getting ready to go into the field.....	103
A. Prison research	104
<i>Why the prison?</i>	<i>104</i>
<i>Naming prison research.....</i>	<i>104</i>
<i>Identifying prisons as research sites and negotiating access/permission into the prison ..</i>	<i>105</i>
<i>Remand imprisonment squeezed in close-ended questions.....</i>	<i>107</i>
<i>Ethical issues in doing research with young remand prisoners</i>	<i>109</i>
<i>Safeguards for conducting ethical research</i>	<i>109</i>
<i>Confidentiality</i>	<i>110</i>
<i>Power imbalances.....</i>	<i>111</i>
<i>Discussions about informed consent.....</i>	<i>112</i>
<i>Getting informed consent in real settings</i>	<i>113</i>
<i>Getting in, being inside and wanting to get out of the four walls: counting down from 12</i>	<i>February to 22 October 2014</i>
<i>Who to talk to in the prisons?</i>	<i>117</i>
B. Communicating with professionals in the prosecution process in Istanbul, Izmir and Ankara from 17 June 2014 to 2 March 2015	119
<i>Appointment with lawyers.....</i>	<i>121</i>
<i>Interviewing social work officials.....</i>	<i>122</i>
<i>Interviewing judges.....</i>	<i>123</i>
<i>Receiving permission from the High Committee of Judges and Prosecutors to conduct</i>	<i>interviews with authorities that are independent by nature</i>
<i>Interviewing prosecutors: Getting used to 'no'</i>	<i>125</i>
<i>Concluding remarks on interviewing youth justice professionals.....</i>	<i>125</i>
Reading court files page by page	126
C. Theatrical expressions in the courthouse	127
D. Sorting out the right questions to ask, and receiving a fraction of the information you want.....	128
E. Producing statistical data exclusively for this research	129
F. Analyzing the transformation between the formal and current laws on youth justice ..	129
G. Working with non-governmental organizations	129

Interpretations	130
Limitations	131
Concluding remarks.....	132
 Chapter V: Seeking security through spatial organization within four walls	 133
Introduction	133
Who rules the prison: guards, psychosocial staff or managers?	138
The broken framework of psychosocial services: psychological remedy to social problems.....	139
Psychosocial service staff in the bureaucratic hierarchical prison administration	139
How do young prisoners spend their time?	141
Who to spend the time with? Security officers	142
Diversity among young remand prisoners	143
<i>Charged with crimes against property</i>	<i>146</i>
<i>Charged with crimes related to drug consumption and drug dealing.....</i>	<i>149</i>
<i>Charged with crimes of bodily injury and murder</i>	<i>151</i>
<i>Charged with sexual crimes.....</i>	<i>152</i>
<i>Criminalizing sexuality.....</i>	<i>152</i>
<i>Charged with crimes against the integrity of the state</i>	<i>154</i>
<i>The collective pains of political prisoners</i>	<i>156</i>
Managed inside the four walls in ‘pains of imprisonment’	158
Some burdens of confinement most intrinsic to being young and inherent in youth imprisonment	160
Pain of blocked access to education: Reproduction of social class through education	161
What if life in the total institution does not continue undisturbed? Shrink the space.....	163
Remand imprisonment as a site of punishment.....	164
Concluding remarks: Management of prisoners through the use of the element ‘space’: being locked up in a nice big container	170
 Chapter VI: Remand imprisonment at the intersection of legislative, judicial and executive powers	 172
Introduction	172
Bureaucratic structure of the Turkish youth justice system	172
Judicial bureaucracy in the palace of justice: prosecutor’s thesis, lawyer’s anti-thesis, the judge’s synthesis and social work officials as others	173
<i>The prosecutor’s thesis.....</i>	<i>174</i>
<i>Role of prosecutors in the dialectic</i>	<i>174</i>
<i>Becoming a prosecutor in the bureaucratic organization.....</i>	<i>175</i>
<i>Benchmarks and developmentalist/Eurocentric discourse and concern over system management.....</i>	<i>176</i>
<i>The gap between the laws and the facilities of the executive power: developmentalism</i>	<i>178</i>
<i>The disconnectedness of the law-implementer prosecutors from the prison system.....</i>	<i>178</i>
<i>Case explosions: remand imprisonment as deterrence and control.....</i>	<i>181</i>
<i>The defence lawyer’s anti-thesis.....</i>	<i>185</i>
<i>The role of lawyers in the dialectic.....</i>	<i>185</i>
<i>Lawyers’ self-perception and views about imprisonment policies</i>	<i>185</i>
<i>Lawyers’ dispensability and the defendants’ isolation in the courthouse</i>	<i>187</i>
<i>Defendants’ complaints about the lack of a coherent anti-thesis strategy</i>	<i>188</i>
<i>Lawyers’ concern over governmentality of the judicial bureaucracy</i>	<i>190</i>
<i>Critiques directed to the Executive Power as the essential element of the system and concerns about remand imprisonment at different levels.....</i>	<i>192</i>
<i>Social work officials as the ‘others’</i>	<i>195</i>
<i>Social work officials’ ambiguous role in the adjudication process</i>	<i>195</i>
<i>Different reactions to social positioning and hegemony</i>	<i>200</i>

<i>Themes arising from social work officials' accounts and practical implications of the ambiguous positioning of the social work officials for the young defendants on remand</i>	204
<i>Judge's synthesis</i>	208
<i>From holding the power of adjudication to banishment</i>	209
<i>Judging young people</i>	210
<i>Critiques of the legislation and the insufficiency of the services of the executive power</i>	213
<i>Remand imprisonment interpreted in contradictions</i>	217
Discussion	222
Chapter VII: Conclusion	233
Introduction	233
Contextualizing remand imprisonment at the intersection of legislative, judicial and executive powers	234
Summary of empirical findings	235
<i>Being imprisoned</i>	235
<i>Diversity among defendant-prisoners</i>	236
<i>Pains of remand imprisonment</i>	237
<i>Management of the bureaucratic disposal resort</i>	237
<i>Delivering adjudication</i>	238
Implications for remand imprisonment	240
References	243
Appendix A	265
Appendix B	266
Appendix C	267
Appendix D	269
Appendix E	271
Appendix F	272
Appendix G	274

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Declaration

The research in thesis is solely the work of Nilay Kavur, and has not previously been submitted for a degree at any other universities. No other sources or aids have been used to conduct this research other than those listed in this thesis.

Public presentations based on the work of this thesis

Conference presentations

Kavur, N. (2016). Decoding the relation between neoliberal managerialism and the language of human rights within criminal justice. *European Sociological Association, 19-21 June*. New University of Lisbon, Lisbon, Portugal.

Kavur, N. (2015) Hegemonic relationships in the palace of justice. *The Others Conference, International Cultural Criminology Conference, 25-26 June*. VU University, Amsterdam, Netherlands.

Kavur, N. (2014). How remand imprisonment becomes the core of Turkish youth justice system: Children's Closed Institutions for Execution of Punishment. *Common Study Session in Critical Criminology, 29-31 October*. University of Peloponnese, Corinth, Greece.

Kavur, N. (2014). Studying the use of remand imprisonment as a control mechanism in relation to the transformations in the political economies. *Common Study Session in Critical Criminology, 14-16 April*. Middlesex University, London, UK.

Kavur, N. (2013). Alternatives to imprisonment for defendants on remand. *European Society of Criminology (ESC) Annual Conference, 4-7 September*. ELTE (Eötvös Loránd University) Faculty of Law, Budapest, Hungary.

Kavur, N. (2013). The role(s) of prisons for unsentenced prisoners. *European Group for the Study of Deviance and Social Control 41st Annual Conference, 30 August-2 September*. University of Oslo (UiO), Oslo, Norway.

Kavur, N. (2013) Prisons in the penal system for unsentenced prisoners and the debate on 'new punitiveness'. *Common Study Session in Critical Criminology, 28 April-2 May*. University of Kent, Canterbury, UK.

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Guest lectures

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Abstract

Around 3.3 million people are remand prisoners worldwide, and remand imprisonment affects an excess of 14 million people per year (OSF Justice Initiative, 2014). In Turkey, around 70 per cent of young prisoners are on remand in the newly emerging high security prisons called Children's Closed Institutions for Execution of Punishment (and adult prisons). The remaining 30 per cent are sentenced and received by an open type of prisons known as Juvenile Education Houses. The very specific nature of remand imprisonment occupies little space in imprisonment and penal theories and governmentality studies. Remand imprisonment is either considered as a bureaucratic phase in the prosecution system or approached and criticized within human rights violations (right to fair trial and presumption of innocence).

In this thesis¹ I argue that the language of human rights impedes critiques that explore and deconstruct remand imprisonment within penal culture and penal politics in Turkey. The stability in the high proportion and the emergence of high security prisons for remanded youth in Turkey lead the researcher to presume that youth remand imprisonment acquires roles within crime control, and social control that could be comprehended within a look through Turkey's governmentality that would draw a picture of its legal culture. So, this thesis explores the role(s) of remand imprisonment in the juvenile justice system in Turkey by situating remand imprisonment in the centre of penal politics. The essential conceptual tools of prison studies including 'labour/discipline', 'time' and 'space' are analysed in this thesis.

The diversity of young defendants charged with drug dealing, crimes against property, bodily injury, murder, sexual offences, and political offences in Turkey calls for a comprehensive method of thought. By adopting a study of Biopolitics, as a method of thought (Foucault, 2007, 2008; Lemke 2001, 2011b, Dean 2010, Rose 1996), I scrutinize the roles of remand imprisonment in Turkey's penal politics in relation to Turkey's political economy, its sovereign power relations with the citizens and in relation to the knowledge production/adaptation in its criminal justice system. Within Biopolitics, 'as the politics of optimizing life of the population,' I consider both the relation between the political economy and penal culture as situated within a revisionist history of imprisonment (Rusche and Kirchheimer, 2003; Melossi and Pavarini, 1981; Foucault, 1977; Foucault 1980), and also discuss the manifestation of sovereign power (Agamben, 1998, 2005) of the state towards youth in conflict with the law. I investigate the mode of knowledge production and adaptation in the youth justice system. I specifically concentrate on the effect of the prevalence of the language of rights on youth remand imprisonment in Turkey, and draw on the sociology of

¹ TUTUKLULUĞUN BİYOPOLİTİKA İÇİNDE YENİDEN DEĞERLENDİRİLMESİ: YASAMA, YARGI VE YÜRÜTME AYAKLARINDA TÜRKİYE'NİN ÇOCUK ADALET SİSTEMİ ÜZERİNE BİR ÇALIŞMA

human rights literature to aid my analysis. I approach human rights as a socially constructed language embedded in the liberalism movement of Enlightenment, and demonstrate its compatibility with the quest for security through spatial control, at times when social security remains weak.

The primary data for this thesis comes from qualitative interviews, observations, and document analysis conducted in Turkish courtrooms and prisons, as well as production of statistical knowledge based on the Ministry of Justice data. Based on the idea that ‘law in action’ or ‘law in context’ (Nelken, 2001) can be different than ‘law in the books’, explaining the praxis and meaning of remand imprisonment calls for an interpretive understanding (Weber, 1978) of meanings different figures attach to their action. In this thesis I scrutinize what meanings and purposes these different actors attach to remand imprisonment by analysing the data generated from interviews with 50 young prisoners in 6 different prisons (Ankara, İstanbul, İzmir, Konya), as well as interviews with 38 youth justice professionals, constituted by prosecutors, lawyers, judges and social work officials, plus information from 65 hearings in three different Turkish courtrooms (Ankara, İstanbul, İzmir).

Analysis of the data in governmentality demonstrates that remand imprisonment has evolved into a spatial crime control mechanism in the ‘managerialist’ conduct of the youth justice system. In this managerialist governmentality where professionalism over social security remains immature, the imagined self-sufficient, self-contained, invulnerable and decontextualized liberal, rational young defendant in the liberal rights discourse, is managed *securely* in the youth justice system through spatial control. Findings from this research demonstrate that youth remand imprisonment works as a first resort deterrence and control mechanism of security in Turkey, especially for those charged with offences related to drugs and property. The findings also show how youth remand imprisonment is rationalized and neutralized as sovereign power’s expression of *just desert*, as remand imprisonment is not distinguished from prison sentence. The research data also fulfills an administrative control mechanism of evidence collection. So the diverse population of young remand prisoners are all ‘managed’ (Feeley and Simon, 1992; Bottoms, 1995) within the same regime of high security prisons that I call ‘bureaucratic disposal resort’².

This thesis adds a novel and needed contribution to the revisionist approach to imprisonment by analysing remand imprisonment as a crime control mechanism in Biopolitics through the country’s political economy and its relations of sovereign power. Findings from the research provide an innovative platform to discuss the compatible relationship between the human rights discourse and the practice of remand imprisonment as a spatial crime control mechanism.

² ‘Bürokratik tasfiye mercii’

CHAPTER I: Introduction

Remand imprisonment worldwide

‘Remand prisoners’, ‘remandees’, ‘awaiting trial detainees’, ‘untried prisoners’, ‘unsentenced prisoners’, ‘un-convicted prisoners’ and ‘pre-trial detainees’ are all categories of prisoners who are incarcerated within the interrogation and prosecution process and who occupy little space in theories of imprisonment. Around 3.3 million people are incarcerated as remand prisoners worldwide. Moreover, the pre-trial detention process affects in excess of 14 million people a year around the world (Open Society Foundation [OSF] Justice Initiative 2014). Remand imprisonment exists as a reality within the prison population, but based on the literature on prisons, I argue that the very specific nature of remand imprisonment has not been considered in theorizing imprisonment and situating imprisonment in theories of punishment, criminal justice system and governmentality. Thus, it is necessary to find space in the theories on imprisonment produced since the early 20th century for the 3.3 million remand prisoners all around the world, including approximately 2000 remand prisoners under 18 in Turkey.

Remand imprisonment is an issue that can be problematic in any country, but it can only be explained by focusing on the local cultural-legal context and by situating local developments in the global trends. Governmental and non-governmental reports tend to cover remand imprisonment largely when the statistical data of remand prisoners reaches a questionably high level or at times of ‘human rights violations’. Locating certain issues as ‘human rights violations’ does not necessarily identify and explain what factors lead to these violations or statistical absurdities, as countries with high remand proportions or high incidence of ‘human rights violations’ in their prisons have different social, historical, political and legal backgrounds. On the contrary, the language of human rights impedes the critiques from exploring and deconstructing remand imprisonment within penal politics.

This thesis explores the role(s) of remand imprisonment in the youth justice system in Turkey by situating it at the centre of penal politics and in governmentality studies. The concept of governmentality is a theoretical research tool, a guideline to scrutinize remand imprisonment holistically. Accordingly, I scrutinize the roles of remand imprisonment in relation to Turkey’s political economy, its sovereign power relations with the citizens and in relation to the knowledge production/adaptation in its criminal justice system. By analysing Turkey’s prison and youth justice systems in relation to its political economy, its sovereign relations with the young citizens and its mode of knowledge production that is currently framed by the language of human rights, the thesis explores the legal culture of Turkey which ascribes certain roles to remand imprisonment in the youth justice system.

Problematizing youth remand imprisonment in Turkey

In Turkey, remand imprisonment in the youth justice system has been first problematized with the awareness of torture incidents targeting young Kurdish political prisoners (Saymaz 2013; Gündem Çocuk report 2013; CPT report 2013). This has implications on the state claiming its sovereign power and its relations with its citizens. Its Kafkaesque use of remand imprisonment for political subjects as an implicit punishment is one aspect of governmentality that can be detected in many criminal justice systems. On the other hand, young remand prisoners in Turkey between the ages of 12 and 18 who are accused of other various offences and their proportion to the whole young prisoners since the year 2000 (see Table 1 and Graph 1) invite the researcher to problematize both the youth criminal justice system and the social security system, which are theoretically inseparable.

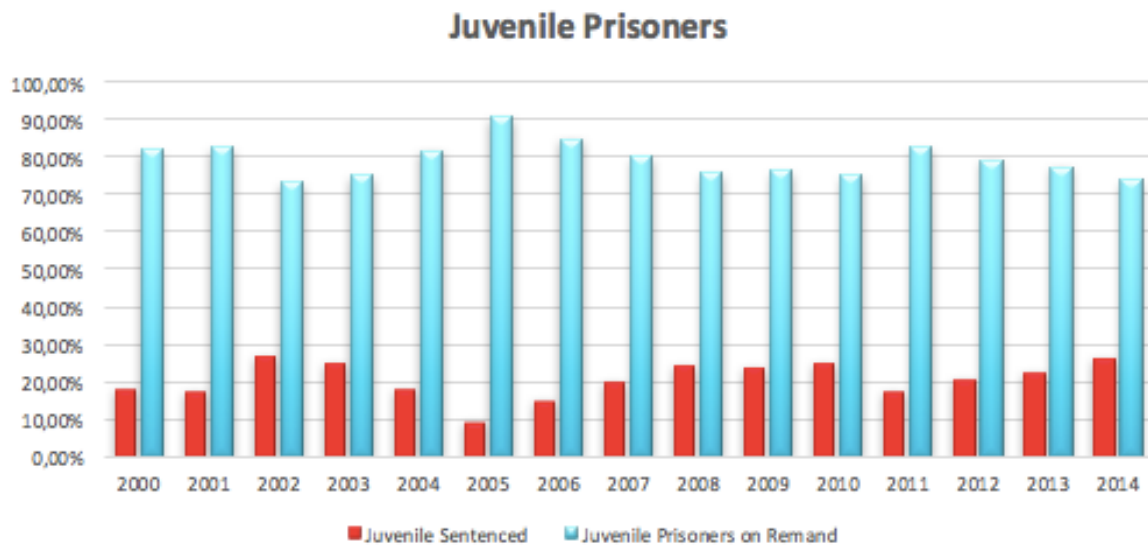
Below Table 1 and Graph 1 show that, between 2000 and 2014, the proportion of young prisoners on remand to all young sentenced prisoners has not been lower than 70%. Moreover, it is estimated that around 10,000 young people circulate in remand imprisonment every year (Yalçın, 2016).

Table1: Percentage of remand prisoners in juveniles, adults and total, prepared exclusively for this thesis. **Source:** Official website of General Directorate of Prisons and Detention Houses

<http://www.cte.adalet.gov.tr>

Years	Sentenced Juvenile Prisoners	Juvenile Prisoners on Remand	Total	On Remand/Total (Juvenile)	On Remand/Total (Adult)	On Remand/Total (Total)
2000	253	1141	1394	81,85%	48,87%	49,80%
2001	352	1665	2017	82,55%	49,27%	50,47%
2002	548	1497	2045	73,20%	40,30%	41,43%
2003	552	1657	2209	75,01%	41,21%	42,37%
2004	366	1628	1994	81,64%	46,37%	47,58%
2005	143	1406	1549	90,77%	46,06%	47,30%
2006	321	1794	2115	84,82%	47,85%	48,97%
2007	539	2148	2687	79,94%	40,70%	41,86%
2008	671	2075	2746	75,56%	37,91%	38,91%
2009	632	2047	2679	76,41%	33,69%	34,67%
2010	529	1584	2113	74,96%	27,52%	28,35%
2011	410	1924	2334	82,43%	26,98%	27,98%
2012	418	1583	2001	79,11%	22,48%	23,31%
2013	451	1527	1978	77,20%	18,23%	19,04%
2014	540	1522	2062	73,81%	13,26%	14,04%

Graph 1: Percentage of children on remand and sentenced children, prepared exclusively for this thesis. **Source:** <http://www.cte.adalet.gov.tr>



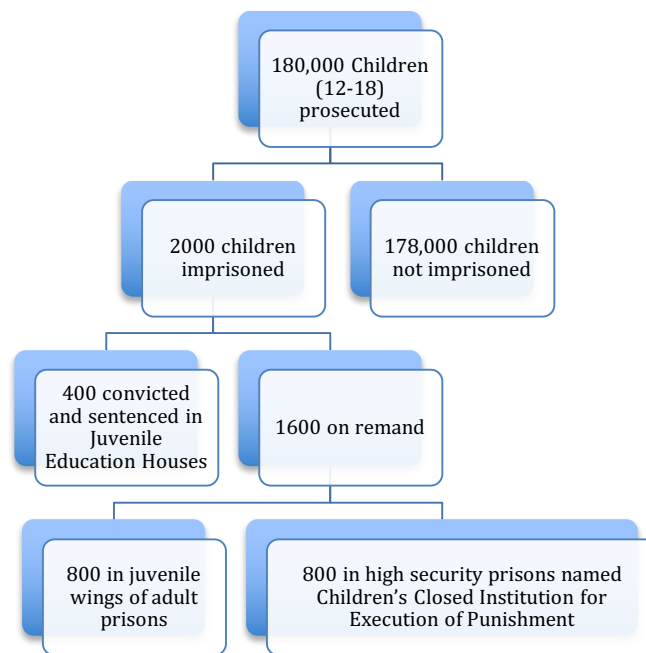
Moreover, over the last decade, high security prisons named ‘Children and Young People’s Closed Institutions for Execution of Punishment’ have been built inside large prison campuses in the three biggest cities of Turkey (İstanbul, Ankara, İzmir) to receive these young defendants. These prisons have been exclusively built for young remand prisoners, as indicated in the Law on the Execution of Sentences and Security Measures (art. 11, Law no.5275, 2004) in line with the ‘United Nations Rules for the Protection of Juveniles Deprived of their Liberty’ that rules the separation of children from adults. So, around half of the young remand prisoners are incarcerated in high security prisons named ‘Children and Young People’s Closed Institutions for Execution of Punishment’ that have been built within the last decade. Others are kept in the juvenile sections of adult prisons. On the other hand, young sentenced prisoners are placed in low-security, open-type prisons named Juvenile Education Houses. So we witness the introduction of high security prisons named “Children’s Closed Institution for Execution of Punishment” that are only for young remand prisoners who have yet to be convicted and thus have not been sentenced.

This proportion of young remand prisoners to all young prisoners, which has not been lower than 70% and the introduction of Children’s Closed Institutions for Execution of Punishment exclusively for remand imprisonment have not been publicized or problematized by the state authorities. Moreover, sentenced young people are sent to Children’s Closed Institutions for Execution of Punishment if they commit punishable acts in the Juvenile Education House. Thus, these high security remand prisons are used as punishment sites for inflicting disciplinary punishment upon the sentenced young prisoners.

On the other hand, around 1.5% of young defendants experiences remand imprisonment during prosecution, which could lead to the conclusion that pre-trial detention is used as last resort. Although 1.5% of young defendants are incarcerated during the prosecution, which could be regarded as a very low and successful number, the emergence of high security prisons for young remand prisoners and the high proportion of young remand prisoners to all young prisoners force the researcher to question the roles of remand imprisonment in the criminal and youth justice systems.

The below schema provides approximate numbers and is drawn to express the situation.

Figure 1: Simplified schema showing imprisonment ratio with approximate numbers based on Table 7 in Chapter III, prepared exclusively for this thesis. **Sources:** <http://www.adliscil.adalet.gov.tr> and <http://www.cte.adalet.gov.tr>



The emergence of high security in three biggest cities of Turkey to contain only young defendants on remand calls for attention to remand imprisonment as an institution in governing crime. Most strikingly, in the 7th column (on remand/total) of Table 1, we can see that from 2007 onwards there is a drop in the proportion of remand prisoners in the whole prisoner population, both minors and adults. Although there is also a slight drop in the proportion of young remand prisoners to all young prisoners between 2012 and 2014, the proportion is above 70%.

The Ministry of Justice presented the drop in the proportion of general remand prisoners as a success but without providing explanations about how this drop has been achieved. Historically, it

is important to capture the period when the proportion of remand prisoners is significantly high and specially-constructed high security prisons are designed to receive young remand prisoners.

Until now, imprisonment has not been taken as a major subject of inquiry in social sciences in Turkey. The vast majority of published work is on the experiences of political prisoners who have implications on the sovereign power of the Turkish state, its nationalism as well as its political economy. Similarly, legal experts have considered remand imprisonment in Turkey within a narrow scope. Ultimately, the current literature is not sufficient to understand the governance of remand prisoners in the Turkish criminal justice system. Moreover, law in practice does not necessarily match law in the books. The latter does not explain the roles of remand imprisonment perceived by youth justice professionals or the young defendants.

This proportion of young remand prisoners to all young prisoners, which has not been lower than 70% and the introduction of Children's Closed Institutions for Execution of Punishment exclusively for remand imprisonment lead the researcher to presume that youth remand imprisonment acquires roles within crime control and social control that could be comprehended within a look through Turkey's governmentality that would draw a picture of its legal culture. Nelken defines legal culture as: "a way of describing relatively stable patterns of legally oriented social behaviour and attitudes. The way legal professionals such as lawyers and judges are appointed and controlled, the prison rates, ideas, values, mentalities can identify the legal culture" (Nelken 2004: 1).

Nevertheless, before discussing the analytical tools to explore the roles of remand imprisonment in the youth justice system, it is first necessary to start with legal explanations in order to define the inadequacy of their explanations.

Traditional procedural approach to remand imprisonment

So, before scrutinizing the legal culture through a study of governmentality, what are the legal-procedural explanations for the high proportion of remand prisoners, which at the end fail to explain the roles of the institution of remand imprisonment?

Firstly, the slow processing of the criminal courts might lead to long pre-trial detention periods, potentially resulting in remand prisoners outnumbering sentenced prisoners. In Turkey, prosecution takes a relatively long time—today approximately 8-15 months³ per young defendant (Table 6, Graph 6 in Chapter III). Secondly, deducting the pre-trial detention period from prison sentencing

³ In the Juvenile and Juvenile Heavy Penal Courts, excluding the other courts.

increases the proportion of remand imprisonment as in the case of Turkey. Thirdly, the verdict might be ‘not guilty’ for a considerable number of defendants.

The fourth explanation is that categorizing the cases awaiting the High Court of Appeal as pre-trial detainees contributes to the high proportion of pre-trial detention. The fifth explanation is that incarcerating political defendants as remand prisoners in high numbers and for long periods contributes to an increase in remand prisoner population. The sixth and the final explanation is specific to the youth justice system. The fact that a considerable number of young defendants reach the age of 18 by the time of the verdict and commence their prison sentence in the adult prisons leads to high proportions of pre-trial detainees in the youth prison population. The majority of young people in conflict with the law in Turkey reach the age of 18 and serve their sentences in adult prisons.

These six factors that could explain the high proportion of remand imprisonment are reality in the Turkish youth justice system. However, especially since 2005 with the legislation reforms⁴, methods to reduce the use of pre-trial detention have been introduced. When we try to search for the legal reasons for the sustainability of high proportion of young remand prisoners to all young prisoners, law articles do not provide an answer because articles in Criminal Procedural Law (Law no. 5271, 2004) do not provide a way to change this proportion. Neither do articles of the Child Protection Law (Law no.5395, 2005). Today, in 2016, it has been over a decade since the enactment of the Child Protection Law, together with the most recent Turkish Penal Code (Law no. 5237, 2004) and the Criminal Procedural Law (Law no. 5271, 2004) introducing diversion and control mechanisms that are alternatives to remand imprisonment (Appendix A). In short, since 2005, law articles do not constitute an obstacle to reduce the ratio of remand imprisonment. In the case of remand imprisonment, the first task to do is to review the rationalities of punishment, imprisonment and remand imprisonment separately to situate remand imprisonment in the criminal justice system.

Rationalities of punishment

Basically, the goals of punishment in the juridical perspective can be categorized under two approaches: (1) reductivism, which is forward-looking and utilitarian; and (2) the retributive approach, which is past-oriented (Cavadino and Dignan, 2007; Hudson 2003). There are various mechanisms in reductivism. First, the idea to punish the person who is in conflict with the law stems from its function to deter that same individual from committing another unlawful act or deterring society from committing the same unlawful act in the future. So the deterrence can be realized on an individual or societal level. Second, in reductivism, punishment can be justified

⁴ Introduction of new Turkish Penal Code (5237), Criminal Procedural Law (5271), Child Protection Law (5395)

simply as incapacitation; incapacitating the offender from doing any acts during the time of incapacitation. So public protection is achieved through incapacitation, which can take various forms, such as disabling the offender by cutting hands, life imprisonment or disqualifying drivers in the traffic by taking the license away. In the form of imprisonment, the offender is incapacitated from committing further acts during the time of incarceration. Third, reductivism also comprises the rehabilitative ideal, which is also forward-looking. For retributivism, on the other hand, the aim of punishment is to take revenge. So proportionality and seriousness matter in the retributive approach.

Globally and legally, the rationalities of remand imprisonment for a defendant differ substantially from the rationalities of punishment. In the case of the existing Turkish Criminal Procedural Law (Law no. 5271, 2004, article 100, see appendix B), the idea of holding the defendant on remand is to prevent the defendant from absconding or hiding, from obscuring, hiding or destroying evidence, and/or from threatening victims and/or witnesses. The defendant may also be imprisoned on remand if he/she is prosecuted according to a certain offence indicated in the category of offences that could lead to remand imprisonment. However, generally, although, not necessarily written in law on the books, protection of the public is secured in certain cases through incapacitating the suspect/defendant.

Thus, the legal rationalities of punishment and legal rationalities of imprisonment on remand do not share a substantial common ground. Imprisonment is globally recognized as the main site of punishment in modern penal law and prisoners on remand experience the pains of imprisonment as well as the pain of uncertainty. Emergence of high security prisons for youth remand imprisonment, thus deserves attention to understand whether the rationalities of remand and sentencing interpenetrate. Without going into deep analysis yet, two theses emerge at first glance to explain the emergence of high security imprisonment for young defendants.

Two theses

A. Punitiveness?

First, the state could strategically generate a policy to deliberately inflict punishment upon young defendants without actually convicting and sentencing them. Is the point to have extra-judicial punishment? Is there a hidden punitiveness maintaining the emergence and existence of a high security prison incarcerating young defendants?

There is a consensus among writers on the juvenile justice system that, in the last decades, there has been a transformation in the justice system and a move away from 'penal welfarism'. The welfare model is known by its positivistic assumption that the wrongdoing of young people is the

product of social and environmental factors. The young person is not responsible for the act as he/she is not viewed as a rational decision-maker. Therefore, rather than punishing, the goal of the institutions is to help the offender through various treatments. In short, this model concentrates on the welfare needs of the young person, rather than the deeds and deserts (Cavadino and Dignan 2007: 315).

The terms ‘new punitiveness’ (Goldson 2002) and ‘populist punitiveness’ (Garland 2001) are employed to raise awareness about the destructive effects of movements in the justice system against penal welfarism. However, according to Matthews' analysis, there is no clear definition of these terms. Rather, they are catch-all terms used too often without giving much attention to what they really indicate (Matthews 2005). Agreeing that there has been a gradual shift, Matthews claims that the decline of penal welfarism may have led to other strategies such as managerialism but not necessarily to the supposed rise of punitiveness. Matthews also approaches the role of populism in punitiveness with cautiousness. Rather than seeing the public view as innately backward and punitive, he reminds readers of progressive public protests and public views that might contribute to the development of crime control strategies. This view of punitiveness sees the process from below, in which the public urges for tougher punishments. But there is another understanding of punitiveness that views it as a top-down process in which the politicians play with the public's fears (Matthews 2005: 176).

Similar to Matthews, Muncie reminds us of the (mis)use of the concept of ‘punitiveness’. He states that: “there is something of an unfortunate tendency for many Anglophone academics and policy makers to assume that general trends in the USA are not only crossing all American states, but are also capable of being transferred internationally. They are not” (2008: 118). Hence, in some countries, the opinion of the public as well as that of politicians may be given less attention than those of experts. Thus, it is wise to be reluctant to approach the containment of youth on remand in Turkey with explanations that give much weight to cultural turns in different places. As a matter of fact, the rise in the number of young people on remand has received much criticism by non-governmental organizations in Turkey, as well as in the media. Accordingly, it is difficult to see popular punitiveness (Pratt, 2007) in Turkey as a process from below in which the public urges tougher punishments that would be observed in neoliberalizing Anglo-Saxon countries.

Considering the laws and legal publications aiming to develop a youth justice system in Turkey, I argue that youth remand prisons are not sustained with a punitive ideal. Punitive expressions towards young people in conflict with the law do not emerge in politicians’ statements and in lawmakers’ expressions or in the media, disregarding some grotesque expressions. A popular punitiveness arising from the media that would move politicians or lawmakers to develop punitive responses to the issue of crime is not evident, except a strong stance against patriarchal violence

that is not particularly related to youth offending. İrtiş, Cartuyvels and Bailleau (2010) do not consider the Turkish youth justice system in terms of punitive tendencies rising against penal welfarism, as Turkey has not experienced the social welfare model (Cartuyvels and Bailleau 2010). Accordingly, punitiveness cannot rise against welfarism in the Turkish context.

Fictionalizing and impeaching the sustainability of remand imprisonment in an axis of punitive vs. welfare ideal might cause oversight in other factors contributing to the issue at micro and macro levels. Likewise, Cavadino and Dignan (2006; 2007) and Pratt (1989) warn against the trap of welfare vs. punitive debates. Moreover, approaching public issues as deliberate policies of the state, relying on calculations, strategic planning or pure intentions might mislead the researcher in providing explanations. In his criticism of revisionist penitentiary historians, including himself, Ignatieff (1981) seeks to warn readers and future researchers not to go for functionalist assumptions and suggests thinking of society in dynamic and historical terms. He draws attention to the possibility that prisons fail their constituencies and limp along because: “conflict over alternatives is too great to be mediated into compromise.” (Ignatieff 1981: 181) Thus, Ignatieff suggests not to adopt three major misconceptions that revisionist penitentiary historians have, namely; “that the state controls a monopoly over punitive regulation of behaviour, that the state's moral authority and practical power are the major sources of social order, and that all social relations can be described in terms of power and subordination” (Ignatieff 1981: 153).

To refrain from functionalist approaches and to prevent falling into the trap of mystifying the state as an omnipresent, omnipotent structure in a state-society dichotomy (Abrams 1988), it is necessary to develop a methodology that allows interpretation of the various motives of different professional groups as well as different groups of defendants towards the same subject matter. No matter how strictly legislative power assigns the roles of these professional groups, the praxis of law in judicial and executive powers does not fit with the framework of law in books. Moreover, different professional groups are themselves divided over the same subject matters of security, punishment and control.

B. Security concerns?

After stating the reservations about functionalist approaches, a second thesis emerges. Does having at least 70% of the youth prison population on remand result from a lack of long-term policies and lack of consensus around policy-making? Have these prisons been constructed spontaneously to control young remand prisoners as they are already part of the criminal justice system on a temporary basis? Have these high security prisons in big prison campuses been planned as part of a growing concern for security but at the same time for human rights in the neoliberal era? These prisons are designed in the most efficient way to prevent escape and provide security for prisoners

inside the facility itself, but at the same time satisfy the most basic ‘rights’ of young prisoners, as the young defendants are both separated from adults and their sentenced peers. So do these high security remand prisons fulfil the basic rights of defendants, meaning secure institutions and thus rendering any work on policy-making for young people in conflict with the law unnecessary? I claim that in relation to its political economy and residual social security regime, ‘children’s rights’ language (see Appendix C) in Turkey, works discursively as a source of legitimization for the overall youth justice system as it deals merely with the effects of imprisonment within the four walls while disregarding the causes and structural patterns of being in conflict with the law. The dialogue between the Ministry of Justice and non-governmental organizations has been constructed within the rights’ discourse. Hence I approach human rights language critically in this research. Rather than theorizing on the roles of remand imprisonment between a punitive vs. welfare ideal axis, a dichotomy, I propose to explore the relation between the emphasis on security and its relation to rights. In this picture, remand imprisonment rather stands in an axiom of *self-induced diversion system* that uses imprisonment as a last resort and security-oriented control mechanism.

Situating remand imprisonment in penal politics through governmentality studies

Understanding the roles of remand imprisonment requires the researcher situating it in centre of the penal politics, which could itself be better interpreted in the studies of governmentality. In this understanding of statecraft, the art of governing is not confined to the figure of the sovereign and the abstract laws. The concept of governmentality as a method of thought to conceptualize the state, indicates to how the *modus operandi* of the government gains new meaning on conducting and ordering *things*. Governmentality as a concept is further developed in Foucault’s lectures at the Collège de France on Biopolitics. The use of the term Biopolitics is not stable and keeps developing as a concept through the lectures and texts of Foucault. It is developed as a *method of thought* to analyze the transformation in the exercise of power and a transformation in the *mode of politics* in the West in the 18th century that is going through a change with capitalist mode and relations of production while the liberal individual being is developed in emerging nation-states. Biopolitics refers to production of knowledge and techniques to *rationaly* manage the *population* as a *social entity* in the transformation towards capitalist relations of production. Understanding political economy and the mode of knowledge production; the production of truth matter significantly in this method of thought.

Through the concept of Biopolitics, Foucault attempts to offer a method of thought to analyze the governmental practice that manages the population as a social entity on the issues of health, hygiene, birthrate, life expectancy, race, especially in relation to the political economy from the 18th century to the present. The question of liberalism as “a way of doing things” and neoliberalism

in the 20th century constitute a significant part of the analysis (Foucault, 2008). Through the concept of Biopolitics, we see the emergence of technologies of security “within mechanisms that are either specifically mechanisms of social control, as in the case of the penal system, or mechanisms with the function of modifying something in the biological destiny of the species” (Foucault, 2007:10).

Lemke (2011b: 34) aims to clarify Foucault’s conceptualization of Biopolitics and attempts to discern Foucault’s employment of the concept in three ways. First, Biopolitics refers to a rupture in political thinking and rearticulation of sovereign power. Second, Foucault refers to the rise of modern racism. Third and most relevant for this research, Biopolitics refers to the emergence of an art of government with liberal forms of social regulation and individual self-governance. This art of governing, gains acceleration as human beings become detached from the land, mobilize and grow in number in the emergence of capitalist relations of production. Foucault points out that this art of governing develops as the population becomes the main target of the governor and economy is introduced as a correct way of managing individuals (2007). The target of governance shifts from territory to population as new disciplines produce knowledge on conduct and as the economy is politicized. Rose describes the liberal rule from the perspective of governmentality, as the rise of the ‘social’ (1996). Institutions on health, education and justice develop through procedures, analysis, measures and tactics. By definition, governmentality takes as its target, ‘population’, as its principle form of knowledge, ‘political economy’ and as its technical means, ‘apparatuses of security’ (Foucault 1991: 102, Foucault 2007: 107,108). The state eventually becomes ‘governmentalized’. So, more precisely, Biopolitics is concerned with the administration of life as it appears at the level of populations.

Accordingly, “government is defined as a right manner of disposing things so as to lead not to the form of the common good, as the jurists’ texts would have said, but to an end which is ‘convenient’ for each of the things that are to be governed” (Foucault 1991:95). So, things must be *disposed*. Foucault underlines the term ‘dispose’ as government, is of disposing things rather than imposing law on meant, “even of using laws themselves as tactics- to arrange things in such a way that, through a certain number of means, such and such ends may be achieved” (Foucault 1991:95). So, the term governmentality refers to the production of strategies and tactics to dispose things and to manage the population through certain knowledge-production. More precisely, governmentality refers to the early modern period of Western European societies in which the knowledge and technique of social sciences become integral to the art of government (Dean 2010). Rose (1996) draws attention to the transformation from the liberal-rule to advanced liberalism that invents new strategies for the will to govern. New relations between the expertise and politics, new pluralisation of ‘social’ technologies, a new specification of the subject of government, are the characteristic shifts that Rose underlines. According to Rose, advanced liberal government seeks to govern

without governing *society*, and to govern through the regulated and accountable choices of individuals. Thus Rose calls for a critical analysis of the practices of freedom (Rose 1996).

Here, sovereignty does not cease to play role, as governmentality becomes a political science. On the contrary, theory of sovereignty, “involves an attempt to see what juridical and institutional form, what foundation in the law, could be given to the sovereignty that characterizes as a state” (Foucault, 1991: 101). To put it in a different way, “the new political rationality applied to biological processes produces a kind of ‘acknowledgement’ of a reality that is no longer simply imagined or combated [by law or discipline], but within which one must ‘work’” (Terranova, 2009: 240). While “the law imagines and can only formulate all the things that could but must not be done only by imagining them and discipline... aims at overcoming the ‘tenacious and difficult’ nature of reality through a series of artificial regulations” *security* ‘works through a series of analyses and specific arrangements’ (Terranova, 2009: 239, 240; Foucault, 2007).

Here, an integrative analytics of governmentality of the modern state should not exclusively focus on the micro power in management of the population and should not eschew the sovereign power’s claim over the territorial boundaries where the population is managed. The question of security through sovereign’s power over territorial boundaries does not disappear due to a focus on the management of population. Control techniques over people who are in conflict with the sovereign state’s security and its territorial claim can be better analysed with a focus on the ‘State of exception’ in the modern Biopolitics that is elaborated by Agamben (1998, 2005). Agamben studies the exclusion from protection of the law, emergence of bare lives outside of the protection of the law, suspension of legal rights while the law is still in force. Control of crimes against the security of the sovereign state and its territorial boundaries through remand imprisonment can be given meaning through Agamben’s analysis of Biopolitics.

So, the study of governmentality provides a broadened way of thinking of power relations in societies. Dean proposes the ‘analytics of government’ to view practices of government in “complex and variable relations to the different ways in which ‘truth’ is produced in social, cultural and political practices” (Dean, 2010:27). In fact, “the discourses on government are an integral part of the working parts of the workings of government rather than simply a means of its legitimization...” (Dean, 2010:37). In this regard, analytics of government goes beyond the language of domination and “how the dominant group or the sovereign state secure its position through legitimate and illegitimate means” (Dean, 2010:37). However, I argue that the quest of legitimacy never ceases in the study of criminal justice systems. In fact, the grounds of the legitimate authority transforms through knowledge production. Determinate factors of what is legitimate are not static. “... ‘Structures of dominancy’ both constrain and enable the exercise of power and the construction of legitimacy in social systems...[and] Foucault’s work, in particular,

challenges normative views of legitimacy, suggesting that they are a result of power, are culturally significant and context dependent” (Gordon, 2009: 269, 271). Thus, research on the knowledge production and strategies of crime control constitute an important aspect of governmentality studies. Hence, rather than abandoning the question of legitimacy in the interest of studying the analytics of government, scrutinizing the power relations can open the grounds for understanding the transformations in the discourses such as ‘reformation’ or ‘rights’ that provide a legitimate sustainability of remand imprisonment in high security prisons.

Remand imprisonment has implications on governmentality as an institution of crime control and social control while adopting a study of governmentality as method of thought reveals the roles of the remand imprisonment in the criminal/youth justice system. In this study I scrutinize the roles of youth remand imprisonment as a study of governmentality by focusing on three aspects of governmentality studies that I find essential.

First, I follow the emergence of high security prisons in relation to the transformations in the political economy and social security in relation to the welfare capitalism of Turkey. For this task, I rely on the literature on revisionist theories of imprisonment (Rusche and Kirchheimer, 2003, Melossi and Pavarini, 1981; Foucault, 1977, 1980; Matthews, 2009). Second, I focus on the role of remand imprisonment in sovereign power’s relations with the political prisoners by drawing on Agamben’s analysis of Biopolitics (1998, 2005). Third, I investigate the mode of knowledge production and adaptation and the transformation in the discourses in the youth justice system. I specifically concentrate on the effect of the prevalence of the language of rights on the roles that youth remand imprisonment fulfils in the youth justice system. Thus, the sociology of human rights literature (O’Byrne, 2012a, 2012b; Turner, 1993, 2000, 2001; Waters, 1996; Morris, 2012, Hynes et. al, 2010, 2012) provides tools for this analysis. Significantly, the ethos of liberalism, which is the abstract logic of exchange among equals, [forming the basis of the rights language] is a key rationality in the appearance of bio-political problems and in their resolution (Dean, 2010:120).

Unfolding and tracking the production and adaptation of certain knowledge in the context of Turkey, the mobilization of certain professions, transformations of techniques in the youth justice system is illuminating. Values matter significantly in this approach. However, very importantly, the techniques cannot be comprehended as emerging from the values that will be discussed, such as ‘welfarism’ or ‘human rights’ or ‘children’s rights’. Rather than viewing the praxis in law as expressions of values, this thesis aims to see how these values function, what consequences they have and how they get attached to techniques (Dean, 2010). So, one of the goals of this work is to unfold how knowledge and values of widely acknowledged concepts of ‘reformation’ and ‘rights’ get attached to techniques of regulation in the Eurocentric and developmentalist ethos.

Accordingly, in the analysis of the data of this research, appealing to the language of rights in the Turkish youth justice system reveals a depiction of a young individual with rights as well as responsibilities as a rational choice-maker; as a “rational-economic individual who invests... and risks making a loss...” (Lemke, 2001: 199) As a *homo oeconomicus*, the young defendant is a rational choice maker who is stripped of from his or her field and habitus (Bourdieu, 1990). Hence, studying the praxis of human rights as a language in relation to the political economy and social security of the geography in which it is implemented is illuminating to see the implications of the language of human rights in the criminal justice system and crime control in the widest sense. In this thesis, I aim to demonstrate how the normative, universal and liberal language of human rights unfold in the political economy and welfare regime of Turkey.

As I mention above, the study of governmentality of remand imprisonment calls for studying its relation to the transformations in the political economy. Revisionist penitentiary theories of the late 20th century allow us to theorize the emergence of the prison as the main site of punishment in the relations of production, political economy and governmentality. Briefly, prison sustains itself and the theories that situate imprisonment in political economy continue working to understand prison’s sustainability in relations of production that transform over time. So, can the revisionist literature of the late 20th century elucidate the roles of remand imprisonment in the light of the three elements of imprisonment, namely ‘space’, ‘time’ and ‘labour/discipline’ (Matthews, 2009)? And reversely, can the everlasting remand imprisonment and prisons emerging only for defendants tell us something about modern penal theories in terms of imprisonment’s three elements?

In the revisionist theories of imprisonment, the two elements of time and labour/discipline come forth as the pioneering elements that constitute imprisonment as the modern mode of punishment. Space, which is the third element, remains an indispensable component. Spatial arrangement and exclusion of people in conflict with the law remains a primary aspect of the modern understanding of punishment. According to the findings of this research, as the elements of time and labour/discipline do not feature in youth remand imprisonment, the analysis revolves around the element of ‘space’.

In line with the revisionist thesis, it is not surprising to witness the rise of high-security prisons in the post-Fordist period in which the regulatory mechanisms of the Fordist era, namely the modern family and the Keynesian welfare state, are undermined and transformed. In this post-Fordist era, we witness the cycle of the production of *la canaille*, which is: “the new contribution to the working class... made up of former peasants or peasants-turned-vagrants, not yet understanding themselves as working-class and therefore deprived of that possibility for a feeling of mutual “solidarity” that will be the hallmark of their becoming working-class” (Melossi 2008: 234-235).

Thus contrary to the height of the Fordist times in the early 1970s when prisoners were deemed “obsolete”, it is not surprising to see the prison brought back to life within this framework, in order to deal with *la canaille*, or the delinquents as Foucault defines this group (Melossi 2008: 241). Feeley and Simon draw attention to a ‘new penology’ (1992), arguing that prison no longer sustains itself with the claim of transforming individuals but rather manages aggregates in a managerialist, though not professionalized, manner. The new penology appeals to the subject matter of this research. However the findings call for a critical review of this approach, which is done in Chapter VI.

These imprisonment theories briefly reviewed above share a common ground by drawing their explanations on the sustainability of imprisonment as the primary mode of punishment in relation to the political economy of the geography they study in a specified time period. As the political economy matters fundamentally to the analysis of youth remand imprisonment in this research, Turkey’s political economy and its situation in ‘varieties of welfare capitalism’ in Esping-Andersen’s formulation form the basis of discussion, which are elaborated upon in Chapter III. After tracing the transformation of prison politics of Turkey through the literature, I agree with the thesis of the revisionist historians.

However, there is a slight reductionism in revisionist imprisonment theories, as crime is merely identified as a class issue, disregarding other dynamics in society such as patriarchal relationships leading to sexual crimes, bodily injury, murder or offences against the integrity of the state. In order to avoid reductionist conclusions based on class structure, different types of offences will be elaborated separately, which will eventually have significance for the imagination of the prisoners in relation to their class and identity. Hence, the diversity of young prisoners (see Appendix D) in this research calls for an analysis of governmentality that encompasses political economy as well as the manifestation of sovereign power.

So, I broaden this approach and state that penal politics correspond to Biopolitics that could be comprehended through security *and* sovereignty. Agamben’s critical approach in reconstructing the concept of power and scrutiny of sovereign power in Biopolitics is illuminating to comprehend the remand imprisonment of young political defendants whose criminality is drawn upon ethnicity and identity politics in relation to the production of ‘states of exception’ and suspension of civil rights (Agamben 1998, 2005). Thus, this thesis aims to scrutinize youth remand imprisonment within a new paradigm by situating remand imprisonment in governmentality, hoping to offer a new perspective to the youth justice system that can pave a way to revising remand imprisonment. The element of ‘space’ is revealed to be essential in controlling both political defendants and defendants accused of other offences.

What does studying imprisonment and specifically remand imprisonment offer in broader social terms and where does the researcher stand?

As Kalberg underlines, Weber knew that maintaining an objective and value-free position to gathering and evaluating data would not be easy. Values remain intertwined within the thinking and action of the researcher, who is a cultural being. In other words, our: "values intrude into our mode of observation" (Kalberg 2005: 13). Social scientists are not value-free but value-driven, which inevitably has a determinant effect on the approach of the researcher and the framework of the subject matter; in other words, the formulation of the problematic. What secures the validity of the findings? The response to the problematic is reflexively explaining the central values that determine the framework and the approach.

So, why does youth remand imprisonment matter? As a researcher preoccupied by the cultural state-citizen contract that determines governmental welfare politics and consequently the welfare/youth/criminal justice system, I hope to arrive at conclusions on the governmentality in Turkish social politics and its governance of young citizens who are in conflict with criminal law. An interpretive/explanatory understanding (*Verstehen*), (Weber 1978, Vol.1: 4) of the roles of remand imprisonment through scrutinizing the operation of the law on young prisoners will ultimately give a composite picture of the state's governance of young people, or in other words, its relations with its citizens. How the state governs its young citizens and, also, its employees conducting this governance on a daily basis is closely and fundamentally related to its welfare politics, its governmentality, its statecraft, and the governance of the citizens by the state. Thus, as the answer to this research question is about the state's governmentality, the data presented will have implications for governmentality and politics of social security.

An interpretative understanding of social action/verstehen in Gramscian understanding of bureaucracy

Having said that, and acknowledging the limited guidance of law in books and rationalities of punishment and pre-trial detention in penology, a methodology to understand the interpretation of remand imprisonment in the bureaucratic praxis is required. As law in books remains insufficient to explain the 'law in action' or 'law in context' as sociologists of law would suggest (Nelken, 2001), research based on an interpretive understanding (*Verstehen*), conducted in prisons and the courthouses can help the researcher analyse the roles of youth remand imprisonment in the justice system. In this method, the individual is seen as "the upper limit and the sole carrier of meaningful conduct" (Gerth and Mills 1946: 55). This study of social action through interpretive means, based on the researcher's understanding of the purpose and meaning different figures attach to their own action (Weber 1978, Vol. 1), can explain what roles remand imprisonment fulfils in the justice

system in terms of security, control, punishment and justice. So, understanding the roles and perception of remand imprisonment as practiced in the youth justice system requires research in the sites of 'law in action', in both of the bureaucratic institutions that are prisons and in the courthouses. Conducting research in law in action; meaning, doing research in the courtrooms and prisons, enable the researcher to understand how the law practitioners and those in conflict with the law interpret the legal actions and what meaning they attach to the legal actions, which could be analysed and interpreted in the macro level in governmentality studies; in relation to the political economy, mode of knowledge production and to sovereign power's relation with the citizens.

Weber believed that bureaucracy and the bureaucratic organization are technically the most rational means of exercising authority over people and bureaucracy's development was the basis of the Western democratic state (Weber, 1978, Vol.2; Fiss, 1983; Morrison, 1995: 292). He described, bureaucracy as an ideal type, as any system of administration conducted by non-elective, trained professionals according to fixed rules and specialized roles. Official conduct is subjected to strict rules of discipline and control under the supremacy of abstract rules. These career-seeking professionals work in hierarchical, vertical organization based on responsibility and accountability. These professionals shall preserve political neutrality. Bureaucratic organizations as an ideal type embody certain rational characteristics, such as calculability, efficiency, predictability and technical proficiency (Button et al., 2012), precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs (Weber, 1978, Vol.2: 973). However, in practice, they may be irrational, highly personalized, slow, imprecise and technologically backward.

The deviation of the praxis of the bureaucratic administration from the rational-legal norms set on legislations; on the rationalization of remand imprisonment as an example, is perhaps not an exception that could be observed in some countries in specific periods, but rather an inevitable result of the installation of bureaucratic organizations within the Biopolitics of the states. Gramscian understanding of bureaucracy is relevant to this point. "Gramsci identifies the bureaucracy's function as *structuring and stabilizing relations between the leaders and the led* [emphasis original]" in other words as, mediating (Migliaro and Misuraca, 1982: 74). Bureaucratic employees are selected and appointed from above by the political leaders of the state on the basis of technical competence, which is presented as a criterion of legitimation. The ruled/governed people can demand of them only technical efficiency. So for Gramsci, the bureaucracy is both a political fact and a technical fact (Migliaro and Misuraca, 1982). Those "who see everything purely in terms of "technique", "technical" necessity, etc., speculate on this coexistence of different causes in order to avoid the fundamental problem" (Gramsci, 1971:145). Specifically, not to fall in to the trap of totalizing bureaucracy and rendering it as a state apparatus, Gramsci puts forth that,

the spirit of the State' of which the bureaucracy is guardian, consists neither in a totality of ethical principles which the state sets before all citizens as a norm, nor in adopting points of view and criteria of a 'universal' kind... It consists instead in the ideological cement which makes bureaucracy itself both homogeneous and compact." The specific ideology rationalizes the position of the bureaucrat (Migliaro and Misuraca, 1982:79).

Thus, Gramsci goes beyond the analysis of Marx and Weber in defining bureaucracy and focuses on how the concrete relations between economy and the state, between 'structure' and 'superstructure' are conducted in reality by the bureaucracy and intellectuals. Thus, defining bureaucracy in its particular function is vital to see how the economy and society relate to the state (Migliaro and Misuraca, 1982:80).

Hence, findings of this research suggests that bureaucratic conduct is shaped within governmentality, as the bureaucratic staff members as professionals realize the very conduct. Mode and means of knowledge-production or knowledge-adaptation (in developmentalist discourse) to conduct the population shapes the bureaucratic organizations. As a matter of fact, in this thesis, the roles of youth remand imprisonment is revealed as the youth justice professionals' interpretation of their own decisions and young defendants' interpretation of their imprisonment as citizens are analysed in relation to the political economy, social security regime, mode of knowledge production and sovereign power's relations with the citizens.

Methods to comprehend governance of youth in conflict with the law

Understanding the perception and implementation of remand imprisonment in the legislative, judicial and executive power requires a triangulation of methods such as analysing the legislations and statistics in recent history, doing courtroom observations, examining court files, conducting interviews with judges, prosecutors, lawyers and social work officials⁵, conducting interviews with remand prisoners as well as engaging in discussions with non-governmental organizations.

Youth remand prison research

Doing research in prisons provides insights into the governance of young people in conflict with the law as well as young prisoners' perceptions of this governance that vary according to social class, gender, age and most significantly the criminal act the young defendant is charged with. The roles of remand imprisonment in crime control and social control cannot be fully comprehended without investigating what meanings young prisoners attach to their imprisonment and how they

⁵ In this thesis, 'social worker' means graduate of social services and 'social work official' means professionals of various fields who are appointed by the state in the judiciary or prison.

relate their own experiences to the formal discourse of youth justice system, that is currently framed in the human rights language. It is significant to see the differences and similarities in interpretation of those imprisoned and practitioners.

Here, identifying patterns of perception and experience according to offence types has vital significance in constructing robust and reliable interpretation. In the case of the criminal justice system, it is fascinating to come across different patterns of interpretation of imprisonment by various groups of prisoners categorized into so-called offence types. It is interesting to note here that despite the clear benefit such categorization provides for analysis, a significant part of imprisonment studies does not present imprisonment narratives based on offence types.

In this study, interpreting imprisonment perceptions based on the nature of crime, such as crimes against property, drug-related offences, crimes against bodily integrity and crimes against the integrity of the state/state sovereignty provide a basis to better understand the relationship between class and imprisonment. Bourdieu's concept of "habitus" and varieties of capital provide an insightful language basis in this sense. So, doing prison research with young defendants enables the researcher to maintain a balanced analysis through the recognition of diverse ways of being in conflict with the law. Moreover, it enables the researcher to see how the formal language is interpreted in praxis; such as the 'right to presumption of innocence', which will be elaborated in Chapter V and which has implications on the roles of remand imprisonment in crime control.

Courthouse research

Still, observing the governance of young people inside prisons and young defendants' narratives of their incarceration is limited in offering insights into how youth remand imprisonment is governed. This deficiency requires remand imprisonment in the bureaucratic organization of the youth justice system to be situated at the intersection of legislative, judicial and executive powers, which provides a comprehensive picture for interpretation. Remand imprisonment lies at the intersection of these three system powers, so analysing the subculture of youth justice professionals and the interaction between actors of three separate powers is essential, and was undertaken in the research conducted for this thesis.

The role attributed to remand imprisonment is analysed in this thesis by revealing the coordination between these three separate power systems and by deliberately focusing on the working of the courthouse as a bureaucratic organization. The roles different professional groups attribute to themselves in this organization, their interaction within and between each other as actors of legitimized state power and how they interpret the youth justice system in various patterns based on their occupational role as a prosecutor, lawyer, judge or social work official can reveal the roles of

remand imprisonment for young people in conflict with the law. In short, identifying patterns/regularities of how different professional groups within the same youth justice system interpret their own social action, their decision-making process and their interaction within and between each other can explain the multi-causal factors impacting on the praxis of remand imprisonment.

Youth justice professionals' perceptions of remand imprisonment; (in other words, their interpretation of their social action) do not necessarily stay in the framework drawn by the law. Youth justice professionals' interpretation of their decisions and actions reveal the governance of the youth justice system and the roles of remand imprisonment within. Deterrence, control and security become prominent in the accounts of workers. However, findings from the data reveal that workers themselves do not share a coherent perception of remand imprisonment. This is due to the fact that workers have different work cultures, leading to hierarchical relations among the professions within the same bureaucratic organization. Hierarchies between professionals within the youth/criminal justice system, consolidating hegemonic relations in the Gramscian sense, can be interpreted as manifestations of Turkey's welfare capitalism.

Interpretation

The primary data is collected through an interpretative understanding, aiming to understand what meanings participants attach to their own actions in relation to their positions in 'law in action', particularly in prisons and courthouses. Primary data, along with production of the statistical data and analysis of the legislations are analysed in a study of governmentality as a method of thought; which guides the researcher to approach the subject of remand imprisonment in relation to the political economy, to the Sovereign state's relation with the citizens and to the production/adaptation of knowledge for policymaking. Based on this analyses, I will demonstrate that remand imprisonment emerges as a crime control and social control mechanism in the Turkish youth justice system that has implications for the penal culture of Turkey. Findings indicate that this institution of remand imprisonment acquires central roles in the neoliberalizing 'managerialist' governmentality that I will unpack as a concept, based on the literature. Spatial control mechanisms fulfil the quest for the search for security in all aspects of governance of criminal justice. So, the diverse population of young remand prisoners are all 'managed' (Feeley and Simon, 1992; Bottoms, 1995) within the same regime of high security prisons that I call 'bureaucratic disposal resort'. I interpret the diversity of the young remand prisoners in Turkey in terms of offence types and their reliance on social or cultural capital direct me to interpret the roles of high security prisons as remand centres in three aspects. Firstly, remand imprisonment, works as a first resort deterrence and control mechanism of security, especially for those charged with offences related to

drugs and property. Second, it is rationalized and neutralized as sovereign power's expression of just desert (deserved punishment) as remand imprisonment is not distinguished from prison sentence and finally, it fulfils an administrative control mechanism of evidence collection. Incapacitation of defendants as aggregates in high security prisons addresses all three of these roles of remand imprisonment. So, the concept of 'managerialism' provides a basis for explanation to the research question. However, it must be employed carefully, as, first, it disregards the emphasis given to individual responsibility of the liberal-rational choice-maker, second it conceals and mystifies the diversity of prisoners and third the emphasis on risk downplays the human agency (Cheliotis, 2006b) of youth justice deliverers.

In this study, findings suggest an emphasis of the spatial aspect of managerialism; the management of aggregates through the use of 'space' and through spatial arrangements to provide security. The hierarchy between the managers and other professionals such as the social work officials indicates to the will to control young defendants through spatial arrangements in high security prisons. Most significantly, the emergence of high security prisons for young remand prisoners occurred at a time when 'human rights language constitutes the sequestration of morality' (Smith, C. 2002) and 'the perception of injustice...has undergone a process of *individualization*' (Bauman, 2001). To put it differently, the human rights discourse shapes the knowledge production in today's governmentality. Hence, besides the interpretation of the roles of remand imprisonment as an institution, the findings of the research further highlights the intrinsic relationship between *managerialist* governmentality and the language of human rights. This compatibility of the language of human rights with managerialist governmentality has remained underexplored in criminological literature. Based on a social constructivist study of language of human rights, this research draws causal explanations and has implications on the compatibility of human rights with the managerialist governance of the criminal justice system in the neoliberalizing political economy and crime control techniques. I have elaborated on the intrinsic relationship between liberalism, individualism, quest of security and adherence to the ontological security provided by human rights. I have scrutinized on the common characteristic of the rights language and managerialist governmentality, which is, mystifying the structural patterns of getting in conflict with the law and individualization of criminal conduct. Thus a critical approach to the language of human rights, informed by the literature from the sociology of human rights is presented in the next chapter.

Structure of the thesis

The next chapter, **Chapter II**, discusses remand imprisonment worldwide and in the existing literature and Chapter II expands on the analysis of governmentality after proposing critical sociological suggestions to the language of human rights. This review shows the reader the

shortcomings of approaching remand imprisonment as a site of human rights' violation, rather than situating it in imprisonment and control theories.

Chapter III analyses the judicial and penal transformations in the Turkish youth justice system in relation to its political economy, welfare capitalism and its manifestation of sovereign power. Chapter III presents the historical transformation of the prison regime, both spatially and numerically. The transformation of the legislations and the birth and development of the juvenile court, together with the conception and transformation of social work, complement the historical analysis. The analysis is backed up by statistical data that I have interpreted by transforming the raw numbers into graphs, a critique of the non-existing numerical data as well as literature produced in Turkey on the justice and the youth justice system. Chapter III provides the contextual information that is necessary to analyse the empirical findings presented in the chapters that follow.

Chapter IV presents the methods implemented in this research to collect data on the perception and implementation of remand imprisonment in the legislative, judicial and executive power. A novel contribution of this chapter is the proposal of an ethical guideline that I employed to conduct research with young remand prisoners.

Chapter V provides the findings from the prison research, thus the operation of the law by the executive power, and scrutinizes the data gathered from interviews with 50 young prisoners to comprehend how remand imprisonment is perceived and experienced by different groups of young people in conflict with the law. The data offers significant insights about the governance of young people and the use of imprisonment as a control mechanism based on the subjects' socio-economic status and therefore their social class. The diversity of prisoners based on the 'capital' (Bourdieu and Passeron 2000) and their offence types is given special attention in this research as it stands out as a significant factor in interpreting remand imprisonment. The management of the prison is depicted especially through the 'pains' of imprisonment (Crewe 2011) and coping strategies.

Chapter VI turns the focus to the operation of the law in judicial power as a bureaucratic system and analyses the interactions between different youth justice professionals within the dialectic of the criminal justice system, namely prosecutors, lawyers and judges, together with actors outside of the dialectic, namely social work officials. Besides providing answers to how remand imprisonment is perceived as a control mechanism by different professional groups, courtroom research reveals the hierarchy between these different professional groups by focusing on their subcultures in the courthouse. This perpetual hierarchical structure in the bureaucratic organization indicates a hegemonic relationship between different state actors, which implies a certain governmentality of welfare politics in Turkey. Their accounts on their experiences, their (lack of) interaction with other groups, and their interpretation of the laws and proposals for the system

provides rich data to make sense of remand imprisonment. The interpretation of the prosecution process by criminal justice professionals, reveals what roles remand imprisonment play in the justice system and how it can contribute to understanding of today's penal politics.

Chapter VII concludes the thesis by summarizing the main findings and the implications of studying remand imprisonment, as well as covering the limitations of the current research and suggesting further research sites.

CHAPTER II: Revisiting remand imprisonment within governmentality

Introduction

Although the issue of remand imprisonment has been considered from various approaches in a limited number of publications, it is rarely situated within the theories of imprisonment—in a revisionist history of imprisonment that would relate it to an understanding of governmentality and to the operation of the modern welfare system. Likewise, it is not easy to find studies on the relation between remand imprisonment in countries and their socio-economic levels and welfare structures. There have, by contrast, been studies on the association between typology of welfare systems and penal cultures in which imprisonment rates is the most significant indicator (see Cavadino and Dignan 2006) based on an implicit emphasis on prison sentencing. Discussion of remand imprisonment in the youth justice system is rare, except for some dedicated work in the Anglo-Saxon world.

While there are a low number of individual studies at local level with a focus on factors affecting pre-trial detention, and thus there is little deep contextual and cultural analysis for researchers, very recent reports⁶ from international organizations promise comprehensive and hopefully reliable data. The majority of published work on pre-trial detention is reports from Europe-based international organizations. At the local/national level, local NGO reports, government reports, Ministry of Justice reports, inspector reports and bar association reports provide information. Broadly speaking, these reports are prepared with the aim of reforming justice systems within the human rights' approach, focusing on fair trial, presumption of innocence, and arbitrary and excessive use of pre-trial detention.

Apart from these ambitious but descriptive documents, most academic writing is found in the areas of psychiatry, psychology and forensic medicine, which consider the negative consequences of confinement and uncertainty of the prosecution process on mental health, such as disorders and suicide (Dahle et al 2005, Liebling 1993). A small amount of literature that aims to reduce the frequency and length of pre-trial detention focuses on the remand decision-making processes. Consequently, the issue of pre-trial detention occupies little space in critical criminology studies. Until today, the majority of the criminal justice systems did not know the number of their own pre-trial detainees or even try to calculate them (OSF Justice Initiative 2014), partly due to

⁶ The European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is one institution that reports on human rights violations, which is stated to more likely take place during pre-trial detention than sentenced imprisonment. Human Rights Watch (HRW), Amnesty International, the Geneva-based Association for Prevention of Torture (APT), the Europe-based Fair Trials International, the Lithuania-based Human Rights Monitoring Institute, the UK-based Prison Reform Trust, Irish Penal Reform Trust, the United Nations Office on Drugs and Crime (UNODC), Defence for Children, Howard League and Penal Reform International are the prominent organizations that pay attention to issues related to pre-trial detention.

governments' lack of will to address the issue at all, and partly due to the general lack of interest in sociology and criminology, though there is a wider application in administrative criminology looking at pre-trial detention within penal system crisis.

So, pre-trial detention has attracted attention not in itself but, for instance, as a contributing factor to prison overcrowding, or in studies focused on defendants' rights to fair trial and pre-trial detainees' right to be separated from sentenced prisoners. Most imprisonment studies focus on sentenced prisoners, or on the total prison population, even not making a distinction between sentenced and unsentenced prisoners. However, in the last decade, the issue of pre-trial imprisonment has started to be considered in Latin America, Africa and Europe as a subject of its own (OSF report 2014).

Rights to liberty, security and fair trial are inherently dependent on criminal justice apparatuses that function in the everyday life of individual modern states. These states have different understandings of welfare and social justice, and hence governmentality. This current work is carried out with the assumption that securing justice within the prosecution process is intrinsically subject to maintaining social justice on the issues of race, gender, class and age within society. Hence, studies at the local level that analyse the court and imprisonment processes of states in relation to their Biopolitics prevent further human rights violations in the long term. Drawing links between the welfare systems of modern states and their penal cultures to understand the factors leading to excessive use of pre-trial detention is necessary to grasp where violations stem from. Considering the aim of this current study, the most relevant literature review therefore concerns research that situates remand imprisonment within the penal culture.

In this chapter, I first present the recent global statistics on remand imprisonment. As the majority of the documents on remand imprisonment embrace the language of human rights and prisoners' rights, and the civil society organizations and authorities in Turkey appeal to the language of children's rights, I open a critical sociological discussion on the language of human rights. After elaborating on the three essential elements of imprisonment, which are labour/discipline, time and space, I review the theoretical approaches to confinement from a political economy standpoint, following the revisionist historians, and as a manifestation of sovereign power, informed by Agamben's analysis of Biopolitics. This review sets the framework to scrutinize youth remand imprisonment in Turkey's governmentality.

The striking numbers and ratios

At any moment, around 3.3 million people are in pre-trial detention worldwide. Moreover, pre-trial detention affects in excess of 14 million people a year across the globe (OSF Justice Initiative 2014).

Table 2: Pretrial detainees as a proportion of the total prison population, by region, 2012. **Source:** World Prison Brief, International Centre for Prison Studies, referred in OSF Report, 2014

Pretrial detainees as a proportion of the total prison population, by region, 2012					
Europe	Oceania	Americas	World	Africa	Asia
18.8%	22.3%	27.9%	32.0%	34.7%	40.6%

Sources: World Prison Brief, International Centre for Prison Studies.

Table 3: Number of pretrial detainees per 100,000 of the general population, by region, 2012.

Source: World Prison Brief, International Centre for Prison Studies, referred in OSF Report, 2014

TABLE 8: Number of pretrial detainees per 100,000 of the general population, by region, 2012					
Oceania	Africa	Europe	Asia	World	Americas
28.0	33.7	38.6	43.1	50.4	107.4

Sources: World Prison Brief, International Centre for Prison Studies.

According to the World-Pre-trial/Remand Imprisonment List by the International Center for Prison Studies (2014), pre-trial prisoners constitute more than 40% of the prison population in about half the countries in Africa, the Americas, South-Central Asia and Western Asia. In 56% of countries worldwide, the percentage of pre-trial detainees in the whole prison population is between 10% and 40%. But in some countries, the percentage of remand prisoners can be around 90%.⁷

Careful with definitions and comparisons

Reviewing these global reports provides the researcher with bullet point causes, consequences, best practices and interesting comparisons. However, comparing pre-trial detention numbers and ratios

⁷ The statistics would be more complete if the report also provided the proportion of remanded defendants to the total number of defendants at a given time as another method of measurement.

does not give us precise data as they are collected from different countries with different data collection culture and methods. Collecting a coherent set of numeric data on pre-trial detention is even more difficult than collecting general imprisonment data, as the definition of pre-trial may vary across jurisdictions.

The terms ‘remand prisoner’, ‘remandee’, ‘awaiting trial detainee’, ‘untried prisoner’, ‘unsentenced prisoner’ and ‘un-convicted prisoner’ are used synonymously with ‘pre-trial detainee’. Pre-trial detainees fall into the following four categories: “(i) detainees who have been formally charged and are awaiting the commencement of their trial; (ii) detainees whose trial has begun but has yet to conclude with a finding of guilt or innocence; (iii) detainees who have been convicted but not sentenced; and (iv) detainees who have been sentenced by a court of first instance but who have appealed against their sentence or are within the statutory time limit for doing so” (OSF 2014: 12). The most common justifications for detaining defendants on remand are the risk of flight, interference with the investigation, obscuring evidence, intimidating the victim or witnesses, committing another crime during the trial period, or having committed a serious crime. So, it is about balancing the rights of the defendants with presumption of innocence as a universal norm and the mentioned interests.

Apart from varying definitions and justifications of pre-trial detention for the statistical data, including or excluding the number of detainees in police stations, detainees waiting for a decision from the High Court of Appeal create significant changes. Moreover, states have different time intervals to collect data. And apart from concrete numbers, comparing proportions of pre-trial detainees in the total prison populations may be misleading due to changes in sentencing trends.

The numbers and ratios of pre-trial detainees are not too small to be overlooked by scholars of imprisonment; however, the issue has received relatively little attention within the academic literature. Two research institutions that have published systematic reports at a global level in the last decade are the International Center for Prison Studies (ICPS) and the Open Society Foundation (OSF) Justice Initiative.

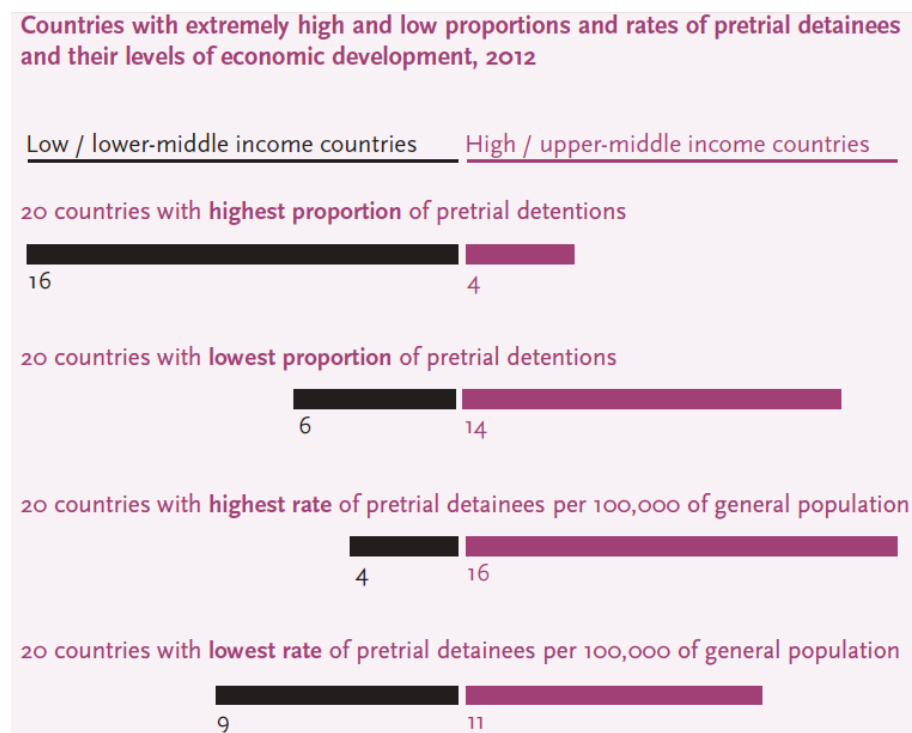
The document that covers the issue of pre-trial detention most widely and comprehensively is OSF’s “Presumption of Guilt: The Global Overuse of Pretrial Detention (2014)” problematizing, very normatively, its ‘excessive and arbitrary use’ as a violation of human rights and its implications on the rule of law. The report introduces the scope of the issue with international and regional standards, norms, jurisprudence and trends, providing data from all over the world, and introducing the common socio-economic characteristics of the pre-trial detainees as poorer, marginalized and minorities. It also discusses the circumstances of detention and its impact on

communities, claiming that it undermines public security and safety, leading in the long term to broken homes and communities that are less safe and have higher crime rates.

Though these are bold claims that need to be backed up with individual studies, presumably they are the most salient characteristics of remand imprisonment. Considering data from a wide range of geographies, the OSF 2014 report determines the most common causes leading to ‘excessive and arbitrary’ use of pre-trial detention with the aim of offering pragmatic and rational responses for governments to take. According to the report, the primary causes of ‘arbitrary and excessive’ use of pre-trial detention are: imprecise, vague and restrictive laws; lack of limits to the duration of detention; public pressure and populist policy responses; lack of any political will to create change; the influence of police and prosecution services, especially on plea bargaining; corruption and exploitation of detainees through bribes; procedural factors such as fast prosecution process due to work load; lack of coordination between criminal justice agencies; lack of material and personnel resources; and, finally, inadequate legal representation. Many of these same issues are mirrored in the Turkish experience, which I discuss in relation to the Turkish governmentality and work subculture in later chapters. The following issues are more salient in the Turkish system: vague and restrictive laws; lack of political will to create change; procedural factors such as fast prosecution process due to work load; lack of coordination between criminal justice agencies; lack of material and personnel resources; and, finally, inadequate legal representation. These mostly administrative issues are situated in the political economical conjecture and legal culture of Turkey in the rest of the thesis.

The most striking finding in the OSF report is that jurisdictions with high rates of pre-trial detainees have significantly higher average income levels than jurisdictions where the number of pre-trial detainees in the whole prison population is high. More specifically, 16 out of 20 countries with the highest rate of pre-trial detainees per 100,000 of the general population are classified as either ‘upper middle’ or ‘high-income’ economies while the rest is ‘low-income’ or ‘lower-middle’ income economies. The case is reversed in the countries with the lowest rate of pre-trial detainees in the whole prison population. Accordingly, as shown in the image below, in the low-income or lower-middle income countries, which have weaker state capacities and limited criminal justice infrastructure, the rate of pre-trial detention (per 100,000 of the general population) is low. On the other hand, the highest proportion of pre-trial detainees among the total prison population is found in low-income and lower-middle income countries because relatively few arrestees are convicted, due to lack of courts and criminal justice staff and limited forensic capacity to undertake investigations. Accordingly, the same factors lead to long detention periods (OSF, 2014).

Graph 2: Countries with extremely high and low proportions and rates of pre-trial detainees and their levels of economic development, 2012. **Source:** OSF, 2014:23.



The language of rights in formulating problems

Considering that these global and comparative reports are prepared for advocating human rights, it is little surprise that they as well as the government reports that approach the issue, are couched in human rights' discourse. They refer to Articles 5 and 6 of the European Convention on Human Rights based on the right to liberty and security and the right to a fair trial, as well as European Court of Human Rights' decisions related to these articles. Identifying problems in terms of human rights' violations is a good start. At least, some patterns in the judicial and prison systems are problematized. However, stating that a phenomenon is a violation of certain rights does not necessarily help the reader grasp *how* that phenomenon occurs, especially in circumstances where there seems to be no obvious political will at the state level, excluding some deliberate acts of some nation-states addressing political defendants/prisoners.

Identifying certain patterns in the jurisdictions as human rights violations and concentrating on certain universal rights of defendants and prisoners may help to put pressure on governments to ameliorate the day-to-day conditions and make amendments in the laws but does not necessarily draw links between the violations and governmentality of the specific country. These reports that are produced in the ethos of human rights can remain normative and fail to provide contextual

analysis. In the same way, evaluation of a youth justice system based on children's rights articles and standard guidelines may be insufficient to spot the contextual praxis that violates certain rights. Moreover, human rights' discourse has been embraced in the Turkish law-making praxis. International and local civil society organizations employ human rights' language in their critiques and policy interventions in Turkey, which I anticipate to be dominant in the coming years. So, the dominance of rights' language calls for a critical overview of the history of the international rights' discourse.

The introduction and embrace of children's rights as well as certain standards and guidelines as its extension can be found in the appendix C. Basically, the 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' provide a more detailed approach than previous UN standards and norms but they do not divert much from the latter, either. The main aim of the Guidelines is to reach unity between the Member States. However, the introduction of these Guidelines should also be viewed from a critical viewpoint as they lead to the repetition of the UN-CRC along with other UN guidelines or rules such as Beijing, Riyadh or Havana, leading to confusion due to too many separate guidelines with numerous articles to learn, compare and contrast. Furthermore, as Hazel states, even though almost all countries have signed the UN CRC adopting the value of the 'best interests of the child,'" other concerns have led countries to adopt other principles such as preventing offending, minimal intervention, protection of society, education or resocialization (Hazel 2008: 67).

Moreover, Goldson and Muncie (2012) criticize the introduction of these Guidelines as they point out the gap between abstract international rules and local realities. They claim that the aim of unity of practices between Member States does not help in real life, and more attention should be paid to local everyday solutions. Furthermore, they criticize the promotion of restorative justice in the Guidelines by pointing out its unintended consequences, such as giving criminal responsibility to the child and not the social environment. Hence, in the next section, I would like to draw attention to how the operation of justice systems can remain problematic despite the implementation of human/children/prisoners' rights.

The language of rights

Within various critiques of human rights discourse since the 1990s that either try to abolish or reconstruct it, there is a recently developing field concerned with offering a new approach, namely the Sociology of Human Rights (Hynes et al. 2012), that aims to revitalize the study of power, inequality and resistance. It is a timely intervention at a time where the invocation of rights constitutes the sequestration of morality (Smith, C. 2002). Smith argues that: "an abstract system of rights continues to effect the sequestration of morality in late modernity" through the association

between moral and legal rights and through the way rights' talk is employed in everyday human affairs and governs sites of moral thinking (Smith, Carole 2002: 46-50).

Thus, O'Byrne asks, despite the acceptance and embracement of human rights' language, how could human rights' violations still constantly take place? "Given that there is, at least since the end of the Second World War... at worst, a general language of human rights to which people and states in some way (and in very different ways) relate, what are the social conditions which make it possible the very real and all too frequent violations of what is presented as being normatively acceptable within that language?" (O'Byrne 2012a: 839) This question can be taken one step forward, as was formulated in Chapter I: Despite the application of human rights and its extensions like prisoners' rights or children's rights in the criminal justice systems and youth justice systems, as in the case of Turkey, how can there still be legitimization problems in these systems?

Besides their effort to develop theories of human rights discourse, sociologists also try to give an account of why it took so long for the sociology of human rights as a field to emerge. The difficulty in sociology's engagement with human rights lies in sociology's historical objection to any attempt to explain social phenomenon normatively in terms of universal foundations (O'Byrne 2012a: 832). Contrary to the universal-normative-legal character of human rights, sociology is social constructionist in orientation and claims that social institutions are not universal but historically contingent and culturally relativized (Waters 1996: 593). Sociology has been equipped to study the dynamics of social institutions and the socially constructed language structures within which the social action has been framed since the mid-20th century. Moreover, sociology's interest lies in the contract between the citizen and the modern state while human rights, as the name implies, knows no nation-state boundaries. In the intricately comprising conceptualization, citizenship makes most human rights accessible while the language of universal human rights is used as a tool to ensure ontological security against violations in the state's conduct of governance.

Waters suggests approaching 'human rights' as a social institution that is specific to cultural and historical context just like any other social institution or language construct and that even its very universality is itself a human construction (Waters, 1996: 593). So human rights as a social institution, a socially constructed language structure, can be studied where its social action is framed (O'Byrne 2012a, 2012b).

Accordingly, it is significant to go through the origins and emergence of human rights and see its social construction. The Universal Declaration of Human Rights (UDHR) was introduced in 1948, in the aftermath of the atrocities of the Second World War. With the UDHR, there was a hope of providing some feeling of ontological security to individuals (Turner 2002). The discourse had its origins in the Enlightenment era, in the arguments of Hobbes and Locke, in contract theories

between the state and the citizens. The foundation of human rights lies in enlightenment, liberalism and individualism. Philosophers made efforts to name those natural rights, which are absolute, universal and incontrovertible. So, human rights could be justified through recourse to 'natural law' in the tradition of Hobbes and Locke (Turner 1993; O'Byrne 2012). Situating the language of human rights in this context, we see that, though it is claimed to be universal, human rights' discourse is embedded in the value system of Western liberal individualism and enlightenment.

By situating human rights language in its origins of Western Enlightenment thought, thus, it is possible to see a set of challenges. Against these challenges, I propose three suggestions that I employ in this study. First, the authority of human rights' language is challenged in "cultural-relativists vs. universalism" debate, which is beyond the scope of this research. Secondly, the human rights' discourse is challenged for contributing to the developmentalism discourse that situates societies in stages from 'backward' to 'developed'. According to O'Byrne: "The sociology of development came into its own during the 1960s and 1970s in the periods of internationalism and indigestion, reflecting an ideological clash between western modernization and anti-western post-colonialism" (O'Byrne 2012a: 834). Hence, human rights' language is criticized for establishing hegemony through the value of liberal individualism, and for being imperialist in its claims to universality. Thus, in Turkey, there has been an embrace of human rights within a developmentalist and Eurocentric necessity. Drawing from the works of Edward Said and Samir Amin, Kolluoğlu states that Eurocentrism, like orientalism, is a discourse of power and knowledge—a paradigm that defines the difference between Europe and non-Europe, making the distinction based on superior-inferior relations and drawing strength from the process of Europe's capitalist expansion (Kolluoğlu 1994). Posner, who proposes to work on the concept of 'human welfare' rather than 'human rights' (2008, 2014a, 2014b), draws attention to the fact that "the use of 'human rights' in English-language books has increased 200-fold since 1940..." and states that: "the human rights movement shares something in common with the hubris of development economics, which in previous decades tried (and failed) to alleviate poverty by imposing top-down solutions on developing countries" (Posner 2014: 2). Eventually, the language of human rights and children's rights has prevailed in the juvenile justice system and the laws, courts and prisons in Turkey.

So against the Eurocentric, developmentalist discourse, I suggest taking a social constructionist stance. By social constructionism, I mean questioning the universalist-normative nature of human rights and approaching human rights' discourse as a socially constructed language embedded in the liberalism movement of Enlightenment. As Nelken suggests, exploring empirical variations in the way universal law is conceived can inform the researcher about how certain practices are interpreted by practitioners (Nelken 2004). Thus, in everyday life, criminal justice systems in non-

Western countries like Turkey can embrace human rights' language not necessarily as universal values but more as values introduced by the developed West, as is demonstrated in Chapter III.

In the same manner, Piacentini, who researches punishment, economy and politics in transition in the post-Soviet Russian prisons, adopts a critical approach to the human rights' approach that encompasses Russian penal politics in the 1990s. She asserts that the conception of a modern prison system derived from improving human rights in Russia. Eventually, identifying the modern prison was determined by external sources, which leads to contradictory values in criminal justice workers. Thus she searched for a reliable social context to understand the particular cultural penal politics of Russia as a country in transition in its political economy (Piacentini 2004).

Accordingly, my second suggestion is methodological, as already introduced in Chapter I. I argue that understanding the roles of remand imprisonment in crime control in any criminal justice system calls for a Weberian, interpretive understanding of social inquiry (Weber 1978 Vol. 1). This sociological method promises to explain how criminal justice workers attach meaning to their action of implementing the law. So this methodology calls for research in the sites of 'law in action' (Nelken 2001). Understanding the meanings attached to certain laws and rights by policy-makers and practitioners opens a framework to reform the criminal justice system from inside rather than imposing human rights' language from above. Similarly, O'Byrne states that the sociology of human rights should acknowledge that there is an identifiable, socially constructed language structure of human rights in existence, within which social actors operate. He asks how this structure is constituted and maintained and what causes it to break down. In other words, how is this language structure of human rights constructed and manipulated in social institutions such as the state, the law and the media, so that it allows the continuing abuses of these rights (O'Byrne 2012a: 839-840)?

Now, we move on to the Marxist critique of rights' language as the third form of critique-challenge to human rights discourse. Goldson and Muncie (2012) are correct in their reluctance to embrace the rights' discourse and the guidelines with their unintended consequences (Goldson and Muncie 2012). It is necessary to elaborate on the basics of human rights' discourse, its intrinsic relationship with liberalism, individualism and security. In fact, when elaborated altogether, rights' discourse revolves around the concept of liberal individualism, individual responsibility and rational decision-making. By scrutinizing the theoretical debates about children's rights, (Fortin 2009), one recognizes that rights and 'individual responsibility' are interwoven. According to Fortin:

An acceptance of the existence of the rights of the individual underlies most liberal political theories... The main doubt over the issue stems from the view that a person cannot be termed as a rights-holder unless they are able to exercise a choice over the exercise of that right. The 'choice' or 'will' theory of rights invests the importance of

choice with such significance that it alone is capable of grounding all rights (Fortin 2009: 14-15).

Hence, when referring to rights, there is an axiom of individual responsibility of the liberal rational choice-maker. Having a sceptical view towards the emphasis on individual responsibility does not necessarily mean people under 18 are not aware of the meaning and consequences of certain acts. However, revolving around individualism and claiming rights for individuals causes us to lose sight of patterns of illegal behaviour, the field where habitus is formed, and take the acts out of context. Hence, in this thesis, a study of the praxis of language of human rights in the youth justice system as a mode of knowledge production, in relation to Turkey's political economy and social security (as we seen in Chapter III) reveals how the liberal individualist language of human rights could remain ineffective in approaching the structural problems in crime control in neoliberalizing political economies.

As Zygmunt Bauman states:

True to the spirit of that fateful transformation, political operators and cultural spokespeople of the 'liquid stage' have all but abandoned the model of social justice as the ultimate horizon of the trial-and-error sequence—in favour of a 'human rights' rule/standard/measure meant instead to guide the never-ending experimentation with satisfactory or at least acceptable, forms of cohabitation. If models of social justice struggled to be substantive and comprehensive, the human rights principle cannot but stay formal and open-ended (Bauman 2001:74).

By interpreting the celebration of individualization process in 'liquid' modernity, Bauman asserts that: "the perception of injustice...has undergone a process of *individualization*. Troubles are supposed to be suffered and coped with alone and are singularly unfit for cumulation into a community of interests which seeks collective solutions to individual troubles" (Bauman 2001: 86, emphasis original). Finally, he states that it is not unexpected that the collapse of collective redistribution-social justice claims and the growth of inequality are coincidental.

In neoliberalizing political economies like in Turkey, in which, the *homo oeconomicus* (Foucault, 2008) is responsible of his/her sustainability in the market and in the society, the defendant/criminal is fully responsible of the illegal act that he/she rationally and individually chooses to commit. Accordingly, social inquiry into the causes of crime and approaching the offender as part of a social entity, a research over the habitus remain unnecessary in this approach. The liberal, individualist human rights language in criminal justice in a neoliberalizing political economy is limited to deal with the effects of prosecution and imprisonment rather than causes of crime and paths of being in conflict with the law. By guaranteeing the right to fair trial, right to

have a lawyer, right to presumption of innocence during prosecution and right to have privacy or right to talk to the family inside the prison, the rights discourse eases the effects of prosecution and remand imprisonment but fails to address the causes of crime. Hence, negative/civil rights are guaranteed to the defendants who are incapacitated through the use of space during pre-trial detention.

Similar to this critique, there is scholarly work on an emerging notion of vulnerability (Furusho, 2016) to refine judgements of regional human rights courts. By highlighting the ‘vulnerable’ human subject and widening State responsibility of social security, the concept of vulnerability aims to reveal the inaccuracy of the idea of ‘traditional legal subject’ as opposed to ‘real-life individual’. More precisely, it is argued that the overemphasis on individual autonomy hides “the fact that free and autonomous individuals need access to social, institutional, and legal means to exercise their freedom” (Furusho, 2016:179). Liberalism values the rational choice maker, ignoring the dependence of the subjects in social contexts. Eventually, liberal human rights language bears the danger of perpetuating certain structural patterns of vulnerabilities by stressing the negative and civil rights in the justice system.

More specifically, the praxis of rights language in a youth justice system that is situated in a traditionally residual, liberal, eclectic welfare and social security regime, like in Turkey (as explained in Chapter III), embodies the risk of approaching the youth in conflict with the law, as a context-free, liberal rational-choice maker. Implications of this kind of interpretation of the rights language are revealed in the accounts of the judges in Chapter VI. Accordingly, an emphasis on the determination of the individual, criminal responsibility occupies centre of legislation debates as we see in Chapters III and VI.

Accordingly, the Marxist critique of ‘natural rights’ claims is that by stripping individuals of the social context, the rights' discourse conceals any structural inequalities between individuals by giving them equal and judicial rights in the justice system. This was still valid for critiques of ‘human rights’ in the 20th century. Generally, from the Marxist perspective, human rights' language is criticized for defending the civil, political and juridical rights of individuals in the ethos of Western liberal individualism while ignoring the social and economic structural conditions contributing to inequalities between individuals, which makes some sections of societies more vulnerable in the criminal justice systems (Hynes et al. 2010, O’Byrne 2012b).

To wrap it up, as O’Byrne stresses, there is the problem of Western individualism and there is the issue of competing types of rights: negative freedoms that are the civil and political rights, and positive freedoms that are the social and economic rights. It begins from the assumption that the purpose of the rights' claims is to protect individuals from the state tyranny. This lies at the heart of the dominant liberal tradition of human rights. Focusing on state tyranny and protecting the

individual from the state, thus an individual's negative rights, can easily lead to ignoring positive rights that should be claimed from the state, such as the rights to economic and social wellbeing intrinsically tied to the operation of youth justice systems.

The revival of 19th-century liberalism in 21st-century neo-liberalism has meant we experience the dominance and prevailing of negative rights, such as the rights to a fair trial, in contrast to positive rights to be guaranteed by the welfare state, which are social and economic rights. Without social and economic rights being guaranteed by the state, a Marxist critique of natural rights is valid. Within Marx's account of capitalist civil society, 'human rights' are merely a façade to hide or mask fundamental economic and social inequalities. In the case of Turkey, embracing the juridical rights in a developmentalist approach guarantees young people in conflict with the law the right to a fair trial, which conceals the structural inequalities and power relations they experience until they appear in court. How does 'the right to fair trial', having a lawyer and being lawfully detained on remand legitimize the criminal justice system when these rights can conceal structural inequalities in society?

İrtiş (2012b) proposes analyzing the youth justice system in 'dual violence': one being 'direct violence' and the other 'indirect violence'. The former, as the name implies, refers to the violence that is easily observed and comprehended in society, hence reported by the media and the civil society organizations, while the latter remains difficult to grasp in the first instance. Indirect violence accumulates with the system's long-term structural deficits. In the youth justice system, indirect violence is accumulated during interrogation, prosecution, incarceration and post-incarceration. Indirect violence forms in accumulation even while youth justice organizations improve to protect young people in conflict with the law, because of a certain prevailing mentality, structural conditions, or the interplay of both (İrtiş 2012b: 52). Likewise, Carrabine (2000), who proposes to do social theory of imprisonment within governmentality, draws attention to a division of labour in the discipline. Accordingly, microsociology of prison life (Sykes, 1958; Goffman, 1961) is divorced from macrosociology of imprisonment related to broader social processes (Rusche and Kirchheimer, 2003; Foucault, 1977). I argue that interventions of human rights' discourse tend to focus on the direct violence or microsociology of the state and tend to disregard indirect forms of violence or macrosociology of imprisonment that require analysis of accumulated structural handicaps.

From this Marxist critique of rights, we move to the fourth challenge, which is the applicability of human rights given its normative character. This is a critique that problematizes operationalization and application of human rights. Human rights are intrinsically bound to citizenship rights. However, while citizenship rights address the modern (nation) state, human rights are global in character. Citizenship provides the principle vehicle that makes most universal human rights

accessible while it excludes trans-national migrants (Morris 2012: 43-44). This global character poses no problem in the case of negative rights that are civil, political and juridical. However, positive rights, namely social and economic rights, are hard to operationalize on the global platform. Here I am referring to the difference between the United Nations International Covenant on Civil and Political Rights (UNCCPR) and United Nations International Covenant on Economic, Social and Cultural Rights (UNCESCR), that both came into force in 1976.

T.H. Marshall (1964) divided citizenship into three parts as the civil, political and social. He “defined the social component as the right to ‘a modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being’” (Turner, 2001: 190). These rights corresponded to the following institutions: the courts of justice, parliament, councils of local government, the educational system and the social services (Turner 2001). Keynesianism was the embraced political economy of Marshall’s time that called for state intervention to moderate the booms and busts in economic activity. The world has changed a lot since his work; the mode and relations of production are much modified in transition from Fordism to Post-Fordism and to flexible employment schemes. Hence, Turner criticizes the Marshallian framework of rights, suggesting that it: “has been eroded because economic changes, technological innovation and globalization have transformed the nature of work, war and the social relations of reproduction” (Turner 2001: 203).

There is a danger of being pre-occupied with constructing meta-theoretical studies on human rights, as Turner does, which are hard to operationalize rather than producing substantial studies. In contrast, O’Byrne asserts that ‘human rights’ is a social concept before it is a legal one and it exists as a language structure that can be scrutinized contextually. He proposes a methodological suggestion to the study of human rights rather than a theoretical outline.

So, finally, as a third suggestion, I would like to underline that although human rights language is universal in character and encompasses all citizenship rights in theory, in praxis, in terms of implementation, human rights is intrinsically bound to states. So, the operationalization of human rights requires a legitimate authority with constitutional- legal boundaries to implement both the negative rights such as the civil, political and judicial, and the positive rights, namely welfare rights. Hence, I refrain from adopting an enforcing-normative language and scrutinize the praxis of the rights within Turkey’s legislative, executive and judiciary powers.

Therefore, in this study I approach human rights language from a social-constructionist stance and refrain using human rights language in Eurocentric and developmentalist framework. Rather than embracing it as a strictly defining set of norms, I employ an interpretative understanding of the praxis of the youth/criminal justice system from the young prisoners and practitioners’ point of

views. Finally, I focus on the praxis in context rather than embracing a didactic, universal and normative set of rights.

Considering these points, remand imprisonment, which is supposedly practiced within the principles of the right to liberty, the right to security, the right to a fair trial and the right to presumption of innocence, are revisited within the governmentality of specific territories. In this study, I analyse remand imprisonment both as a consequence and as a source of indirect violence that can go unnoticed in well-rooted hegemonic relationships in society. Hence, this research requires revisiting remand imprisonment within penal politics, which calls for a study of Turkey's governance, its Biopolitics as a manifestation of the state's sovereign power, along with its political economy. The transformation of the legal discourse in the global conjuncture within the discourses of developmentalism and human rights complements the analysis of the roles of remand imprisonment in the youth/criminal justice system.

Situating remand imprisonment in the revisionist theories of imprisonment

To start with, an analysis of the transformation of imprisonment and situating remand imprisonment in penal politics requires an introduction of the conceptual tools from the revisionist theories of imprisonment. Within the framework of revisionist history of penality, Matthews states that the emergence of the modern prison was dependent upon the changing nature of the three essential elements, namely labour, time and space (2009: 25). However, as he argues, their interdependent nature has not been fully explored.

Analyzing the evolution of the modern prison system, Rusche and Kirchheimer state that before the 18th century, “prisons exist[ed] only in order to keep men, not to punish them. Until the eighteenth century, jails were primarily places of detention before trial, where the defendants often spent several months or years until the case came to an end” (2003: 62). Today, as the main form of punishment as well as the most severe form in most countries, imprisonment is used synonymously with punishment (Hudson 2003: 119). Comparing the modern understanding penality with the pre-modern era, Hudson states that: “modern penality substitutes suspension of rights for infliction of pain; it substitutes disciplining of the body-persona for mutilation of the physical body—it also substitutes the professional gaze for the public spectacle” (2003:137). And the prison fulfils all these three aspects of the modern penality. Hence, the elements of ‘time’, ‘labour’ and ‘space’ have been scrutinized in relation to convicted prisoners.

However, I claim that as remand prisoners are placed in the same prisons under the same conditions—the only difference being that it for an uncertain amount of time—analysis of remand imprisonment in relation to these three elements contribute to an understanding of imprisonment in

general. Explaining the roles of remand imprisonment requires the exploration of these interdependent elements of space, time and labour/discipline in penal theory through the revisionist history of punishment and imprisonment. Moreover, this elaboration contributes to understanding the major transformation that youth imprisonment in Turkey has been going through regarding the newly emerging high-security prisons, in contrast to the juvenile education houses.

The (ir)relation between labour supply and imprisonment

Rusche and Kirchheimer, who considered punishment as a social phenomenon freed from both its juristic concept and its social ends (2003: 5), offer readers a broad view for better situating the prison in penal systems as well as the social and economic structure of the society. They state that: “every system of production tends to discover punishments which correspond to its productive relationships,” and suggest investigating the birth and development of penal systems, the reasons for avoiding some punishments and preferring others, as well as their respective intensity, through economic and fiscal forces as well as the social ones (2003: 5). They find that “the roots of the prison system lay in mercantilism, and its promotion and elaboration were the task of the Enlightenment” (2003: 72). The principle objective of the modern prison is the rational exploitation of labour power in times of its scarcity (2003: 62). The explanation of this introduction of the prison in relation to the capitalist mode of production is, however, criticized for being too reductive. Cavadino and Dignan find the approach inadequate for two basic reasons. First, they claim that Rusche and Kirchheimer fail to explain how the human agencies in the penal system turned this economic imperative into practice. Second, Rusche and Kirchheimer: “themselves admit that imprisonment became the standard method of punishment at a time when the demand for prison labour had *fallen* as a result of technological and other developments” (Cavadino and Dignan 2007: 69-70). So, prison persists even though it fails in its main official objective to reintegrate prisoners into society, as Foucault (1977) remarks.

Discipline and imprisonment: the element of labour

In terms of the relations of production, Rusche and Kirchheimer state that it was expected that the prisoners would acquire industrious habits and that they would voluntarily be part of the labour power (2003: 42). Thus, in *The Prison and the Factory*, Melossi and Pavarini draw a parallel between the prison as a technology of punishment and factory as a site of production and state that they both require *discipline*. Accordingly, the object of the prison that was first modelled on the factory was: “not so much the production of commodities as the production of men” (1981: 143). As Matthews states, labour, both inside and outside the prison, has shaped the form of punishment. Prison provides goods and a source of revenue, as well as training for the prisoners and the possibility of rehabilitation through work (Matthews 2009: 41). Taking this notion of discipline,

Hudson states that: “Marxist theorists now place much emphasis on this equivalence of factory production and imprisonment, with discipline as the category which connects the two. Imprisonment is thus seen as a pre-eminent punishment in capitalist societies, regardless of rises and falls in the value of labour” (2003: 121). The prisoners, who are under constant surveillance, internalize the norms of society and reproduce the power through their own subjectivities via disciplinary mechanisms (Foucault).

Transformation in the penal system is not the sole change that Foucault highlights in his book *Discipline and Punish* (1977). Through analyzing this massive transformation in the penal system of the West in the modern age, Foucault draws attention to the development of a disciplinary society in which individuals are made to act according to certain societal norms through different disciplinary institutions such as schools, psychiatric hospitals, barracks and prisons. Hence, “according to the rules of study which [Foucault] sets out, punishment is understood as ‘a political tactic,’ situated within the general field of power relations” (Garland 1990: 137).

Accordingly, Ransom states that this disciplinary power is a change in: “statecraft away from the sovereignty of the monarch and toward a concern for ‘government’ where the latter refers not only to the person governing but also to a wide variety of efforts in both the public and private spheres to shape the human material at one’s disposal” (1997: 28). Here, a triangle model composed of the terms sovereignty, discipline and governmental management is helpful to comprehend Foucault’s understanding of power. The emergence of carcereal and disciplinary technology is closely related to the process of governmentality through which the governance of the subjecting/subjected individual is established (Baker 1998: 6). These disciplinary practices are associated with forms of knowledge which Foucault calls power/knowledge. Each disciplinary practice is associated with forms of observation, recording and knowledge, which enables judgment on normal and abnormal. Hence, the prison system persists even though the recidivism rates are high enough to show that the system fails. Prison successfully produces delinquents, breaking the lower classes into antagonistic divisions of deserving and undeserving poor (Foucault 1977: 266-292).

Paying for crime by ‘doing time’: the element of time

While one explanation for the prison emerging as the major form of punishment with the rise of capitalism is based on the concept of ‘discipline and labour’, another aspect is the link between the deprivation of liberty and ‘time’. Focusing on the links between the rise of imprisonment and capitalism, Melossi and Pavarini take the work of Pashukanis to understand why imprisonment persists when there is no need for labour power. Pashukanis (1924/2002), as the author of ‘commodity form theory of law’, states that moral law reveals itself as the rule law of exchange between commodity owners in the capitalist mode of production. “Notions of justice are, therefore,

derivative, from commodity exchange” (Milonavic, 2002: xxv). According to Hudson, Pashukanis “suggested that the prerequisite for the development of imprisonment as punishment was the development of wage labour, which puts a price on time...and there is, Pashukanis points out, a correspondence between receiving reward for labour by the hour, and paying for crime by ‘doing time’” (Hudson 2003: 119).

Deprivation of liberty, as a result of a court sentence, is the specific form in which the bourgeois-capitalist understanding of criminal law embodies the principle of punishment (Melossi and Pavarini 1981: 55). Taking the principle of exchange of equivalents as an amount of money for an amount of work, deprivation of liberty within the walls of the prison as a punishment is deeply related to the relations of production. In transition to industrial capitalism, with the separation of time and space (Giddens, 1990), time becomes commodified as time loses its form and labour is paid by the quantity of time that is spent for production. So prison as an institution enforcing the deprivation of liberty for a designated period of time emerges as a natural form of punishment. After all, time and liberty appear as commodities that all people possess equally. Moreover, time-based punishment has solidity and objectivity; the period of the sentence can be calibrated according to the seriousness of the offence, and the length of the sentence can be traded, gained or lost. Through intermediate sentencing that aims to discipline the prisoner, good behaviour, hard work and change/reform can be traded off against the length of sentence (Matthews 2009: 37-38).

Deprivation of liberty through spatial confinement: the element of space

The third and most essential element of the modern form of punishment is ‘space’. Segregating people in conflict with the law from the rest of society, both physically and socially, is the main characteristic of modern punishment. This spatial segregation differs in levels from high-security prisons to open prisons. Within the prison, too, spatial arrangements categorize and differentiate between the prisoners and are used as a disciplinary punishment. Prisons are ‘public institutions’ since they are run by or on behalf of the state, but they are also ‘private’ as they facilitate exclusion from the ‘public’ domain (Matthews, 2009: 26). As Matthews stresses, space establishes social divisions, (re)defines behaviour and sends out messages, provides the construction and dissemination of ideologies, and establishes order, and thus it is never neutral.

So, spatial exclusion of people in conflict with the law and control of this population through spatial arrangements within the prison is one aspect of the modern understanding of punishment. The three interdependent elements of time, space and labour are essential to comprehend and explain different forms of punishment and imprisonment. Today, any form of imprisonment depends on the use of these elements.

Understanding Turkey's youth prisons through the essential elements of imprisonment: labour/discipline, time and space

In Turkey, as introduced in Chapter I, there are two different prisons within the same youth justice system: those for sentenced detainees, and those for pre-trial detainees. Among the three essential elements of time, space and labour, different elements dominate the *raison d'être* of different forms of imprisonment. It is the latter one that challenges the idea of the 'disciplinary institution' and invites the researcher to analyse 'sovereign power', 'security' and 'biopower'. While young sentenced prisoners are institutionalized and disciplined in open-type labour/education-based Juvenile Education Houses for a certain period, to then be integrated into the cheap labour force, young remand prisoners are contained in high-security prisons for an uncertain period, depending on the prosecution process.

A more detailed account of juvenile education houses in Chapter III reveals labour and discipline as the dominant aspects of the prison for sentenced young prisoners who are managed with disciplinary rules in a relatively low-security regime. On the other hand, detailed accounts of young remand prisoners in Chapter V demonstrate that the regime that young remand prisoners are governed by highlights the element of space and diminishes the elements of time and labour. So, the Closed Institutions for Execution of Punishment, for incarcerating young defendants, show us that security power is actually merely spatial. The element of time disappears in the uncertain nature of remand imprisonment. This is for certain. The striking part in this research is the indistinction between remand and sentenced imprisonment in the praxis, as shown in Chapter VI, along with the emergence of high-security prisons designed just for remand prisoners. The emergence of high-security prisons discussed in Chapter III and the emphasis on spatial control demonstrated in Chapter V indicate a transformation in the governance of young people in conflict with the law. The element of space is important in this transformation. As spatial management in the praxis of youth imprisonment in the Turkish context gains significance, the element of time diminishes.

Authors such as Jonathan Simon, who employ the governmentality perspective, draw attention to the change from sovereign mechanisms and disciplinary technologies to a 'risk society' (Lemke 2011a: 89) that can explain the high incarceration rate of remand prisoners. Security is maintained through segregation through spatial boundaries.

Feeley and Simon draw attention to a new understanding of penality, which they name the 'New Penology', in which the prison is not an institution to transform individuals, as Juvenile Education Houses are, but functions as a custodial institution that 'manages aggregates,' as the remand

imprisonment in Turkey does. This ‘New Penology’ is managerial rather than transformative, meaning that it is not concerned with reforming and treating the offender. In this language of risk, meaning a highly influential way of calculating and assessing the danger or harm that an offender may present in the future (Scott 2008: 15), aggregate classification for the purposes of surveillance, confinement, and control replaces individual diagnosis (Feeley and Simon 1992: 452). Hudson (2003) states that this New Penology is more consistent with the idea of ‘security power’ than ‘disciplinary power’. While discipline targets the individual who is to be socialized and integrated into the community, as in the juvenile education house, “security addresses itself to the ‘ensemble of a population’ (Gordon 1991: 20). Security works through the identification of common risks, and the provision of shared solutions; security’s interest in individuals is to place them into categories of risk-posing or risk-vulnerability” (Hudson 2003: 161-162). Here, the idea of danger that applies to the individuals to be transformed is displaced by the idea of risk that applies to the aggregates. Efficient management of the aggregates is the main target of these actuarial practices, instead of normalizing individuals in the long term (Hudson 2003: 161-163). Accordingly, as for the remand prison, “incapacitation before adjudication, particularly without any rehabilitative or retributive goal, smacks of the actuarial justice objective. The intent is simply to manage efficiently unchangeable population (primarily poor minority males) and preserve social tranquillity” (Kempf-Leonard and Peterson 2002: 435). To manage this population efficiently, the employees, the number of cases a judge can finish in a given time, and the number of reports social work officials completes are more important than how each individual case is undertaken in the system.

Appeal of the term of ‘risk management’ in the literature

A review of the literature indicates that the question of risk management has dominated arguments about remand imprisonment in the Anglo-Saxon world. I refer exclusively to the Anglo-Saxon literature as it provides the majority of the data. The data in the international literature does not necessarily come from the countries with the highest number or ratio of pre-trial detainees, but from countries with a relatively low or moderate level of pre-trial detention numbers and ratios such as the UK, Ireland, Canada, the USA, Australia and New Zealand—mainly the Anglo-Saxon countries. This limit in data may occur from a couple of reasons. Firstly, the possible language barrier of the researcher: if they only search in English, it may limit the findings. Second, the fact that these English-speaking countries have a long established history of record-keeping, statistics and analysis may result naturally in more data being found on these than on other countries.

Consequently, the literature review of remand imprisonment in this thesis focuses on the practices and critiques of the Anglo-Saxon world and Western Europe. At first glance, this looks contradictory to the above-mentioned argument that pre-trial detention should be analysed in relation to the welfare systems of the states, because the Turkish welfare system is not clustered

together with either the Anglo-Saxon world or the Western Europe, although certainly there are policy transfers. However, examining the literature of ‘the West’ on pre-trial detention in relation to the Turkish remand problem in the youth justice system is necessary as the decision-makers in the Turkish legislative and judiciary systems first consider these countries during policy-making, as shown in Chapter III.

In terms of the relationship between political economies and penal tendencies, these Anglo-Saxon countries, especially the USA, England and Wales, Australia and New Zealand, together with South Africa, embrace free market, minimalist or residual welfare states, according to Cavadino and Dignan (2006:15). They have extreme income differences, provide individualized, atomized, limited social rights to citizens, have pronounced tendency towards social exclusion, ghetto-formation, adopt ‘law-order’ as dominant penal ideology with high imprisonment rate and receptiveness to privatization. No doubt, there are practices that do not fit this categorization at the national level of these countries. Interestingly, together with Canada, which is not included in this cluster, all these states have different ratios and practices on pre-trial detention and problematize the issue from very different angles. As a matter of fact, it is very important to pay attention to differences between policy practices in these countries in which a diffusion of neoliberal doxa and flow of neoliberal penalty are claimed to take place. As Newburn emphasizes, empirical findings may reveal variations between policy objective/rhetoric and policy practices within the same countries (Newburn 2010). Notwithstanding this caution on the discrepancies between penal discourses and actual practices together with the variations in the diffusion of penal cultures, in the section below I find it useful to discuss the commonalities of the remand imprisonment patterns in the Anglo-Saxon countries.

Remand imprisonment cannot be discussed merely with numbers and ratios. Everyday practices in the control mechanisms run by the courts and prison administrations give a better understanding of the whole picture. Still, the level and changes in pre-trial detention is a good starting point for discussion. The majority of studies on remand imprisonment in England and Wales are done in relation to bail decisions and factors affecting the denial of right to presumption of bail instead of being remanded in custody, and the interpretation of ‘substantial grounds’ to deny bail plus pleading guilty. Similar to England and Wales, bail support is a significant research subject in the literature on Ireland (Seymour and Butle, 2008).

Remand imprisonment with trends in the Anglo-Saxon world and discussion about New Penology

Table 4: Pretrial population rates in Anglo-Saxon countries **Source:** World Pre-trial/Remand Imprisonment List (second edition) 2014 by International Centre for Prison Studies (ICPS)

Countries	Prison population rate (per 100,000 of national pop'n)	% of pre-trial detainees in the total prison pop'n	Pre-trial population rate (per 100,000 of national pop'n)	Pre-trial population rate (per 100,000 of national pop'n)	Pre-trial population rate (per 100,000 of national pop'n)	Pre-trial population rate (per 100,000 of national pop'n)
England and Wales	148	13.8 in 2014	21	22 in 2000	24 in 2005	24 in 2010
USA	716	21.6 in 2012	153	123 in 2000	156 in 2005	157 in 2010
Australia	130	24 in 2013	32	20 in 2000	25 in 2005	29 in 2010
Canada	118	35 in 2010-2011	41	28 in 2000	37 in 2005	43 in 2008

England and Wales

Starting with England and Wales, the proportion of pre-trial detainees to the whole pre-trial detainees is relatively good compared to other jurisdictions (OSF report 2014). According to the World Pre-trial/Remand Imprisonment List (second edition) 2014 by the International Centre for Prison Studies (ICPS), England and Wales's percentage of pre-trial detainees in the whole prison population was 13.8% in 2014, while pre-trial detainees' rate per 100,000 people in the general population was 21. Overall, while the sentenced prison population has increased, the number of pre-trial detainees has remained stable over the last two decades. Trends for children and young people on remand in England and Wales receive attention due to the number of acquittals and those who receive non-custodial disposals compared to adult counterparts. Moreover, around half of all defendants do not receive a custodial sentence.

All these results can be interpreted as related to trade-offs between justice and risk management (Player et al. 2010). On the other hand, scholars talk about the net widening effect of granting conditional bail to the defendants. Despite good tracks of data within the criminal justice system and some dedicated research, it is difficult to identify the leading factor in stabilizing the prison remand population. It might be related to a fall in the overall number of defendants in the criminal procedure instead of bail decisions (Hucklesby 2009-2010: 10). However, further research on the subculture, thereby giving meaning to decision-making process of judges, is needed to add substantial information about the remand process.

Scotland, Canada and New Zealand have higher proportion of remand prisoners than England and Wales. Australia, Canada and New Zealand have experienced rising remand populations due to restrictions in granting bail, which England and Wales did not experience despite the same restrictions. “In both Australia and Canada the remand population constitutes an increasing proportion of the prison population, accounting for 23% of the Australian prison population in 2008 (ABS 2009b) and 32% of the Canadian prison population (Walmsley, 2014)” (Hucklesby 2009-2010: 4,6).

Australia

According to the aforementioned World Pre-trial/Remand Imprisonment List (second edition), Australia’s percentage of pre-trial detainees in the whole prison population in 2013 was 24, while pre-trial detainees’ rate per 100,000 population is 32.

Specifically, in the State of Victoria, the rate of unsentenced detention increased by 67% between 2007 and 2010. Considering pre-trial detention in the Australian youth justice system, Stubbs agrees with Zedner that, “while the objective of remand is to contain the person rather than to punish them, the conditions and effects are punitive” (Stubbs 2010: 486). According to Richards and Renshaw, who researched bail and remand for young people in Australia (2013), ‘risk aversion’ is one of the factors leading to high remand numbers. They refer to the ‘new found preoccupation with managing risk’ that is brought forward by Feeley and Simon and Garland and Hudson and state that risk aversion may be a driver of rates of custodial remand. It is noted that, in Australia, police officers’ desire to protect the community has effects on young people’s bail conditions (Richards and Renshaw 2013: 72). They find similar cases in England and Wales that study bail decisions.

Canada

Even though Canada’s crime rate has been decreasing in recent years, 54.5% of people behind bars in Canada were in pre-trial custody on an average day in 2012/2013, awaiting trial or determination of bail (CCLA report: Set up to Fail 2014: 5). Canada’s sentenced custodial population has declined as a result of a number of statutory reforms (Player et al. 2010: 235). According to the World Pre-trial/Remand Imprisonment List (second edition) 2014, Canada’s percentage of pre-trial detainees in the whole prison population has been rising and was recorded in 2010-2011 as 35, while pre-trial detainees’ rate per 100,000 of the population was 41.

Disproportionate numbers may lead policy-makers to investigate the roots of this increasing trend in the last thirty years. “In 2011/2012, Aboriginal Canadians made up 25% of admissions to remand, and just under 4% of the population” (CCLA Report, By the Numbers, 2014: 1).

Moreover, a disproportionate number of pre-trial detainees have mental health or substance abuse problems. Approximately one-third reported being homeless.

Similar to Richards and Renshaw's argument for Australia's remand imprisonment of young people, research conducted by Webster, Dobb and Myers (2009) on Canada's remand population shows that the growing ratio is a product of an increasing culture of risk aversion. They state that while the benefits of granting bail to a defendant remain invisible, risks of not granting a bail are visible.

On the other hand, a study conducted by Kellaugh and Wortley in Canada in 2002, one of the rare empirical and well-grounded pieces of research focused on pre-trial detention, states that unlike New Penology predictions, the disciplinary focus of the courts, with individualized, moral assessments of the accused, come forth. Accordingly, "police recommendations, not judges' predictions of dangerousness, played the most important role in these decisions, and those recommendations were based on offenders' individual situations as indicators of flight risk" (Kazemian et al. 2013: 53). Moreover, according to the study, remand imprisonment is an important resource for guilty pleas especially because defendants are eager for release when they are detained prior to trial.

The USA

The World Pre-trial/Remand Imprisonment List (second edition) 2014 states that the USA's percentage of pre-trial detainees in its whole prison population was 21.6 in 2012 while pre-trial detainees' rate per 100,000 of population was 153. This rate was 123 in 2000, 156 in 2005 and 157 in 2010.

A recent study conducted in the USA, claiming that the history of bail can predict the future of parole, states that said history has always shown characteristics of the New Penology paradigm with its privatization through commercial bail bonding/bounty hunting (Maruna et al. 2012). The authors focus on the downside of the US bail system and remind readers that, "the US system of bail has been accused of discriminating against the poor, injecting profit motive into a public service function, breeding corruption and abuse of power, and increasing the risk of wrongful imprisonment" (Maruna et al. 2012: 330).

On the other hand, similar to the findings of Kellaugh and Wortley in Canada, in another empirical study conducted in New Jersey, USA, by Kazemian et al. (2013) researchers used the example of bail to assess whether risk- management rationales have migrated into judges' decision- making despite a law that favours non-incarceration. The study found out that characteristics of the New

Penology did not necessarily lead to decisions to deny bail and that New Jersey's bail system resisted adopting the New Penology—similar thus to the findings of Kellaugh and Wortley in Canada. Race was an important factor affecting the decisions, as it is with Aboriginal people in Canada's penal regime (Kazemian et al. 2013). The authors conclude that, “relying on principles of the New Penology, it was plausible to expect that judges would jail arrestees from lower socioeconomic classes and grant release to defendants with more money who, presumably, are not members of ‘unruly classes’”. However, these were not the findings that emerged from New Jersey” (Kazemian et al. 2013: 61). The researchers highlight that a counter-narrative to the New Penology can be maintained in the US, given the decentralized US system. Thus the law does not inevitably serve social and political trends; on the contrary, it can resist the postmodern development of penology (Kazemian et al. 2013).

In New Penology, selective incapacitation aims to: “identify high-risk offenders and maintain long-term control over them while investing in shorter terms and less intrusive control for lower-risk offenders” (Feeley and Simon 1992: 458). Kazemian et al. take the discussion from this point and argue that selective incarceration is difficult to fit when applied to bail decisions rather than sentencing. Accordingly, bail decisions focus on flight risk. As they underline, bail decisions are given very quickly without relying on much information and over-prediction of dangerousness. Moreover, Kazemian et al. turn the argument of New Penology upside down for bail decisions and state that actuarialism could be used to release defendants predicted to pose a limited flight risk which can identify and potentially eliminate the elements of postmodernist surveillance (Kazemian et al. 2013: 51).

Considering the literature discussing the relation between the New Penology paradigm and remand imprisonment in various Anglo-Saxon countries, it is challenging to see how different research within the same geographies arrive at opposite conclusions. This might arise from the different methodological approaches, as while documents relying on quantitative data are more likely to draw connections with the New Penology paradigm, qualitative studies focus on other factors and explanations.

Looking at the majority of the Anglo-Saxon literature on remand imprisonment, it is possible to state that risk management and the New Penology argument look persuasive from a bird's-eye view. However, the argument still needs to be tested through empirical and interpretative research in different countries. As Kazemian et al. point out, previous research conducted in various European countries, Canada and some US states indicates that New Penological practices are woven into traditional correctional practices. Moreover, the New Penology paradigm was originally introduced by two US scholars, based on the context of the American jurisdiction in the 1980s (Kazemian et al. 2013: 51). Even though the concepts of managerialism and risk

management are appealing to put forward as the causes of changes in pre-trial detention proportions and rates, more research on smaller geographical scales is needed to comprehend the pre-trial detention phenomenon.

In this study, indicative aspects of actuarial managerialism (Bottoms, 1995) are revealed in the prison and court research. These are thoroughly discussed in Chapters V and VI.

The hierarchical interaction in this work model between youth justice practitioners and the lower-positioned social work officials that is illustrated in the following chapters demonstrates the ethos of managerialism that could be defined in contrast to professional knowledge production. The constant preoccupation with ‘security’ works up this managerialist mentality in the courtrooms and prisons. Hence, young defendants are managed as aggregates through categorization and spatial segregation.

However, this managerialist control of aggregates does not necessarily indicate systematic population control through knowledge production and risk calculation. Rather, interpretative understanding of youth justice professionals’ own decision-making, hence their human agency, matters in comprehending *how* the system is *managed*. Turkey's political economy and social security system, which have been shaped in a developmentalist discourse, form the contextual basis from which actors in the youth justice system shape their ideas. Eventually, spatial control comes to the forefront in the youth justice system, pivoting around ‘individual responsibility’ of young people in conflict with the law. The rights language that prioritizes the negative rights of the individual remains inactive in underlining the structural patterns of being in conflict with the law, and therefore has limited capacity to maneuver within spatial control. Hence, a particular mentality of managerialism embraces youth remand imprisonment that pivots around ‘individual responsibility’ of the subject, contrary to the thesis that states that individual responsibility has diminished along with rehabilitation.

Having said that, guarding against the managerialist ethos and also the language of human rights that could mask the diverse structural patterns of being in conflict with the law, I would like to reserve the next section for offences against the integrity of the state. The prisons that are reserved for defendants on remand do not only hold defendants charged with ordinary offences but also offences against the integrity of the state. Different patterns of illegal activities can be found in remand imprisonment such as political crimes that are harder to explain through the idea of risk management in the case of Turkey. So, while the majority of the young defendants on remand are in custody for offences against property, sexual offences, homicide and drug dealing, another reason for being in custody is the anti-terrorist law. In Turkey, anti-terrorism is invoked in the case of children accused of being involved in pro-Kurdish movements or organizations.

The incarceration of pro-Kurdish groups dates from the 1980s. With the strengthening of the state-security courts in the 1980s and the anti-terror law in 1991, we see an acceleration in security concerns that is interrelated to sovereign power, as terrorism is regarded as a danger posed to the existence and integrity of the state. The state's enunciation of sovereign power through racism calls for an Agambenian analysis. The concepts of 'bare life' and 'homo sacer' that are reintroduced by Giorgio Agamben through his readings of Foucault on Biopolitics promise a ground to think about the prisoners on remand who are charged with offences against the integrity of the state.

State's sovereign power in Biopolitics

Agamben's reading and reconceptualization of Biopolitics reintroduces sovereign power and its relation to bare life. According to Agamben, Biopolitics for Foucault is the entry of the natural life of species into politics or the politicization of the natural life of the governed. This signals a threshold: a shift from the classical theory of the state to modern arts of governing. Agamben comes up with the term 'bare life' by referring to Aristotle's distinction between *zoe*, that is biological life, and the *bios*, the life that is shared (Patton 2007: 204). Foucault sees the politicization of bare life as a radical transformation from sovereign power to Biopower. But according to Agamben, bare life is already within the sovereign power and constitutes the nucleus of that sovereign power. In fact, *"it can even be said that the production of a biopolitical body is the original activity of sovereign power"*. In this sense, Biopolitics is at least as old as the sovereign exception" (1998: 6, emphasis in original).

For Agamben, the decisive fact of modern politics is the 'state of exception' that is exercised by the sovereign power of the state. The exception becomes the rule, and the bare life coincides with the political realm. Thus exclusion and inclusion and *bios* and *zoe* enter into a zone of indistinction. Bare life is included in politics in the form of exception; in other words, through exclusion. It is neither external nor internal to the juridical order (1998: 9,11; 2005:23).⁸

Agamben sees sovereignty in Schmittian (1985) terms. So sovereignty is a form of power that can suspend the law while maintaining the force that law would assume (De Larrinaga and Doucet 2008: 522). It is the sovereign's ability to proclaim the 'state of exception' that leads to the suspension of the law. In this situation, normal law or juridical order does not apply; its application is suspended but the law remains in force (Agamben, 2005:31; Humphreys, 2006). This state of

⁸ As Patton states, Agamben immediately links this idea of the bare life to 'homo sacer', the sacred man, which is also used interchangeably with bare life and 'who may be killed and yet not sacrificed' (Agamben 1998: 8). However, "homo sacer is not the same as simple natural life, since it is, as Agamben later notes, the natural life of an individual caught in a particular relation with the power that has cast him out from both the religious and the political community" (Patton 2007: 210). In precise terms, "The sovereign sphere is the sphere in which it is permitted to kill without committing homicide and without celebrating a sacrifice, and sacred life—that is, life that may be killed but not sacrificed—is the life that has been captured in this sphere" (Agamben 1998: 83).

exception arises from the ‘state of necessity’. It is only within the modern understanding of state that necessity is included within the juridical order and appears as the true ‘state’ of law (Agamben, 2005: 26). Civil wars, insurrection and resistance are primary states that lead to the suspension of law by the sovereign and thus the state of exception (2005: 3). The relationship between this sovereign power’s ability to suspend the law and Biopower lies in the fact that suspension of the law suspends certain lives (De Larrinaga and Doucet, 2008: 522), like in concentration camps and in Guantanamo Bay. DeCaroli states that, “the camp, is for Agamben, an absolute biopolitical space in which power is exercised not against juridical subjects but against biological bodies. It is, in effect, a space in which sovereignty exists but the law does not, a territory in which actions are neither legal nor illegal” (2007: 53).

In *Homo Sacer*, Agamben distinguishes between the camps and the prisons. He states that it is in the camps but not in the prisons that we observe the production of bare lives in the state of exception. He states that prison law only constitutes a particular sphere of penal law and is not outside the normal order, but the juridical constellation that guides the camp is the state of siege. Hence, he also claims that this is why the camp cannot be analysed by Foucault because a camp is different from the simple space of confinement (Agamben 1998: 20).

Although he does not differentiate explicitly, when Agamben speaks about confinement, he exclusively refers to the convicted prisoners whose rights are determined by the penal law and presumably whose civil rights are not suspended. The rights and lives of prisoners on remand are also determined within the penal law, as it is for young prisoners on remand in Turkey charged with ordinary offences. However, the rights and lives of young prisoners on remand charged with violating the integrity of the state can be analysed in relation to the state of exception and suspension of lives of young prisoners, as this takes place at times of an intra-war in Turkey.

De Larrinaga and Doucet aim to explore the relation between human security and sovereign power by looking at the prisoners in Guantanamo Bay. They state that “the life lived by the subjects of the human security discourse can be seen as life lived as ‘bare’ inasmuch as this discourse is not meant to qualify political life” (2008: 530). In this line of interpretation, I claim that a similar statement can be made regarding the situation of young political defendants in the Closed Institutions for Execution of Punishment, and also those who are sentenced, as the sentencing trends and even the legislations change in the political conjecture.

In 1991, the Law on Counter Terrorism was enacted due to the tension between the Kurdish population and the Turkish State. Since then, a significant number of Kurdish young people, living mainly in the south-eastern part of Turkey, have been remanded in custody by this law. These

young people are identified as risks to the presence of the Turkish State and attributed criminogenic labels.

Throughout the 30-40 years of intra-war between the Kurdish forces and Turkish military forces, protection of the territorial boundaries, security of the population as a whole, the sovereignty of the state and the state's integrity have been considered as under threat by Turkey's government. "Human security is instrumental in sovereign power's ability to delineate the circumstances in which such a state of exception can be proclaimed" (De Larrinaga and Doucet 2008: 532). New laws like the Law on Counter Terrorism are enacted and renewed in states in which the security of the people and the sovereign's power are said to be at stake. Unlike other defendants on remand whose future depends on penal law, the outcome of the cases of these 'political defendants' depends on both the penal law and the state's sovereign power. Hence, their lives are suspended for an uncertain period of time in this state of exception in which the integrity of the Turkish State is considered to be above the rights of people. I would claim that this uncertainty in the suspension of civil rights constitutes punishment of these bare lives.

Having stated this point, it is necessary to acknowledge that the term 'security' here is certainly used differently by Agamben than by Foucault. In Foucauldian terms, security depends upon the well-being of the population through calculations of risks related to a wide range of factors, as well as the protection of the nation from threats to the nation-state. Security in this state of exception is about the threats to the state's sovereign power. Conversely, for Agamben, Biopolitics is, according to Coleman and Grove: "metaconstitutive of sovereign-juridical power" (2009: 497). In other words, while Biopolitics is observed in a number of social sites and institutions for Foucault, for Agamben, it appears via the threshold, as an indistinction between law and fact, juridical law and biological life (2009: 498). It must be noted that Foucault and Agamben have different conceptions of the state, as they have different conceptions of security and Biopolitics. As Coleman and Grove underline, discourses and practices of government are in place of what was supposed to be sovereignty and they lead Foucault's discussion on Biopolitics (2009: 491). While Foucault sees the state from bottom-up, Agamben approaches it from top-down and consequently in a totalizing manner.

In short, no matter how much Foucault stresses that he does not differentiate between sovereign-juridical, disciplinary and Biopolitical acts of government, a considerable number of authors, including Agamben, read his works this way. It must be said that this (mis)understanding does not arise from readers' lack of attention, but rather from the fact that Foucault does not define the concepts distinctively and links the concepts of sovereign power, Biopower, security and governmentality while also referring to them in periodization.

Lastly, the conundrum in Foucault's definition of Biopolitics arises from the different levels of analysis as techniques and representation that Foucault approaches the concept with. "At the level of representation, classical sovereignty was already Biopower. At the level of political technology, it only became biopower in the course of the nineteenth century" (Patton, 2007: 214).

Here, I would like to underline that, just like in the realization of relations of security power in the remand prison for ordinary remand prisoners, political prisoners in relationship with the sovereign power experience imprisonment in its spatial aspect, whereby the elements of time and labour/discipline are eliminated.

Concluding remarks

In summary, taking a critical approach to the language of rights in order to problematize remand imprisonment, this study proposes scrutinizing remand imprisonment in terms of the governmentality of the population, which is the means of statecraft to maintain a population's well-being and security. A study of governmentality of remand imprisonment calls for situating remand imprisonment in the revisionist theories of imprisonment that underline the correspondence of penal politics to the political economy and what I would call its social security system in welfare capitalism.

However, relying on an analysis based on political economy would be reductionist. Subjects' relationship with the sovereign power—in other words, the manifestation of the sovereign power in the criminal justice system—is equally important in terms of the diversity of the criminal acts. So a holistic view of the governance of young defendants reveals structural patterns of being in conflict with the law. The three essential elements of imprisonment—labour/discipline, time and space—are useful conceptual tools in tracking the transformations in the prison regimes.

CHAPTER III: The context in which remand imprisonment gains a central role in the youth justice system

Introduction

Criminological literature has remained sparse in Turkey until today. Until now, governments have not developed a systematic approach to fund research to tackle problems related to crime.

Criminological studies did not flourish in academia either. Thus, a common language to argue about the penal history and penal culture of Turkey has not yet developed. Moreover, there is no established work culture of calculating and presenting trends in crime and imprisonment rates in Turkey. Data is mostly presented in tables rather than in graphs, which means it is more difficult to follow rising or decreasing rates. Lastly, crime control policies are rarely discussed in the public domain, finding little space in the media. In Turkey, crime control is viewed as an issue that is best tackled by its professionals, primarily graduates of law faculty. Trust in professionals in the issue of crime control does not mean that the civil society or the media does not bring up criminal issues at all,⁹ but the criminal justice system and specifically the juvenile justice system could be better scrutinized.

The criminologist Topçuoğlu draws attention to the lack of empirical data behind Turkey's law and policy-making practices and suggests that there is an incredible need for the standardization and systematization of the official data gathered by different state organs. The following changes are also needed: making data accessible for researchers; introduction of a routine national victim survey; identification of recidivism through the organization of data between different state organs; identification of factors leading to recidivism; and introduction of intervention programmes (Topçuoğlu 2015). In Turkey, according to the data given in 2011, 68,6% of youth are imprisoned again within a year after being discharged (Yılmaz, 2011:10). However, there is no systematic data to track yearly trends. Likewise, Eren draws attention to the presentation of raw numeric data and the difficulty in composing and interpreting data as the data collection or presentation methods vary between years (Eren 2014: 68-69). Topçuoğlu and Eren's statements, especially on the gathering and sharing of statistical data, have rung true throughout this study, and insufficient data has been a continual headache for me.

Within this context, civil society organizations along with some universities have paid more and more attention to the issues of imprisonment in the last decade. Short-term and medium-term

⁹ Young people charged with being in contravention of the anti-terror law, known as 'children throwing stones [to the police]' has been a big discussion topic in the recent years. While this thesis was being written, violence against women and femicide was being brought up by civil society organizations and the media to pressure politicians to increase punishment.

policy-oriented research projects have been funded by various international institutions for harm reduction in imprisonment. Turkey's Centre for Prison Studies is newly emerging.

In order to understand how the Children's Closed Institutions for Execution of Punishment, which are prisons designed to detain young defendants, occupy such a central space in the whole system, in this chapter, I scrutinize the Turkish justice system with a special focus on the evolving youth justice system. Rather than illustrating only today's system, a historical transformation from the late 19th century onwards of the prison system, the court system and legislations is presented. First, the history of imprisonment is portrayed from general to specifically juvenile prisons. Legislations and judiciary transformations are considered, with a focus on social work within the history of Turkey's welfare capitalism. Reforms taking place since the 2000s are given and current legislations and practices are set out. By the end of this chapter, the reader will be informed about how the system has evolved and how the language of juvenile justice has changed till today. Equally important, this chapter prepares the reader to follow the discussions in later chapters where I analyse data from today's courts and prisons. So, the accounts on the practice of laws are mostly reserved for later chapters where I discuss the findings. This chapter situates the legal framework and culture and its transformation in relation to Turkey's governmentality.

Prison history in Turkey: Transformations in prison design and architecture and its implications

The majority of the literature on imprisonment is produced on the detention of people who are recognized as a threat to state sovereignty on the basis of their political position regarding the political economy or ethnicity, followed by systematic torture. Notwithstanding the invaluable contribution of the biographies, autobiographies and memoirs to the history of imprisonment in Turkey, these are written with the purpose of questioning the legitimacy of detaining political selves, and by nature do not tackle imprisonment in general. In a report from the Turkish Economic and Social Studies Foundation (TESEV), Mandıracı also draws attention to the prison literature culture in Turkey and states that prison politics and policies have focused on political prisoners, which has resulted in a lack of regard for the problems of ordinary prisoners (constituting approximately 90%) arising from management, physical conditions and security concerns (Mandıracı 2015).

Without considering the existence of pre-trial detainees in the judicial/legal literature, prisons by default are considered as sites of administration of punishment. From the viewpoint of human rights, this approach violates the presumption of innocence of pre-trial detainees. From the point of view of penal studies, this ignorance blurs the boundaries between 'security' and 'punishment'. As

a matter of course, conceptual discussions on penalty in Turkey remain rudimentary. Moreover, the presence of pre-trial detainees in these prisons remains unquestioned.

According to some writers such as Eren (2014), İbikoğlu (2006) and Neziroğlu (2006), Turkish penal politics is shaped to govern political prisoners that threaten the sovereign state. I agree with the argument that Turkish penal politics is shaped around its will to protect its sovereign power. However, I further argue that the prison regime has transformed in such an efficient way that its governance corresponds both to its political economy and its will to practice sovereign power. The high-security juvenile remand prison regime fits perfectly in this conjecture.

The historicism of imprisonment, below, aims to illuminate the penal politics of Turkey from a broader perspective in its governmentality, considering both the sovereign state's will to control political prisoners as well as the rest of the prisoners, who are charged with ordinary offences and who constitute the majority of the population.

Eren's book on the history of imprisonment in the Ottoman Empire and Turkey provides a periodical framework to situate the juvenile prisons in the justice system. The book is written with a preoccupation with political prisoners' detention, and the politics of resistance on the premises of political identities. This means the imprisonment of ordinary prisoners receives less attention than it deserves, as the author himself modestly acknowledges. Adopting a Foucauldian approach to historicism, Eren studies the subject matter in three eras (Eren 2014). The first era is identified as the 'dungeon' era until the end of the 19th century, when no building was constructed as prison and no specific laws on the management of prisons existed. At the start of the second era (late-19th century— 1960s), a reform process started. Special buildings were constructed as prisons and prisoners were kept in wards and new laws were introduced to govern these institutions. Overall the second era is the era of ward-system prisons in which prisoners were managed in inadequate conditions.

From the 1970s onwards, left-socialist struggles became prevalent in Turkish prisons. Torture and violence occurred routinely and resistance took place, which eventually led to a transformation in prison design. During this third era, in which socialist movements were repressed, the design of the prison started to be transformed from a ward system to room-cell systems to better control the prisoners (Eren 2014: 14). Consistent with the human rights'/prisoners rights' rhetoric, the room-cell system prisons has become prevalent in the 2000s in the neoliberal political economy. Equally important, these new 3rd generation prisons with room-cell system are built in large prison campuses away from city centres.

Here, the change of terminology from detention houses/prisons to punishment houses is significant for some writers/activists like Eren and also in the youth justice system context. Although the terms ‘prison’ and ‘punishment house’ are used interchangeably by the public, in the 2000s, ‘punishment house’ replaced ‘prison’ upon the initiative of the Ministry of Justice. Eren demonstrates this change by his discourse analysis in a mainstream newspaper (Eren 2014: 229-232). Accordingly, the term ‘punishment house’ is problematic, as the word ‘punishment’ inherently refers to a crime which itself is a contestable term, especially when considered in the literature for political prisoners or remand imprisonment. The use of the term ‘punishment house’ corresponds to the ‘room/cell system’.

Imprisonment of political prisoners, those associated with socialist movements or pro-Kurdish movements, has grown and shrunk over the decades in changing political environment and legislations. Prosecution of these cases have been conducted in State Security Courts (1984-2004), Specially Authorized Heavy Penal Courts (2004-2014), and Courts Authorized according to Anti-Terror Law Art.10 (since 2012), indicating a ‘state of necessity’ (Agamben, 1998, 2005) that claims the insufficiency of normal penal courts in dealing with ‘security’ of the state. Children have been in and out of this ‘special’ prosecution in recent years. At this point, before moving on with the transformation of youth prisons, it is necessary to pay more attention to the move from the 2nd generation to the 3rd generation prisons, which have implications in youth imprisonment.

Rise and decline of labour-based prisons in the ward system era: 1930s—1950s

Between the 1930s and 1950s, during the triumph of state-led industrial capitalism, labour-based prisons occupied policy-makers’ agenda for boosting national production. In line with the theory of Rusche, prison conditions improved and prison labour began to be widely used in Turkey. Then labour-based prisons declined together with the decline of labour scarcity and the change of political economy (Sipahi 2006). Between the 1950s and 1970s, stone buildings were built as prisons in a ward system. The ward system continued from the 1970s onwards (Sağlam cited in Eren 2014) but with smaller units. So, “the labour-based prisons were founded not as an instrument of controlling the masses, but as state enterprises for augmenting national production” (Sipahi 2006: 25).

In 1943, during this period of establishment of these special labour-based prisons, the second Juvenile reformatory of Turkey for 120 children was established, built by construction teams made up of convicts (Sipahi 2006: 41, 51). A juvenile reformatory was established in Edirne with a capacity of 200 children who were sentenced for more than six months, while those sentenced to shorter periods were confined locally. Young convicts in Edirne did light agricultural work and were trained under teachers (Sipahi 2006: 47). In 1941, reformatories were assigned under the

same regulations as labour-based prisons (Sipahi, 2006: 48) Altogether, these special prisons received one-third of the entire prison population, which in Sipahi's eyes is a significant population, showing the impact of political economy on the criminal justice system (Sipahi 2006: 42).

In the 1960s, prison classification changed to closed, semi-open and open prisons. Similar to Eren and İbikoğlu's claims, Sipahi claims that from the 1960s to the 1990s, the primary concern in Turkish penalty shifted from prisoner-workers in prisons with production facilities to political prisoners in high-security prisons, reserved especially for prisoners charged with crimes against the state.

From the ward system to room system: a response to prisoners' resistance and claims built on prisoners' rights

After the second coup d'état in 1980, military prisons held political prisoners who were referred to as anarchists, and kept then under a brutal disciplinary regime. During this period, the normal juridical-penal law and rights could be suspended for an uncertain period of time while maintaining its force in the 'state of necessity' commanded by the will of the sovereign power of the state for the security of its population (Kaynar-Kars 2013). In these prisons or Biopolitical spaces, power was exercised not against juridical subjects but against the biological bodies of the prisoners (Topaloğlu and Fırat 2012). Thus, drawing from an Agambenian understanding of a 'state of exception', I claim that as sovereignty existed but law was suspended, the actions were neither legal nor illegal.

In the 1980s, torture was inflicted as a common, routine and discouraging, terrorizing form of punishment (Fırat and Topaloğlu 2012; İbikoğlu 2012). Later in the 1980s and 1990s, prisoners' resistance in the form of social/communal culture and discipline inside the prisons trumped the military's discipline (İbikoğlu 2012: 156). İbikoğlu views this transition as a two-sided process; a failed disciplinary system of the military on the one side, and an effective disciplinary system of the political prisoners themselves on the other. Later, the military's disciplinary regime diminished as civilian administrations took over control of prisons in the 1990s. Prisoners relied on well-rehearsed methods of resistance, and prisoners' communes gained autonomy through social/communal discipline, daily programmes, division of labour and compulsory education sessions, with prisoners being ready to fight for the commune against the state (İbikoğlu 2012: 48-49).

However in the 2000s, following 'Operation Return to Life' on 19th December 2000 that was organized to suppress the hunger strikes of different political prisoners in various prisons, nearly all political prisoners (accused of terror and organized crime) were transferred from wards into new

cell-based F-type high security prisons designed to have one to three prisoners per cell (İbikoğlu 2012: 139-140). Hence, the ward system favored by political prisoners started to disappear in exchange for cells favored by the Ministry of Justice (Neziroğlu 2006: 424). İbikoğlu claims that the maximum-security prisons in Europe and North America influenced the transition to F-type prisons in Turkey. A CPT report published in 1996 that criticized the living conditions in the ward systems at the time provided a legitimate back-up to the government in this transition while the official authorities aimed to regain control of the prisons (İbikoğlu 2012: 120, 147; Neziroğlu 2006:166). These F-type prisons generated discussions in academic studies and the media, specifically over solitary confinement and isolation.

In his interviews with top prison bureaucrats in Ankara, İbikoğlu was told that the ultimate goal of the Directorate of Prisons and Detention Houses (DPDH) was to completely eliminate wards and low security prisons (İbikoğlu 2012: 8). İbikoğlu asserts that this new security-oriented managerial regime of control imagines prisoners as utility-maximizing rational individuals who naturally conform to the rules of the system in order to benefit from the rewards and avoid punishments (more isolation). The goal of these new prisons is ensuring security by appealing to the self-interest of the rational individual prisoner (İbikoğlu 2012: 147, 158-159). According to İbikoğlu, this prison population is no longer mere subjects of a sovereign or subjects to be transformed into ideal citizen, but are managed and reduced to utilitarian individuals (İbikoğlu 2012: 100). In a nutshell, İbikoğlu argues that there has been a transition from the political prisoners' disciplinary regime of control to a security-oriented managerial regime of control.

However, the term 'managerialism' had been placed in the agenda by American criminologists to explain the transformation of American penalty, where prisons lock up aggregates of ordinary prisoners to be managed. Political prisoners in Turkey, on the other hand, are deliberately placed in high-security prisons and managed carefully. Therefore, 'managerialism' does not necessarily explain the idea behind the transformation in the Turkish state's imprisonment policies, although the physical design of new Turkish prisons with their emphasis on security might resemble the American model. And it is this very intersection of the manifestation of the state's sovereign power to govern the political prisoners and its security power to govern the non-political prisoners that we must pay attention to. Here I would like to make it clear that the aim of governing political prisoners would not lead to a managerialist ruling in the prisons, as the concept of managerialism connotes a certain way of ruling corresponding to the political economy but not the political-sovereign rule. However, eventually, the security oriented prison regime fulfills the aim of controlling both the ordinary and commune-oriented political prisoners.

Since the 1970s, the term 'political prisoner' has referred to people incarcerated due to their orientation and involvement in socialist, pro-Kurdish or pro-Kurdish socialist movements and

organizations, both armed and unarmed. In this thesis, political imprisonment of young people under 18 connotes Kurdish prisoners claimed to be involved in pro-Kurdish terrorist organizations or movements in armed or unarmed struggles. In fact, focusing on the imprisonment of these young people in relation to legislation and the conduct of the judiciary demonstrates the manifestation of the sovereign power of the state.

Parallels between high-security F-type prisons for political prisoners and Children and Young People's Institutions for Execution of Punishment

It is not possible to trace a separate control and imprisonment policy of the Turkish youth justice system that is different from the general criminal justice system. I argue that the transformation from ward to cell system and the will to better control prisoners through spatial organization, illustrated above, provides a basis to understand how juvenile prisons have been transforming, too. There has been a shift towards the elimination of the ward system and low-security prisons for juveniles as well, but with different objectives, such as renewing the prison design as part of the modernization of the prison system. The same models of imprisonment such as high-security prisons are adapted to the youth justice system within the formal discourse of human rights and prisoners' rights. Today's prisons meet international standards in terms of security, hygiene, privacy and other prisoners' rights; however, the concept of penalty and the function of prisons occupy little space in the agenda. In other words, the rights discourse is effective in managing the micro issues of imprisonment while failing to address the structural macro issues of criminalization and crime control. What is peculiar in the Turkish case is the intersection of the control of political prisoners and young remand prisoners (both ordinary and political) in similar prison designs based on security and control.

Tracing the periodization in the design and use of imprisonment in line with Turkey's political economy, we see that prison design transforms in parallel with the transformations in the political-economic conjecture, while serving to control political prisoners as well.

Anti-terror law and imprisonment of armed and unarmed youth

As laid out in Chapter II, the strengthening of the state-security courts in 1980s and the anti-terror law in 1991 have been mechanisms to continue the never-ending fight against Kurdish nationalists. The anti-terror law (no.3713), the law on meetings and demonstrations (no.2911), and Article 250 in the Criminal Procedural Law (no.5271) on the establishment of special courts to prosecute acts of working in illegal organizations have criminalized pro-Kurdish youth until today. The emergence and transformation of special courts, together with the emergence and transformations in the legislation, point towards the suspension of the constitutional law according to the political

conjecture. In this regard, Kaynar calls the anti-terror law an ‘imperative’ in the form of law (Kaynar 2013: 161). There is an acceleration of concern for security, related to the enunciation of the sovereign state power. The discussion below should be read alongside the history of imprisonment of political prisoners in Turkey since the 1970s. The accounts of young prisoners charged with political crimes (Chapter V) show that they consciously struggle against a ‘collective’ pain of imprisonment.

‘Political crimes’ have been gathered under the umbrella name ‘terrorism’ since the introduction of the anti-terror law in 1991 (Kaynar 2013: 148). However, as Kaynar suggests, in the current context of Turkey, naming ‘terror’ crimes as crimes against the integrity of the state provides a better terminology to analyze the criminalization of people in groups. Moreover, the word ‘terror’ and its definition in the law work ambiguously, which affects the prosecution process of young people charged with crimes against the integrity of the state.

The amendments to the anti-terror law in 2006 had a great impact on young people. Its definition of terrorism was criticized as being vague, overly broad and lacking in clarity on the nature of the crime. For example, Article 6 had: “the potential to make anybody who expresses an idea contrary to the official state ideology guilty of being a “terrorist,” even when the accused may be completely opposed to the use of violence” (Gunter 2012: 121). Hundreds of armed and unarmed political young people have been prosecuted in this conjecture in an accelerated manner, especially since 2006. Eventually, criminalization of Kurdish youth found space in the media as ‘children who throw stones’, especially between 2006-2008 (Yağcıoğlu 2010; Acar et.al., 2012). Accordingly, there were public cases filed against 500 young people in various cities with allegations of propagandizing terrorist organization, violating Law 2911 (Law on Meetings and Demonstrations), and becoming a member of an organization through crime (Justice for Children Report 2009). Children above 15 could be tried together with adults in the special courts founded by the Criminal Procedural Code Article 250 (Erdoğan 2012: 118).

In 2010, there were further amendments to the anti-terror law through law no. 6008, so that children can no longer be tried in these specialized courts and special interrogation and prosecution measures related to Anti-Terror Law cannot be practiced on them. Propagandizing in meetings and demonstrations is not prosecuted according to the anti-terror law, plus, according to the law on the meetings and demonstrations, penalties are not increased. Since then, children can only be tried in juvenile and juvenile heavy penal courts but not in specialized courts (Human Rights Watch Report 2010).

Following these amendments, it has been reported that violence, torture and torture through sexual abuse and rape has been taking place on a discriminatory basis in the closed prisons. The target

group is young Kurdish males who have been detained on remand and accused of political crimes. One of the youth prisons, M-type Child Prison in Pozantı, Adana (South Coast), was closed in 2012 due to reports of human rights' violations and incidents of torture in the prison (Tomasini-Joshi, D. and Keillor, K. 2012). Another Child and Youth Closed Prison in Şakran, İzmir (West Coast), which is part of a prison complex, was in the news in May 2013 after reports of torture on the basis of ethnic discrimination (Saymaz 2013; Gündem Çocuk report 2013).

Eventually, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited various juvenile facilities in Turkey after the Pozantı incident and proved the correctness of the accusations (CPT report 2013). These incidents of torture constitute a violation of Article 3 of the European Convention on Human Rights, Article 5 of the UDHR and Article 37 of the UN CRC. They also violate domestic law 5275 that prohibits any kind of discrimination and inhumane treatment to prisoners. Moreover, since these abuses take place on ethnic grounds, there is also a violation of Article 14 of the European Convention on Human Rights, Article 2 of the UDHR and Article 4 of the Havana Guidelines. The European Court of Human Rights also determined violations in various other cases such as *Guvec v Turkey* (2009), *Selcuk v. Turkey*, *Koştı and Others v. Turkey* and *Nart v. Turkey*. Accordingly, Turkey has been found in violation of Articles 3, 5 and 6 of ECHR due to an excessive period of pre-trial detention.

All the above reports and records of changes in the legislation show the suspension of the legality in the 'state of necessity' as an enunciation of the sovereign power of the state; a state of indeterminacy that Agamben analyses in his works (1998, 2005). The suspension constitutes punishment of the bare lives of young people whose prosecution process depends upon political conjecture. As the civil war continues and the definition of terrorism expands into more ambiguity, imprisonment of young political defendants shall be on the agenda. However, it must be noted that similar to the politics of imprisonment as stressed by Eren, imprisonment of youth does not raise any awareness without the confinement of political prisoners. Consequently, studies on the imprisonment of young people need to consider the diversity of criminality into consideration.

Before moving on with the transformations in the youth prison designs, I would like to share the most relevant statistical data on imprisonment.

Imprisonment by numbers

By January 2015, there were 291 closed prisons, 41 private open prisons, 2 Juvenile Education Houses for convicted children, 5 closed prisons for women, 1 open prison for women and 3 closed Institutions for Execution of Punishment for children on remand. In total, this makes 355 prisons

with a capacity of 163,129 (<http://www.cte.adalet.gov.tr/#>, accessed 10 March 2015) in Turkey which has a population of over 78 million, in 81 cities.

In May 2013, the (now former) Minister of Justice announced that by 2017 there will be about 213 to 223 new prisons in Turkey (haberler.com, 2013). According to the official website, many prisons have been closed down and replaced with new ones, to reduce the operating costs, to enhance the quality (of what is not specified) and to act in line with a modern punishment administration approach. Thus, 169 small district prisons have been closed down since 2006 as they did not meet international norms and physical standards, as education and correction were restricted or impossible to realize. Along with this, 83 new ‘healthy, secure, mechanical and electronically equipped prisons that are eligible for rehabilitation services’ are designed as *modern* projects and 32 extra buildings have been added to the old ones primarily in metropolitan cities¹⁰. Here, I observe that there is a similarity between the politics of the current AKP government and the populist Democrat Party of the mid-20th century. Similar to the populism of Democrat Party, which invested in over 100 small prisons in less than 4 years (Eren 2014) while building roads, the AKP government has invested a lot in constructing and renewing prison facilities while building roads and boosting the construction sector. Within this framework, 3 new Children’s Closed Institutions for Execution of Punishment have been opened in big prison campuses in the three largest cities of Turkey—Maltepe/Istanbul, Sincan/Ankara and Aliğa-Şakran/İzmir—within the last decade.

In February 2015, 151 social work officials, 271 psychologists and 352 teachers worked in these prisons. Calculating in relation to the prison population at the time, 1 social work official works for 986 prisoners, a psychologist works for 549 prisoners and a teacher works for 423 prisoners¹¹ (Mandıracı 2015: 25). This shows the minimal significance given to concerns or policies regarding the rehabilitation of prisoners. As shown in Chapters V and VI, despite a bundle of legal reforms since 2004, investment in human resources and professionalism have remained weak when contrasted with investment in the construction of the facilities.

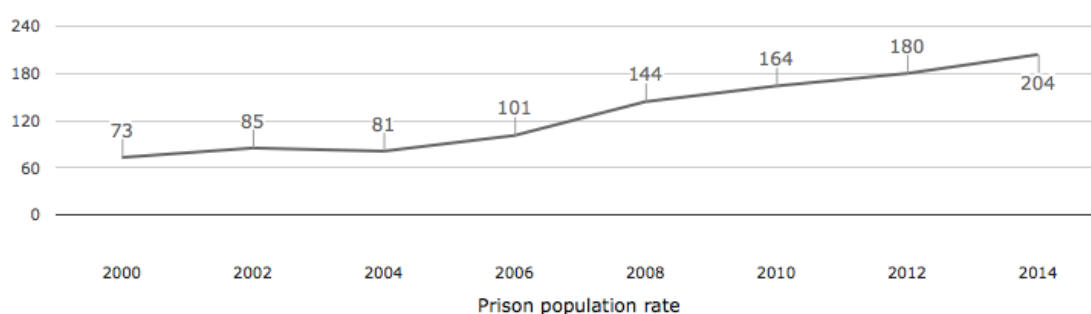
Alongside the increase in the number of prison facilities, imprisonment numbers have been rising steadily. There has been a rise in the number of prisoners per 100,000 population in Turkey since the 1990s. From 1992 to 2008, this number rose from 54 to 135 (Yücel, 2009:230). According to the World Prison Brief (<http://www.prisonstudies.org/country/turkey>), the prison population rate (per 100,000 of national population) is 220 in 2015.

¹⁰ <http://www.cte.adalet.gov.tr> [accessed 5 January 2015]

¹¹ I asked the same numbers for years 1979-2014 for youth prisons but did not receive an answer.

Graph 3: Turkey's prison population rate **source:** World Prison Brief

(<http://www.prisonstudies.org/country/turkey>)

**Table 5:** Convict and Remand Population from 2000 onwards in Turkey, prepared exclusively for this thesis. **Source:** <http://www.cte.adalet.gov.tr>

Years	Male Sentenced	Female Sentenced	Juvenile Sentenced	Total Sentenced	Male on Remand	Female on Remand	Juvenile on Remand	Total on Remand	Total
2000	23.708	894	253	24.855	22.595	921	1.141	24.657	49.512
2001	26.286	903	352	27.541	25.267	1.136	1.665	28.068	55.609
2002	33.079	1.181	548	34.808	22.197	927	1.497	24.621	59.429
2003	35.297	1.207	552	37.056	24.613	970	1.657	27.240	64.296
2004	29.074	925	366	30.365	24.914	1.023	1.628	27.565	57.930
2005	28.420	882	143	29.445	24.089	930	1.406	26.425	55.870
2006	34.458	1.086	321	35.865	31.303	1.315	1.794	34.412	70.277
2007	50.650	1.620	539	52.809	34.353	1.527	2.148	38.028	90.837
2008	60.444	1.948	671	63.063	36.446	1.651	2.075	40.172	103.235
2009	73.063	2.305	632	76.000	36.585	1.708	2.047	40.340	116.340
2010	83.289	2.748	529	86.566	31.262	1.402	1.584	34.248	120.814
2011	89.252	2.955	410	92.617	32.479	1.584	1.924	35.987	128.604
2012	100.617	3.278	418	104.313	28.564	1.560	1.583	31.707	136.020
2013	113.378	3.956	451	117.785	24.966	1.200	1.527	27.693	145.478
2014	131.136	4.855	540	136.531	19.915	869	1522	22.306	158.837
2015	146.767	5.373	729	152.869	22.525	1030	1.665	25.220	161.522

So, there has been a great increase in the number of prisoners in the last decade as shown in the above table. One possible reason for this increase is that with the recent legislations convicts serve two-thirds of their sentence in prison instead of one-third (Söylemez, 2012). On the other hand, probation was introduced in 2005 as a method to decrease imprisonment numbers (Mandıracı 2015: 28).

The issue of remand imprisonment

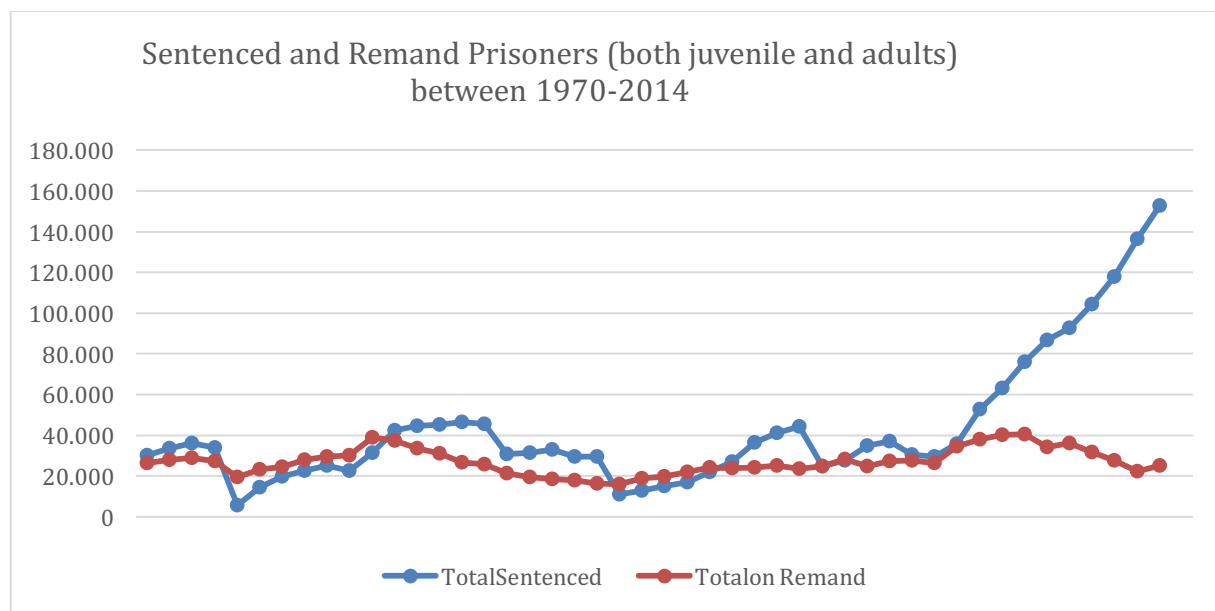
As shown in the table and graph below, the proportion of defendants on remand to convicted prisoners was too high until 2006, which is a significant indicator of crisis in the system. Human rights expert Manuel Lopez-Rey, who was invited to conduct research for the Turkish state, raised

the problem of remand back in 1967. Lopez-Rey stressed that remand imprisonment was used as an earlier form of undeclared punishment and it was difficult to prove otherwise (Lopez-Rey, 1967).

Table1(Chapter 1): Percentage of remand prisoners in juveniles, adults and total, prepared exclusively for this thesis. **Source:** <http://www.cte.adalet.gov.tr>

Years	Juvenile Sentenced	Juvenile Prisoners on Remand	Total	On Remand/Total (Juvenile)	On Remand/Total (Adult)	On Remand/Total (Total)
2000	253	1141	1394	81,85%	48,87%	49,80%
2001	352	1665	2017	82,55%	49,27%	50,47%
2002	548	1497	2045	73,20%	40,30%	41,43%
2003	552	1657	2209	75,01%	41,21%	42,37%
2004	366	1628	1994	81,64%	46,37%	47,58%
2005	143	1406	1549	90,77%	46,06%	47,30%
2006	321	1794	2115	84,82%	47,85%	48,97%
2007	539	2148	2687	79,94%	40,70%	41,86%
2008	671	2075	2746	75,56%	37,91%	38,91%
2009	632	2047	2679	76,41%	33,69%	34,67%
2010	529	1584	2113	74,96%	27,52%	28,35%
2011	410	1924	2334	82,43%	26,98%	27,98%
2012	418	1583	2001	79,11%	22,48%	23,31%
2013	451	1527	1978	77,20%	18,23%	19,04%
2014	540	1522	2062	73,81%	13,26%	14,04%

Graph 4: Sentenced and Remand Prisoners (both juvenile and adults) prepared exclusively for this thesis. **Source:** <http://www.cte.adalet.gov.tr/#>



From 2007-2008 onwards, the proportion of prisoners on remand started decreasing in the whole system. However, it was high at the start. In 2010, the high proportion of pre-trial detainees to sentenced prisoners started receiving attention as members of secularist and ultra-nationalist organizations with possible ties to the military and security forces started to be tried, and were on remand for a number of years. During the same years, some journalists were also placed on remand and tried, and others were on remand because they are tried according to the special law on state security (Turkey Bar Association Remand Report 2011, referring to the Criminal Procedural Code, article 250).

Consequently, the Turkey Bar Association Human Rights Centre released reports in 2009 and 2011 on the issue. According to the report, the proportion of prisoners on remand to sentenced prisoners had been rising in the last decade. The gap had increased to 162% (2011:18).¹² According to the report, for judges, remanding defendants means being on the safe side, and unlawful remanding is not questioned. Here, I would like to draw attention to the fact that within the tradition of criticism in Turkey, remand imprisonment gained attention as some public figures and journalists, rather than ordinary citizens, started to be detained on remand. Only a few studies (Şen 2011; Şen and Özdemir 2012; Erkul 2013; Kadir Has University Seminar book, 2013) have problematized the issue of remand imprisonment.

By 2013, the Minister of Justice was proud to talk about the new developments in legislations and in practice, and especially about the significant drop in the proportion of prisoners on remand (Şimşek, 2013). However, the methods to reduce the ratio of remand imprisonment have not been expounded on in formal documentation. Additionally, and most significantly for this study, the fact that the ratio never dropped in the juvenile imprisonment did not garner any attention. Below I elaborate on the transformation in youth imprisonment and situate remand imprisonment in the system in regard to the prison design and regime.

Transformation in the imprisonment of young people

Until the last decade, the primary institutions for young people in conflict in law were the three Juvenile Education Houses (called juvenile reformatories until 2005) in Ankara, İzmir and Elazığ. Child Prisons in Sinop, Eskişehir and Konya that had held convicted young people between 16 and 18 (Uluğtekin 1976) were closed. Until the introduction of Children and Young People's Closed Institutions for Execution of Punishment, young people on remand or young people whose

¹² However, it must be noted that the Ministry of Justice website and the Remand Report presented different numbers which would also change the percentages from 1999 onwards. This might be due to the difficulty in categorizing convicts whose cases are pending in the Court of Appeal. In any case, this statistical confusion raises questions for the researcher.

sentences had not been decided were held in adult prisons or principally by the juvenile wings of the adult prisons, which has the ward system design.

By January 2015, there were two Juvenile Education Houses: one in Ankara and the other in Istanbul. The ones in Elazığ and İzmir have been closed down, one after the other. And there are 3 Children's Closed Institutions for Execution of Punishment (Republic of Turkey, Ministry of Justice, General Directorate of Prisons and Detention Houses website, accessed 5 February 2015). The former Minister of Justice, Ergin, announced that new prisons for young people will be established between 2012 and 2017 (Yeni Ekonomi, 2013). So, it is expected in the near future, young defendants who are in the juvenile wings of various adult prisons will be placed into these new prisons.

The Juvenile Education Houses receiving sentenced youth

Considering prison as a disciplinary institution that is designed to produce docile and productive labour power, Juvenile Education Houses (JEHs) fit very well into the 'time-tabled regime of the modern prison' (Hudson 2003: 134). These prisons have roots in the reformatories of the late 19th century that were founded to give children vocational training, similar to borstal in the UK. From the 1920s until the 1950s they served as labour-based prisons and were then categorized as open-prisons. Until 1995, the Juvenile Reformatory was run through the circulating capital/revolving fund depending on the work of juvenile convicts (Uluğtekin, 1991; Kavur 2012).

According to Maksudyan, "The ıslahhanes [reformatories] were not reformatories for rehabilitating children in conflict with law or unruly children. They were established as a part of a series of new institutions, targeting the reorganization of the urban life in social and economic terms" (2008: 264). Öztürk (1995) and Karatay (2007) view the reformatories as the first successful attempt to give children vocational training according to the needs of the Ottoman Empire. Accordingly, the development of national industry was the dominant discourse. Öztürk asserts that reformatories were the basis of both vocational education and protective institutions. Later these institutions were collected under the Ministry of Education while the penal institutions for children in conflict with the law were centralized under the Ministry of Justice in early Republican Turkey.

Today, these JEHs are positioned as a separate division in the criminal justice system in Turkey as open-type prisons, only holding convicted young people whose sentences have been finalized by the High Court of Appeal. Apart from being facilities for people under 18, they are distinguished among the other facilities by their emphasis on education. There is no restraint against escape; the security in the institution is provided by surveillance of the correction officers. Unlike the closed prisons, these JEHs are without fences or bars. Mobility is much more flexible but under constant

surveillance. Today, convicts in the JEHs receive formal or vocational training and they work in private companies as apprentices. The convicts above eighteen who attend an education programme either in or outside the prison and whose sentences have not been completed can stay in the JEHs until they turn twenty-one.

Besides education and labour, disciplinary rules and punishments significantly determine the young convicts' lives in the JEHs. Summarizing the purpose of the new disciplinary procedures in prisons, Foucault said that “‘Ultimately, ‘what one is trying to restore in this technique of correction is not so much the juridical subject, but the obedient subject, the individual subjected to habits, rules, orders and authority that is exercised continually around him and upon him, and which he must allow to function automatically with him’” (Ransom 1997: 33).

Accordingly, what this open-type, low-security reformatory prison deals with is not so much the juridical subject, but the obedient subject, in other words the docile body, to be integrated into the cheap labour force. Young sentenced prisoners are confined in the JEHs for a designated period of time and subjected to an education/ work schedule that makes them work as cheap laborers and acquire work discipline. Thus, in this way, with the emphasis on labour and vocational training for a specified period of time, Juvenile Education Houses epitomize the ideal type of prison to produce a citizen corresponding to the capitalist mode of production. The collaboration between the JEHs and private companies both in the industrial and service sector is worth noting. Young prisoners with primary school diploma are allowed to work in private companies during the day. I would like to draw attention to the emphasis on the elements of time, labour/discipline in this model in which spatial control is minimum, in contrast to the Children's Institution for Execution of Punishment for remanded defendants.

According to research I conducted in 2010-2011, in this reformatory model, the prisoner is viewed as someone lacking the academic, vocational and social skills to achieve socially acceptable goals. However, the model itself embodies certain problems. Firstly, the specific educational backgrounds of the convicted youth determine their programmes in the institution, which results in diverse and distinct experiences of conviction, causing injustice in the prison system itself. Secondly, through the individualizing effects of these education programs, the existing educational capital of the convicts are preserved and reproduced, for instance in the course of vocational training. Thirdly and most interestingly, besides holding “certain opportunities,” JEHs work with intrinsic disciplinary rules and punishments. The most frequently practiced disciplinary punishment in the İzmir Juvenile Education House is to send residents temporarily (6 months) to a Children's Closed Institution for Execution of Punishment, where they are deprived of opportunities given by the JEH. This “punishment on top of punishment” is given in addition to the court's punishment (Kavur 2012). The fact that sentenced children in the JEHs are sent to Children's Closed

Institutions for Execution of Punishment, which are reserved for pre-trial detainees, is a clear indication that JEHS are represented and credited by the authorities in relation to the closed prisons for children on remand. This disciplinary punishment has significant implications regarding the punitive character of the Children's Closed Institutions for Execution of Punishment, which led me to start this doctorate research. It seems that the JEHS are slowly withdrawing from the stage and making way for the remand centres. The indistinction between remand and convict imprisonment in the accounts of youth justice professionals that will be presented in Chapter VI, along with the opening of new high-security prisons only for defendants indicate to this takeover.

From open-type prisons for sentenced youth to closed-type prisons for youth on remand

As is demonstrated in Chapter V, in contrast to the JEHS that are open-type institutions, the aim of remand prisons is not to transform prisoners into obedient subjects through discipline. Instead, prisoners are incarcerated, controlled and managed as aggregates.

Figure 2: Locations of prison campuses with high security Children's Closed Institution for Execution of Punishment

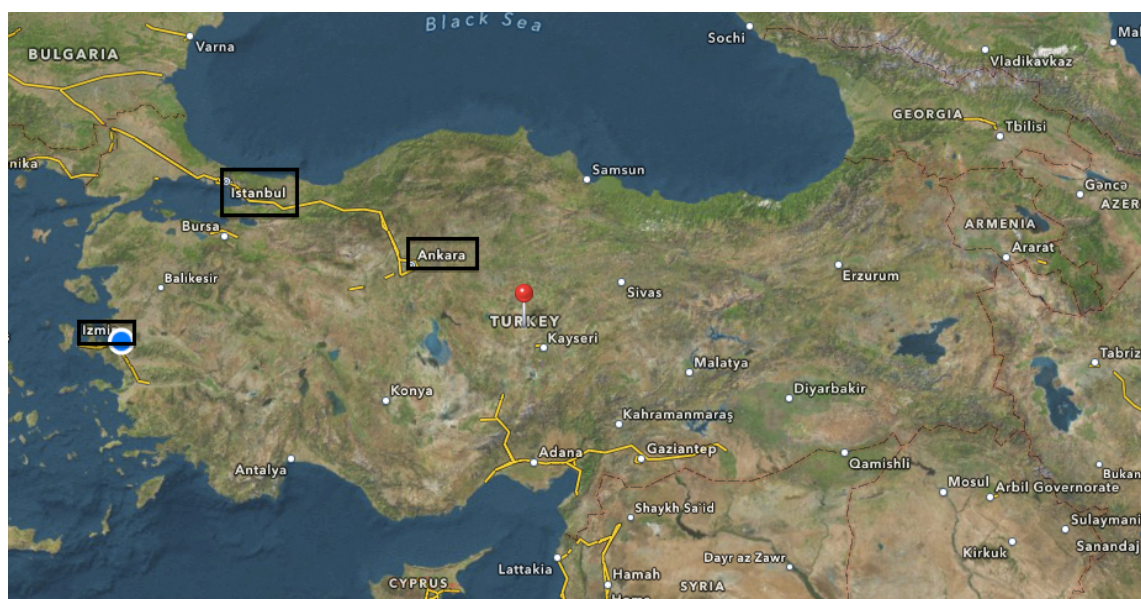


Figure 3: Photograph of the Aliğa/İzmir Prison Campus

Source: <http://www.izmiracik.adalet.gov.tr>, accessed on 6 February 2015



Note: See the organized grand campus, 60 kilometers away from the city centre in the middle of nowhere. The high apartment blocks are built for prison officers.

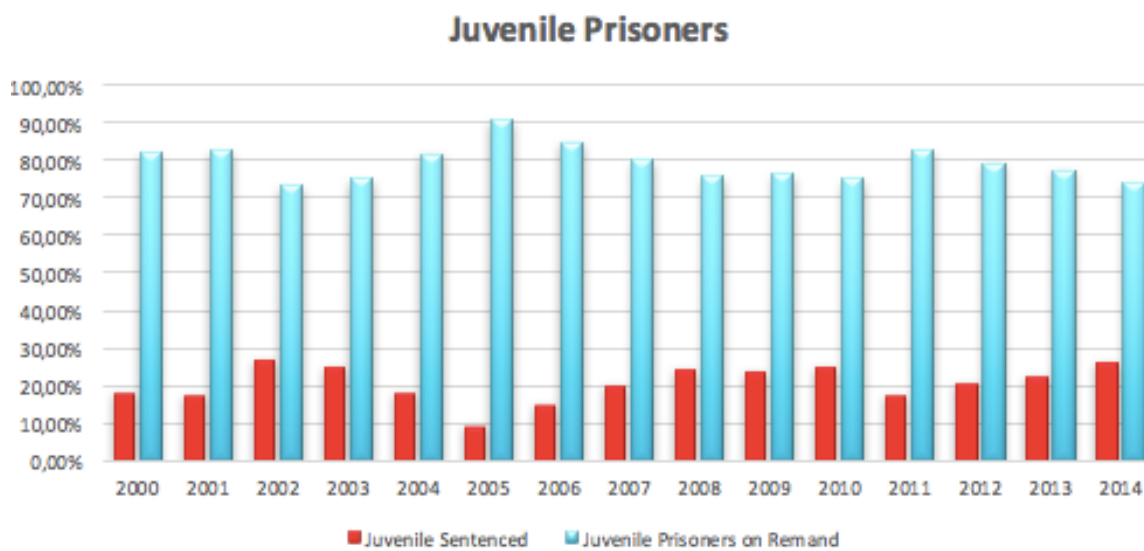
These remand prisons, which have restraints against escape and are guarded from outside and inside by the security personnel, house remanded youth and young people sent from JEHs as a form of disciplinary punishment. Note that the Law on Execution of Punishments and Security Measures (Law no 5275) makes this distinction in the law and describes the facilities separately for those sentenced and for those on remand. Strikingly, a great majority of law implementers in the courthouse are unaware of this distinction, which I discuss in Chapter VI.

It is significant to recognize that the high percentage of unsentenced prisoners incarcerated in prisons that manage the prison population as aggregates is observed in the post-Fordist period, in which the regulatory mechanisms of the Fordist era such as the modern family and the Keynesian welfare state are undermined and transformed. In this post-Fordist era, we witness the cycle of the production of *la canaille*, which is constituted by the: “the new contribution to the working class... made up of former peasants or peasants-turned-vagrants, not yet understanding themselves as working-class and therefore deprived of that possibility for a feeling of mutual “solidarity” that will be the hallmark of their becoming working-class” (Melossi 2008: 234-235). Within this framework, contrary to height of Fordist times in the early 1970s when prisoners were deemed “obsolete”, it is not surprising to see the prison brought back to life to deal with the *canaille* or the delinquents as Foucault defines this group (2008: 241). The prison has the task of receiving this young unruly group. And the youth remand centres that are closed prisons meet the task of managing this group, which renders the existence of the transforming and educating Juvenile Education Houses unnecessary.

Thus, looking at the transition from Fordism to Post-Fordism in which we observe the decline of penal welfarism globally, it is not surprising to see the rise of the remand centres to incarcerate the

new ‘delinquent’ population, with the aim of managing them and also disciplining them to an extent. Discipline is significant for better management. Accordingly, it is possible to state that gradually judges are tending to send young people in conflict with law to remand centres, which fulfill the role of controlling them.

Graph 1 (Chapter I): Percentage of children on remand and sentenced children, prepared exclusively for this thesis. **Source:** <http://www.cte.adalet.gov.tr>

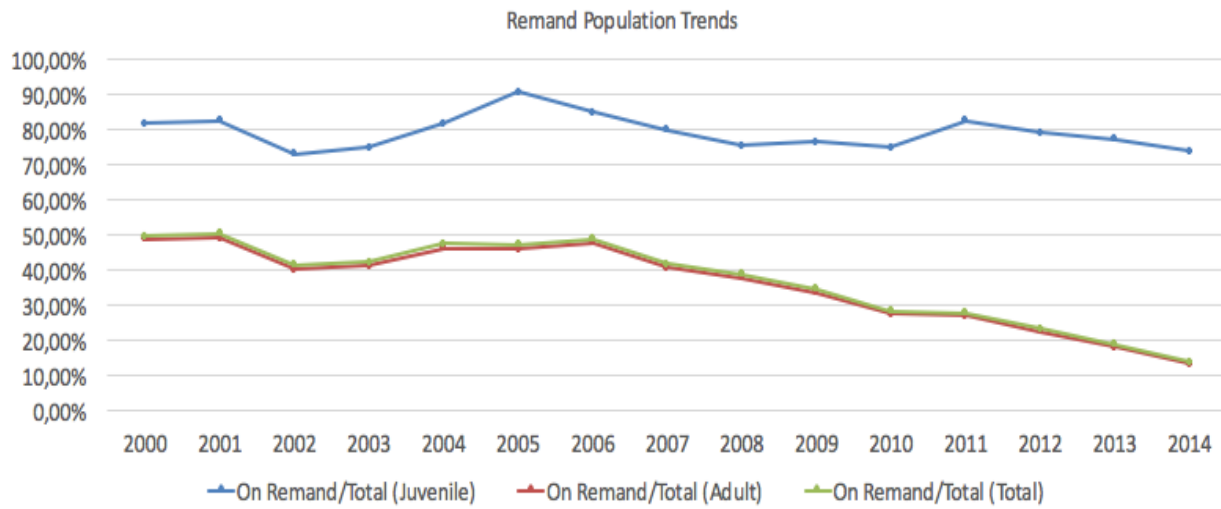


JEHs incarcerate a small percentage of youth in conflict with the law as the young remand prisoners (above 70% of the total) are detained by either Children and Young People’s Closed Institutions for Execution of Punishment or by the adult closed prisons.¹³ The three Children’s Closed Institutions for Execution of Punishment in Ankara, Istanbul and İzmir keep half of the young remand prisoners, while the other half are kept in the juvenile sections of Turkey’s adult prisons.

¹³ The absolute numbers presented by different state institutions are different in each document. I suspect that the numbers given by the national prison administration are changed from time to time, too. I noted that 90% of young prisoners were on remand for the year 2012. Likewise it was stated to be 90% for the year 2009 in the Unicef report. Strikingly, these ratios are only problematized a few times in the relevant literature. Uluğtekin mentions the problem that 86.5% of the children in prisons was on pre-trial detention in 2010. Moreover, one-third of these young pre-trial detainees were kept at juvenile wings of adult prisons according to the Ministry’s data. (Uluğtekin 2010: 35-36).

Graph 5: Remand proportion trends, prepared exclusively for this thesis. **Source:**

<http://www.cte.adalet.gov.tr>



As stated in the previous section, contrary to adult system, the proportion of juvenile remand prisoners stayed above 70% between 2000 and 2014. Additionally, the speed of decrease in the remand population among the adult prison population is not seen in the juvenile prison population.

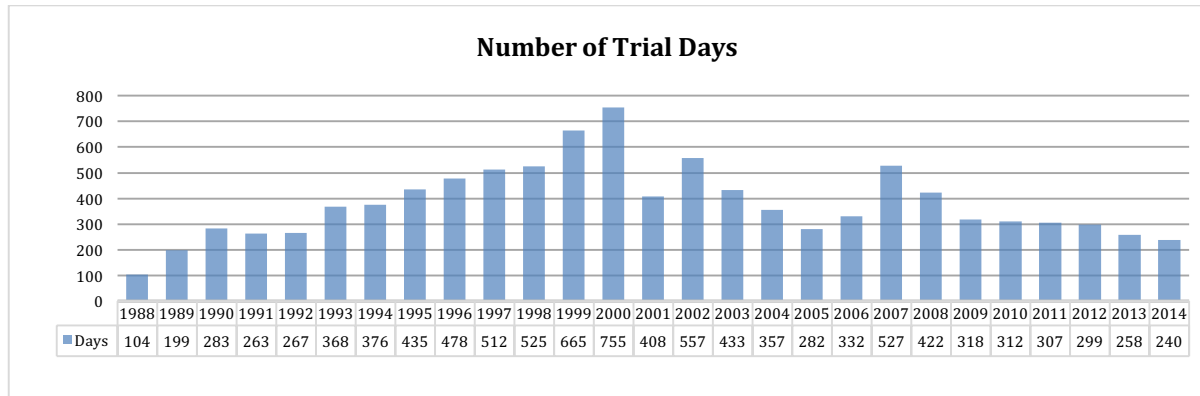
While some youth in conflict with the law are locked up as remand prisoners for more than the average period of 8 months, some stay for a month until the first trial and then are released until the next case when they are arrested again.

Table 6: Average number of days of trial periods between 2003 and 2013, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>

Years	Juvenile Heavy Penal Court	Juvenile Court
2003		433
2004		357
2005	267	326
2006	323	335
2007	619	517
2008	502	414
2009	517	303
2010	457	302
2011	332	306
2012	310	298
2013	252	258

Graph 6: Average number of trial days in the Juvenile and Juvenile Heavy Penal Courts

between 1988-2014, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>

**Table 7:** Juvenile Remand Prisoners/All Juvenile Defendants tried in all courts, prepared

exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr> and

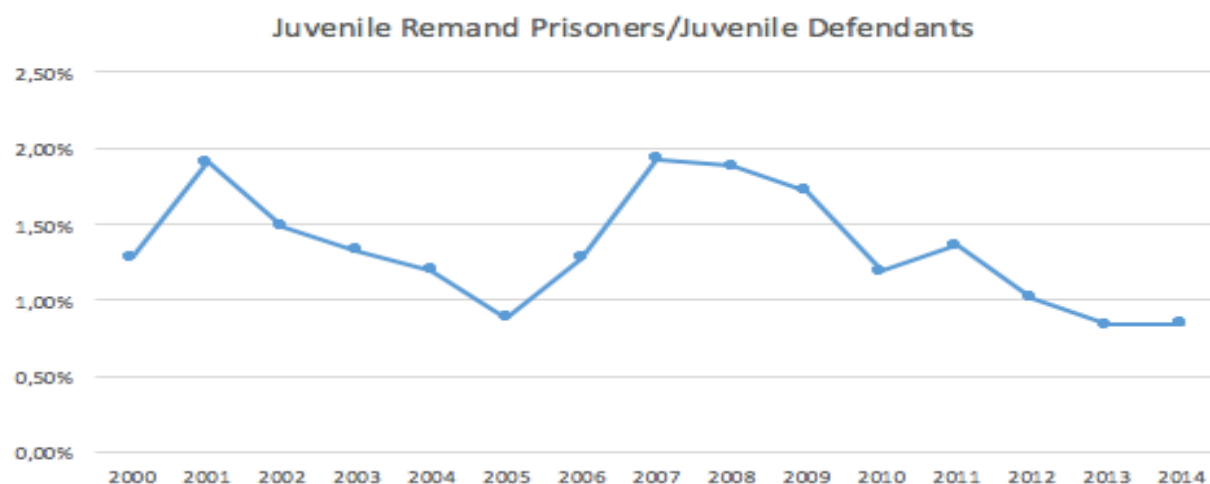
<http://www.cte.adalet.gov.tr>

Note 1: The number of defendants are those that enter the system in that year.

Note 2: General Directorate of Criminal Records and Statistics counted the number of young defendants by counting the number in court cases. A defendant might be counted more than once.

Years	All juvenile defendants in all courts	Juveniles on remand	Ratios
1994	67240		
1995	65791		
1996	70410		
1997	84222		
1998	96631		
1999	90960		
2000	88991	1141	1,28%
2001	87206	1665	1,91%
2002	100904	1497	1,48%
2003	124620	1657	1,33%
2004	136358	1628	1,19%
2005	158917	1406	0,88%
2006	141102	1794	1,27%
2007	111278	2148	1,93%
2008	110237	2075	1,88%
2009	119141	2047	1,72%
2010	133201	1584	1,19%
2011	141412	1924	1,36%
2012	155795	1583	1,02%
2013	182308	1527	0,84%
2014	179807	1522	0,85%

Graph 7: Proportion of juvenile remand prisoners in all juvenile defendant population, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr> and www.cte.adalet.gov.tr



However, according to Table 7 and Graph 7 above, it can still be claimed that remand imprisonment is used as a last resort, as the percentage of juvenile remand prisoners among all juvenile defendants stayed below 2% between 2000 and 2014. Ironically, while remand imprisonment is used as a last resort, more than 70% of young prisoners are held on remand. At this point the precise ratio of young prisoners on remand, who receive prison sentencing, would provide us with meaningful conclusions. However, given the raw data by the official authorities, either on websites or through formal and informal requests, it is not possible to make this calculation. The lack of this essential statistical data has implications for the politics of imprisonment in Turkey. In short, the lack of knowledge production through preparing statistical trends indicates the lack of will to manage systematic transformations. The graphs made for this chapter aim to fill some of this gap. The lack of statistical knowledge presents a picture of Turkey's governmentality, which I aim to complement with the ethos of law-making that I discuss below.

Without keeping track on numbers and drawing implications from the numeric data, the Ministry of Justice endeavours to keep up with the percentage by building modern high-security juvenile prisons. Thus it succeeds in fulfilling a requirement of children's rights: separation of young prisoners from adults, as well as separating children on remand from those convicted. Thus, the language of rights provides a legitimate basis for the construction of separate high-security prisons only for the young prisoners on remand.

Below, I present a historical transformation of the legislation and its correspondent institutions in the ministries to grasp the ethos of 'law-making' as Weber would call it (Weber 1978 Vol. 2: 653), which frames the birth of these separate high-security prisons as 'ideal types' for young prisoners on remand.

The ethos of law-making: civilization

Transferring laws in a speedy manner from the West and adopting human rights standards have been a tradition in Turkey that has been preserved until today. Considering the civil law and the criminal code, Turkey has been adopting European laws since the late 19th century. Japan and Turkey are the most obvious examples in which elites sought to ‘modernise’ their society and bring it into the wider family of ‘civilised’ nations (Nelken 2004: 5). Turkey's first penal code was adopted from Italy, while the first Criminal Procedural law was transferred from Germany (Hakeri 2008 and Sokollu-Akın, 2010). The old Turkish Penal Code (law no 765) (1926) was the sole legal document concerning children in conflict with law for many decades. Only a few of the articles in this former law concerned children in conflict with the law.¹⁴ For a long time, a reduction in the sentences was the only characteristic that separated the legal procedure for juveniles from the procedure for adults.

After the enactment of a series of laws in the establishment of the Turkish nation-state in the 1920s, I designated that the history of law-making regarding the youth justice system has had two waves of legislative reforms regarding children until today. The first wave happened in the late 1950s-early 1960s, and the second took place in the mid-2000s. Many attempts to amend the existing laws and introduce new ones have been made. Some attempts have succeeded, while some took decades to be realized. However, the interpretation of these two waves reveals contextual information on Turkish governmentality, and so is scrutinized below. Most importantly, in the first wave, social work as a profession started to be institutionalized. The enactment of the Law on the Establishment, Duties and Procedures of the Juvenile Court, (Law No. 2253) followed this wave but took place in 1979, and did not come into force until 1982. Finally, during the second wave, The Child Protection Law (Law no. 5395) was introduced (2005), along with many other enactments, such as the new Penal Code (Law no. 5237) and the Criminal Procedural Law (Law no. 5271).

Today, the interpretation and practice of these laws binding children in conflict with the law leads to debates over the hardships of its implementation. More interestingly, while some critiques stress the punitiveness of the Turkish juvenile justice system, legislators and implementers underline the legislation’s importation of children’s rights. So today, comments navigate between the axis of the system being punitive and the laws protecting children’s rights. So how could the legislations embracing children’s rights lead to a punitive perception of the system?

I compared the former Law on the Establishment, Duties and Procedures of the Juvenile Court (Law no 2253, 1979) and the recent Child Protection Law (Law no.5395, 2005). This comparison

¹⁴ For all articles applied for youth under 18, see articles 53-58 in the former Turkish penal code.

illustrates that this conundrum in fact gets locked around the concept of discretion or criminal responsibility, or rather, the individual responsibility of the criminal act. Focusing on this concept of individual responsibility can emancipate us from debates over punitiveness. As a matter of fact, Graphs 14, 16, 17 that are prepared for this thesis demonstrate that, imprisonment used as a last resort punishment does not occupy a significant space in the youth justice system. Instead, the graphs demonstrate a peculiar pattern of diversion in the Turkish justice system. Thus, a general punitiveness discourse should be approached with caution as I stated in Chapter I.

Scrutinizing the concept of individual responsibility, that is related to the freedom of choice of a liberal-rational individual as *homo oeconomicus* is completed with analyzing the position of social work in relation to political economy. So below, I provide a brief history of the transformation of the legislations intermingled with the history of social work around the concept of child, with the help of a literature review. First, the history of social work and the transformations of legislations call for an overview of Turkey's political economy and governmentality of social security.

Political economy and social security

In the 1920s, after the collapse of the Ottoman Empire, whose economy was based on the agricultural work of small farmers, the Turkish Republic competed with the industrialized nation-states through state-led industrialism. Turkey's history of social policy is based on a conservative corporatist regime (Buğra 2006) under state-led capitalism with substantial value attached to the family (Yazıcı 2012). Esping-Andersen's book *Three Worlds of Welfare Capitalism* (1990), adopted by Cavadino and Dignan (2006, 2007) with regards to the penal systems, and by numerous other scholars, draws a framework to comprehend the governmentality and transformations in the Turkish welfare regime and social policies. In conservative corporatist welfare regimes, citizens enjoy social rights such as health insurance and pensions according to occupational groups. Moreover, family plays the central and primary role in ensuring the social security of the individual. The state provides social assistance when the individual fails in the market and the family fails to assist. As Esping-Andersen (1990) underlines, welfare systems construct inequalities in society and can also strengthen inequalities. In other words, varieties of welfare capitalism have the primary determining role in shaping the stratification of society. Thus the stratification based on social class in society is once more strengthened by the state's hierarchical model of welfare regime.

The first constitution of the Republic of Turkey, introduced in 1924, is viewed as the one that guarantees the most freedom to its citizens. At this time, Turkey was developing within the solidaristic corporatist ideology of Kemalism (Parla and Davidson 2004: 13), which favours capitalism under the leadership of the state, empowering certain occupational groups. Then in 1960

and in 1980, Turkey went through two severe military interventions. The constitution was changed twice, in 1961 and 1982. It is agreed by many scholars that, in all three constitutions, laws that require positive contribution to socio-economic rights of the people from the state have been very limited (Karluk 2013: 76).

Consequently, the social security of Turkey's citizens was based on a hierarchical, inegalitarian corporatist system with different levels of benefits according to occupational groups (Buğra and Keyder 2006; Buğra and Candaş 2011).¹⁵ Until very recently, the social security of the citizens—pensions and health insurance—was based on three occupational groups, civil servants, business owners/employers and employees in the private sector, and farmers. Each group received different social security benefits. Basic social rights were granted to citizens of Turkey based on their performance rather than their citizenship. The Turkish welfare system developed to intervene with social assistance only when the family failed to assist the individual who failed in the market. This centrality of the family leads scholars to classify Turkey more like Southern European welfare regimes. Moreover, not only was it “close to the Southern European model but also to the informal-conservative regime found in Latin America” (Soto Iguará 2010: 201).

Meanwhile, huge internal migrations took place from the rural to the urban areas during the industrial movement from the 1960s. Eventually, a considerable section of the population was detached from the land and their labour power was commodified in the labour force. A great number of people were marginalized in the urban industrialization and later in the post-industrial life in the following years. Social security and social control in urban life had been the task of the family and community. Accordingly, the welfare regime of Turkey can be defined as an informal welfare regime (Eder 2010). For a long time, social assistance and social policies of the Turkish state were limited to marginal and *deserving* social groups.

From the 1960s onwards, social work was introduced in the developmentalist paradigm (Özbek 2006: 189) under the leadership of the United Nations. The United Nations Technical Assistance Program contributed to the development of social work in the modernist-developmental discourse, as the counterpart of welfarism of the industrial West (Göbelez 2003: 82). Thus the number of social work officials rose quickly, with the aim of combating poverty and the consequences of poverty to raise under-developed countries to the level of modern developed nations. The paths to development were drawn with the supervision of professionals of the Western powerful economies, which I claim resulted in difficulties in finding space for local solutions and meeting local needs. Although, as Buğra notes, child poverty and concerns over it

¹⁵ “The formal system of social security was designed when the urban population was a minority and could fairly be assumed to enjoy the benefits of employment. Peasants were supposed to take care of their own risks through traditional means. With de-ruralization and urbanization, however, the prevailing reality became that of the informal and sporadically employed urban worker, for whom employment status could not be counted upon to lead to stable social security coverage.” (Buğra and Keyder 2006: 216)

were real, the problem never found its place in the disbursement of fiscal resources (Buğra, 2007:38). In this context, social work found its position in the Juvenile Courts in the early 1990s as the first juvenile courts were established.

From the 1980s onwards, Turkey's political economy transformed in line with neo-liberal tendencies in the global market in the echo of classical political economy. In this outward-oriented liberal era, income inequality rose due to both global conditions and domestic developments (Pamuk 2013: 313). It must be noted that Pamuk does not view liberalism as the sole reason for inequality, as he detects other eras with high-income inequality levels in inward-oriented, state-led economies. In this regard, Yazıcı (2013) draws attention to the dangers of using the popular analytical term "neoliberalism" in critical analysis and invites researchers to scrutinize this term without reifying it and taking its meaning for granted. According to Yazıcı, anthropological critiques draw attention to the use of neoliberalism as a package term produced in the West and exported to the rest. The proposal is to approach neoliberalism as an ongoing process differing in socio-cultural formations (Yazıcı 2013: 10-11). In this thesis, the construction of neoliberal subjects that are individually responsible, self-sufficient, initiating and supported by the family in case of failure constitutes the basis of neoliberal governmentality.

Buğra and Candaş claim that, in the current era, what was dismantled in Turkey through a market-oriented economic strategy was not a welfare state universally applied to all citizens but an eclectic 'social state' formation that they describe as a dual citizenship model, with a Bismarckian formal security system incorporating informality and clientalism. The authors draw attention to two antagonistic features of this dismantling: the reassertion of traditional forms of solidarity as well as the discovery of social rights as an aspect of citizenship (Buğra and Candaş 2011: 515-516).

Until the 1990s, Turkey saw strict control over wage labor, decreases in wages, and the gradual reduction of public social expenditures (Coşar and Yeğenoğlu, 2009). Under the Justice and Development party regime since 2002, the economy has been a more market-led economy, empowered by the centrality of the family in a social conservative approach. Even though the current government has introduced a more universal health insurance system and a pension system in the last decade, the core idea of social policy in Turkey has remained limited to marginal and deserving groups. Buğra and Keyder argue that: "the present government's approach to these problems reflects a liberal residualism, flavored with social conservative values, that are premised upon the centrality of the family and the significance of communal solidarity" (Buğra and Keyder 2006: 213). The dominant political ideology of Turkey after the 1980s can be defined as a coalition of the right (neoliberal) with the religious (conservative) cleavages (Göçmen 2014: 94).

Hence, Buğra and Adar draw attention to a new wave of welfare governance that first emphasizes workfare rather than welfare and second, "modifies redistributive action by the state through diverse partnerships between the state, the private sector and voluntary initiatives in the provision

of social care and public services” (Buğra and Adar, 2008: 84). Grütjen underlines the emergence of the private insurance companies and the NGOs alongside the strengthening of the family’s role in welfare provisions (Grütjen 2008: 117). Accordingly, Buğra and Adar define the current Turkish social policy as a: “dualistic welfare regime with a well-developed corporatist social protection system excluding large segments of the population and informal relations providing a safety net to the latter in risk situations” (Buğra and Adar 2008: 85).

Eder states that the results of the cumulative effect of an “institutional welfare-mix that has actually mutated so as to compensate for the absence of the earlier, politically attractive but fiscally unsustainable welfare conduits, has been political patronage, the expansion of state power, without improvement of welfare governance” (Eder 2010: 152). Öniş names the current government’s ruling as ‘regulatory neo-liberalism’ (Öniş 2012: 137). Thus, up until now, the Turkish welfare regime has been attributed characteristics of residualism, dualism, eclecticism, immaturity and informality, underlining its non-universalistic character that reasserts social stratification and attributes the role of alleviating burdens to the (extended) family, informal social ties and the voluntary sector.

In this regard, Yazıcı notes that, “...the AKP government has systematically promoted non-state actors, the private sector and voluntary initiatives, especially charity mobilized through nongovernmental organizations and municipalities, as leading actors for poverty alleviation and the provision of social services”, along with returning to “the family” to alleviate the social burdens on the state (2012: 110). Yazıcı also draws attention to the emergence of neoliberalism’s contradiction in the simultaneous deployment of neoliberal welfare policies with a conservative political discourse about the family that denounces neoliberalism’s ideological center, “the West.” So we see the promotion of the “three generation family household” to ameliorate the individual at times the individual fails. In the Turkish context, the AKP government’s conservative family rhetoric invokes not the nuclear unit as it is in its counterparts such as Britain or the US but the three-generational extended family (Yazıcı 2012).

In fact, by ‘return to the family’, Yazıcı highlights how state social practice channels clients to their familial resources when clients (women with children) ask for the state’s help in the form of shelter, money, jobs and child care (Yazıcı 2012: 128). The narrowing of the extended family alongside the new poverty following the forced migrations in the 1980s work as factors in the criminalization of young people who remain in the margins of urban life (Uluğtekin 2012).

Institutionalization of social work and child protection

Back to the early 20th century, in the conservative corporatist, state-led capitalist welfare regime, the formal institutionalization of child protection, which I consider as part of a larger social security paradigm, has a long and slow history from the early 1920s till the 1960s. The first moves for child protection—cooperation to form protection bodies—took place in the 1910s and 1920s. These were the Associations for the Protection of Children, which were established in the Ottoman Empire in the First World War era in a voluntary structure. In 1937, these bodies, then named Child Protection Institutions, were accepted as associations but not formal state institution recognised by law.¹⁶ Accordingly, Child Protection Institutions worked in a decentralized manner, with a lack of coordination. During these years, Şensoy (1949) drew attention to the increase in the number of youth in conflict with the law. He also stressed that property related crimes took place more in the cities than in rural areas. In 1949, the first law on the protection of children was passed that ordered child protection as the duty of the government (Kartal 2008: 39), but with a very narrow perspective. The social workers assigned to these institutions were not trained professionally until the 1960s. Voluntary associations were the only institutions providing social services but they lacked cooperation and coordination among themselves.

Göbelez elaborates on the development and institutionalization of professional social work, which was named “social services” in the late 1950s, as an aspect of governmentality by problematizing the ‘question of modernity’, coupled with the elite's aspirations for ‘social control’ (Göbelez 2003: 4). Based on an accepted definition of social services in Turkey as, ‘the entire preventive, protective, rehabilitative and corrective services that are provided to elevate the socio-economically deprived individuals to the life standards of the society in which they live’, Göbelez asserts that governmental and non-governmental actors took this ‘social question’ in a progressive developmental and modernizing attitude (Göbelez 2003: 4). Although speaking from a post-modern viewpoint and keeping a critical stance on the modernizing and developmentalist rhetoric in the birth of professional social work, Göbelez does not explain the implications of this developmentalist approach thoroughly, or at least she does not draw the link between her problematization of the structure of social work in Turkey to the developmentalist framework. Here I speculate that her critical stance on this developmentalist rhetoric stems from her efforts to demonstrate that an understanding of social welfare did not develop in the Turkish context. Consequently, social work was introduced as a profession without an infrastructure, and most of the reforms were realized as showpieces in the course of developmentalism. If this is the critique, then it is easy to trace the same traditional approach in the following law reforms, which I elaborate upon in the next sections.

¹⁶ <http://cocukhizmetleri.aile.gov.tr/hakimizda/tarihce>
[accessed 14 March 2015]

The welfare paradigm of the industrial West was transferred to the rest of the world through the developmentalist paradigm. In this framework, social welfare provisions such as social services had a major role in the construction of the development discourse (Göbelez 2003: 73). Referring to a World Bank report published in 1978, Göbelez reminds the reader that in the 1950s and 1960s, the developing countries' economic growth rates exceeded the rates in the industrial West. However, in most developing countries, income inequality was very high. Developmentalism as a counterpart of the welfarism of the industrial West resulted in disillusionment with the hope of eliminating poverty (Göbelez, 2003: 81-82).

From the 1950s onwards, industrialization, urbanization and migration led to the disintegration of the traditional family, a rise in criminality rates and an imbalance in the income distribution rates (Göbelez 2003: 102). The UN experts supported the enactment of a law concerning the establishment of a Social Service Institute to guarantee the re-organization of the social welfare system with a modern institutional character (Göbelez 2003: 88). Thus it was enacted in 1959. Graduate social workers were employed in the juvenile and adult courts, reformatories, prisons, child care centres, bureaus for fostering family and adoption, development plans for villages and society and family planning, as well as in hospitals and clinics with psychological and psychiatric services (Özbek 2006: 192). Social workers faced serious administrative obstacles and resource constraints, which limited their potential; they were unequivocally dependent on governmental or voluntary resources to refer their clients (Göbelez 2003: 124-125).

Solmaz Kantekin's accounts as a graduate of social work and the first social worker in the Ankara Reformatory for Children in conflict with the law are important in this regard. She stated that when the Academy for Social Services was established, work definitions were not made and the profession was not sufficiently introduced. She criticized the situation and stated that the profession could not commence by making translations from the Western countries. In many institutions, social workers did not enjoy official status, because of the unsettled and ambiguous character of the work (Göbelez 2003). The difficulty in obtaining a position as a social worker today, is clearly depicted in the accounts of social work officials in Chapter VI.

In 1983, the Social Services and Child Protection Institution (SHCEK) was established with responsibility for the protection of children. For more than 60 years before that, it had been an 'association', and its main resources were volunteers and donations, which reflects the Turkish social policy environment (Kartal 2008: 3).

Birth of the juvenile court

The history of a separate juvenile justice system in Turkey started in practice in 1987 with the opening of the first juvenile courts to judge and implement penalties or (protective) measures for children in conflict with the law. Children in need of protection but not in conflict with the law were given little space in The Law on the Establishment, Duties and Procedures of the Juvenile Court (Law No. 2253, 1979). Until 1987, children were tried in the same criminal courts as adults but subjected to reduced sentences and sent to juvenile reformatories if found guilty.

In the establishment of juvenile courts, the absence of a social welfare system to support the child and the family was an issue for debate. At the time, protection of needy children was carried out by the Protectories and Child Care Homes that were regulated by local municipalities in accordance with The Law on the Children in Need of Protection (No 6972). However, these institutions were reported to be disorganized (Kurtege 2009: 45). They were criticized for loose management between formal and voluntary associates, and their ineffectiveness. Reviewing the debates of the 1960s and 1970s in prominent journals and reports, Kurtege concludes: “the lack of contact and coordination between local municipalities, ministries, the court and social services obscured the goal of correction of juvenile delinquents in accordance with their needs and potentialities” (Kurtege 2009: 46-47). Since these evaluations, the roles have been redistributed to different state institutions at different levels. Nevertheless, this thesis concludes that a lack of contact and coordination prevails today.

Juvenile courts remained insufficient both in quantity and quality for a long time (Uluğtekin 2006). Until 2000, there were juvenile courts in only four cities out of eighty-one (Uluğtekin 2010: 35). Judges of the juvenile courts comprised a principal judge and two member judges who would preferably be over 30 years old with their own children, which indicates the decency of criteria that is limited to the assumption that patriarchal sentiments would divert children from criminalization.

Kurtege categorizes the debates on the perception of juvenile delinquents that took place while a juvenile court was being establishing into four themes. First, there was a change in the perception of the juvenile delinquent from the ‘criminal child’ to ‘the child pushed to crime’. “This new perception of the juvenile delinquent as the child abetted into [sic] crime is scrutinized as a new model distinct from the early republican period and as the ground legitimizing cooperation between the court and social work” (Kurtege 2009: 30). Second, the Turkish Penal Code was criticized for its punitive approach towards children. Third, the distinction between the child in need of protection and the criminal child in the Law on the Children in Need of Protection (law no.6972) had to be abandoned. Lastly, there was a lack of an organized social welfare system to protect and correct juvenile delinquents (Kurtege 2009: 19-20). Establishing a centralized system via a Juvenile

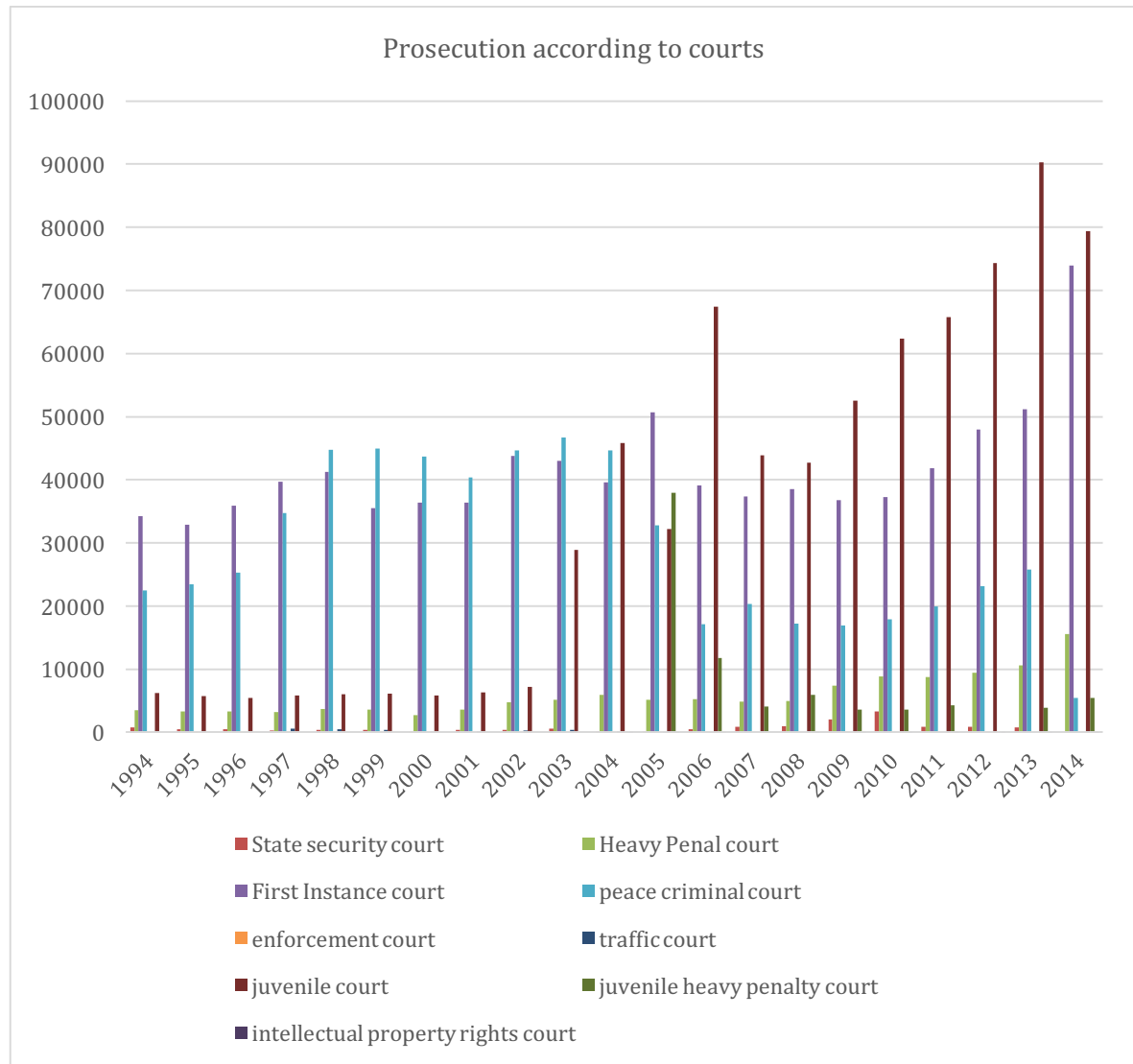
Court was considered around these themes, but it did not occur in praxis, as demonstrated in Chapter VI. Although the Juvenile Court was established in Turkey as social work gained significance in the post-World War II era, social work has never gained acknowledgment nor been viewed as a requirement in the courthouse, as is shown in Chapter VI.

Regarding the court system, one of the most striking aspects of the new Child Protection Law (2005) has been the change in the structure of the courts through the introduction of the Juvenile Heavy Penal Court on top of the Juvenile Court. So, today, there are two types of courts in the Juvenile Justice System in Turkey. Firstly, there are Juvenile Heavy Penal Courts that deal with cases filed against a juvenile for crimes within the jurisdiction of Heavy Penal Courts for adults. A president and two judge members together with the prosecutor run these Heavy Penal Courts. Secondly, there are Juvenile Courts, which deal with cases filed against a juvenile for crimes within the jurisdiction of first instance criminal courts and the criminal courts of peace.¹⁷ The Juvenile Court is run by one judge. The prosecutor is not in the courtroom to keep courtroom rituals for the juveniles to a minimum (Erdoğan 2012: 72). However the prosecutor is present in the Juvenile Heavy Penal Courts. This separation of courts has been criticized, for two main reasons: first, the child tried in the Juvenile Heavy Penal Courts is more likely to feel more stigmatized; and second, it is clear that the emphasis is on the crime, rather than the best interest and welfare of the child (İrtiş 2011: 102).

The graphs below show the insufficiency of juvenile and juvenile heavy penal courts in the administration of prosecution.

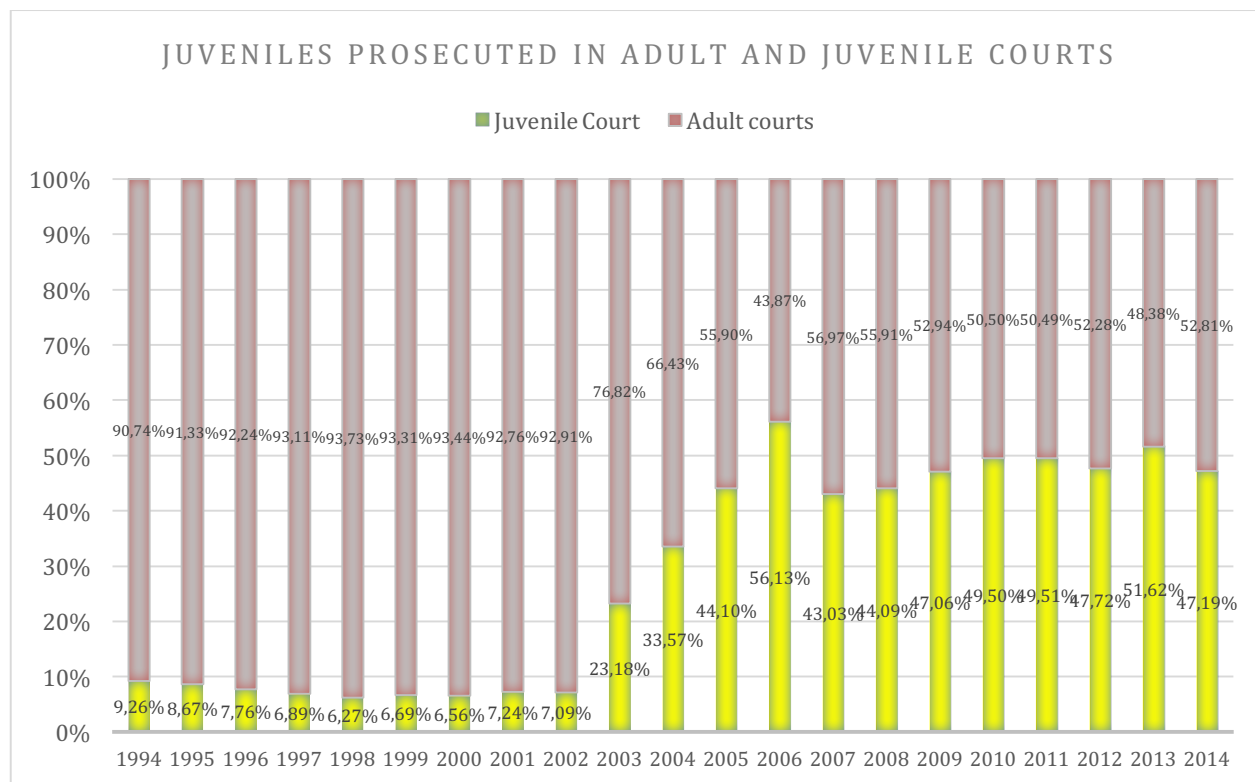
¹⁷ These courts were closed in 2014.

Graph 8: Number of juvenile defendants between 1994 and 2014 according to court types, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>



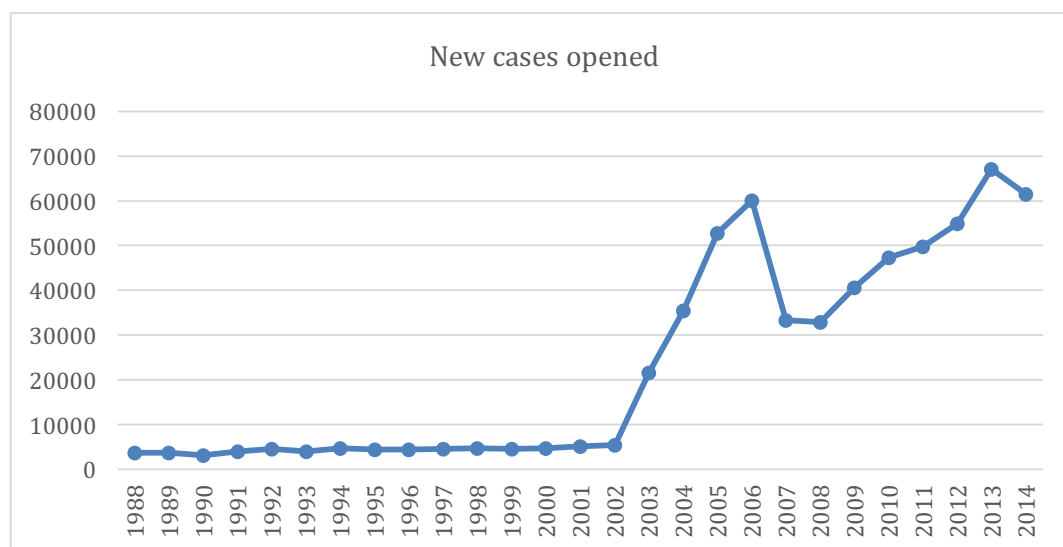
Graph 9: Ratio of young defendants tried in juvenile courts and juvenile heavy penal courts to the ones tried in other adult courts (1994-2014), prepared exclusively for this thesis. **Source:**

<http://www.adlisicil.adalet.gov.tr>



Until 2003, the vast majority of juvenile defendants were prosecuted in adult courts. Since 2006, the ratio of juvenile defendants tried in juvenile courts and juvenile heavy penal courts has been roughly 50%.

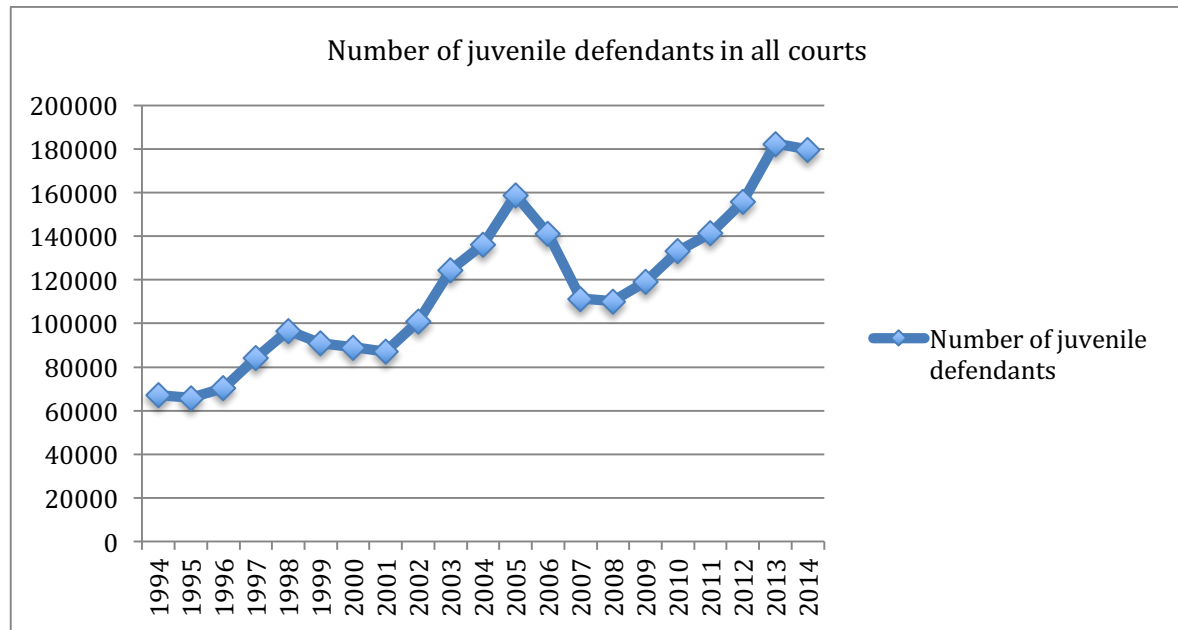
Graph 10: New cases opened in courts for young defendants, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>



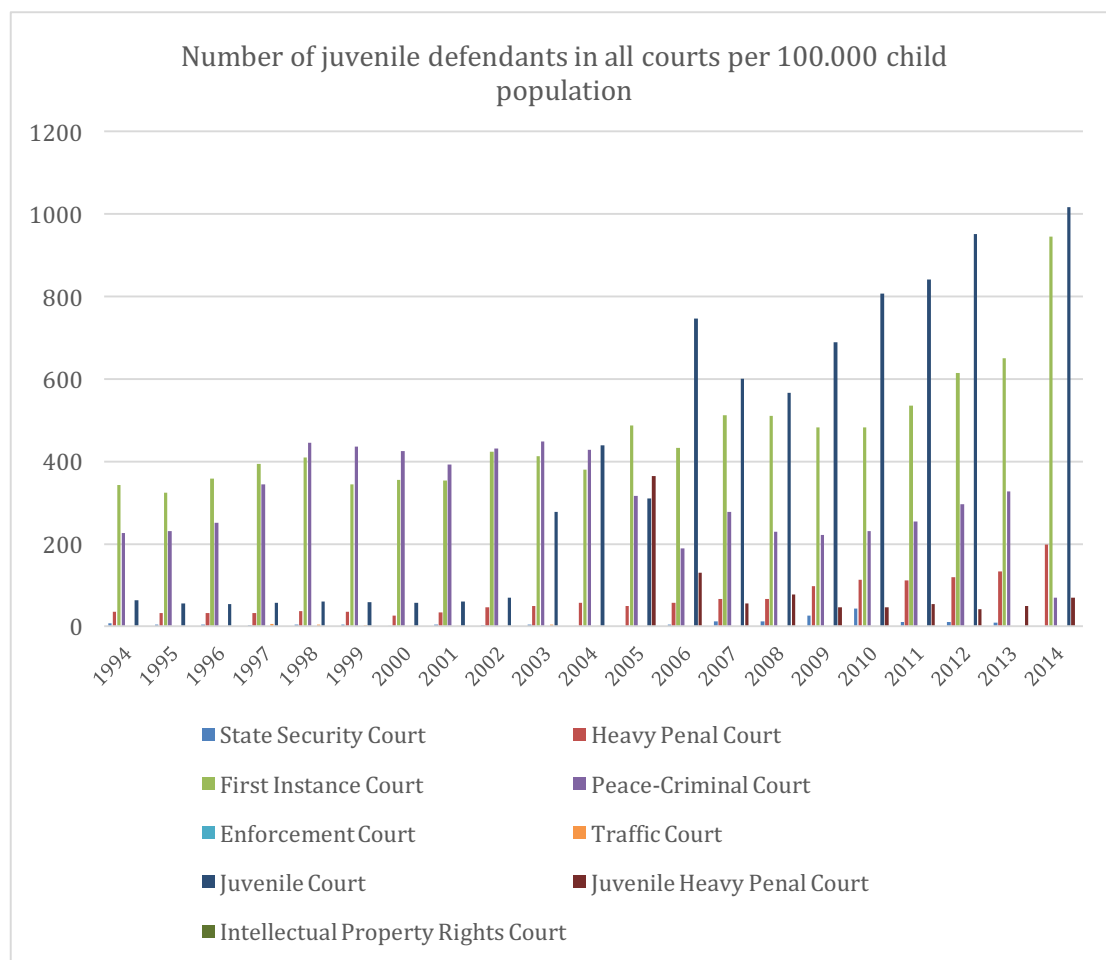
According to the above chart, from 2003 onwards, juvenile courts started taking more cases than before. The number of juvenile defendants in all courts has been increasing in the last two decades, as seen in the graphs below. Not only has the number of defendants increased, but also the proportion of young defendants per 100,000 child population. This calls for a systematic intervention in youth offending.

Graph 11: Number of young defendants in all courts, prepared exclusively for this thesis.

Source: <http://www.adlisicil.adalet.gov.tr>

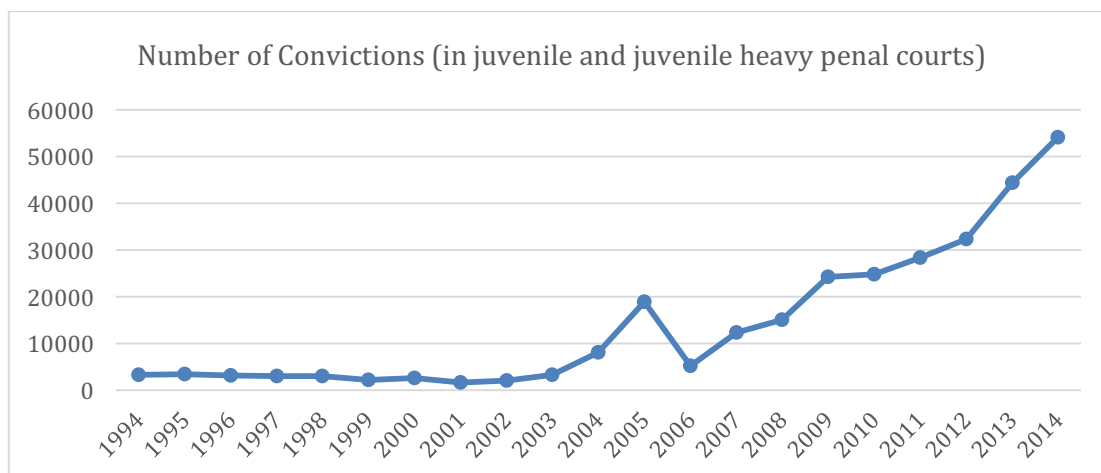


Graph 12: Number of juvenile defendants in all courts per 100,000 child population, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>



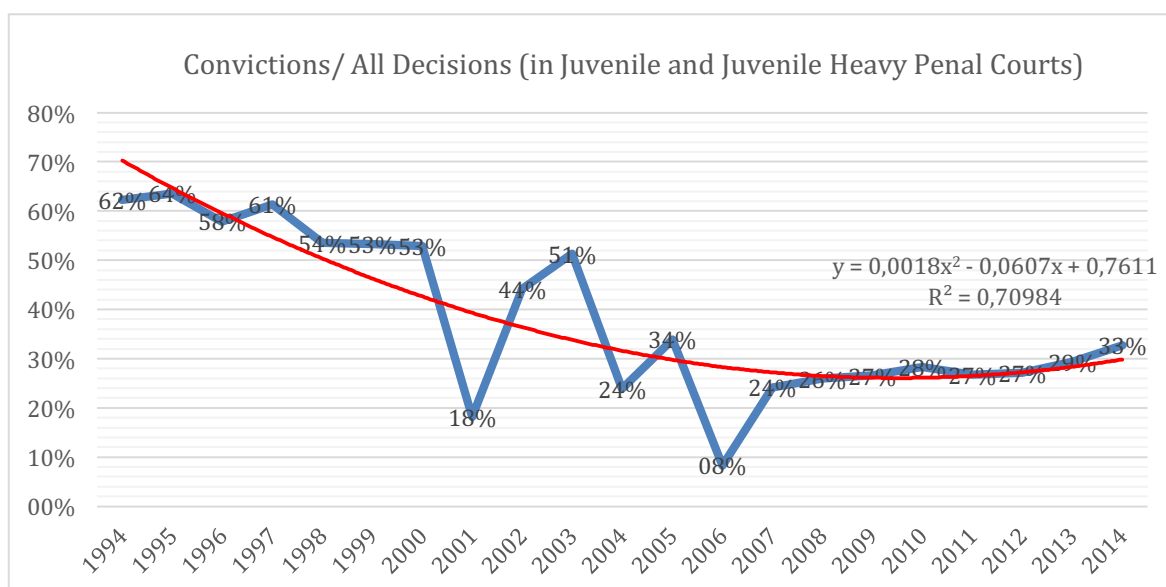
According to the graph below, from 2003 onwards there has been a rise in the *number of juveniles* who are found guilty and convicted. These are tried only in juvenile courts and juvenile heavy penal courts, which corresponds to approximately 50% of all juvenile defendants.

Graph13: Number of convictions in juvenile and juvenile heavy penal courts, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>

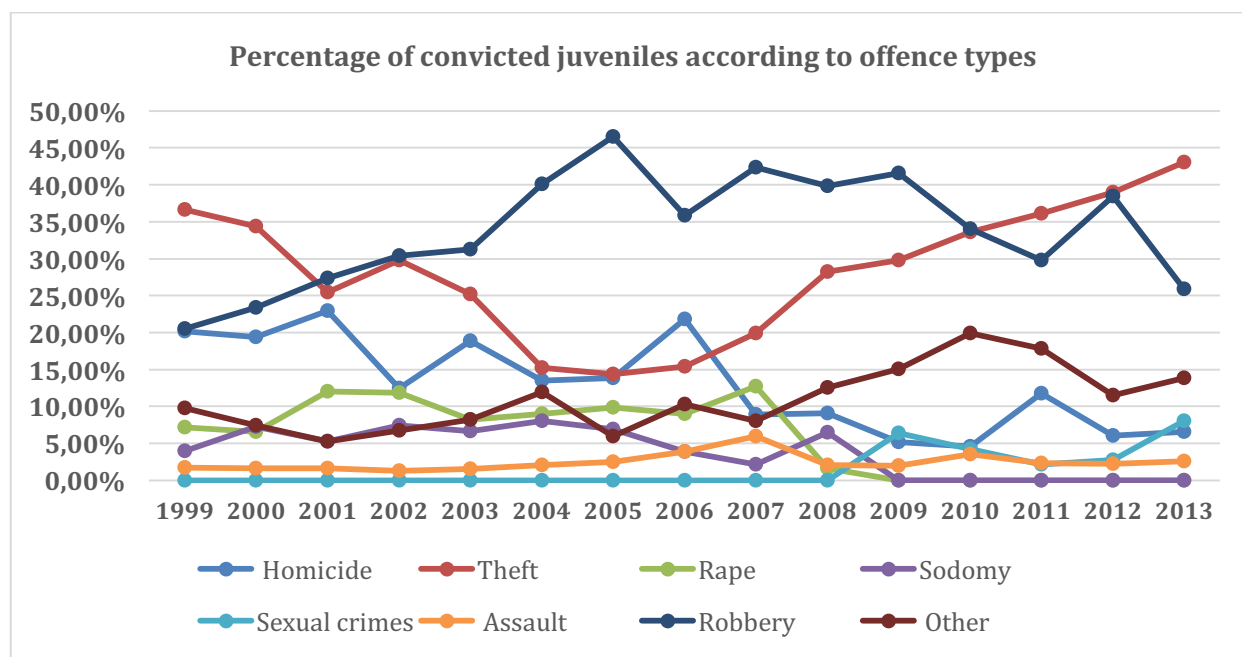


However, according to the graph below, although the number of convictions has risen, the ratio of convictions in all decisions has declined (for those tried only in juvenile courts and juvenile heavy penal courts, which correspond to approximately 50% of all juvenile defendants). Thus, the ratio of juveniles who are found guilty has declined.

Graph 14: Trend in convictions in all decisions in juvenile and juvenile penal courts, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>

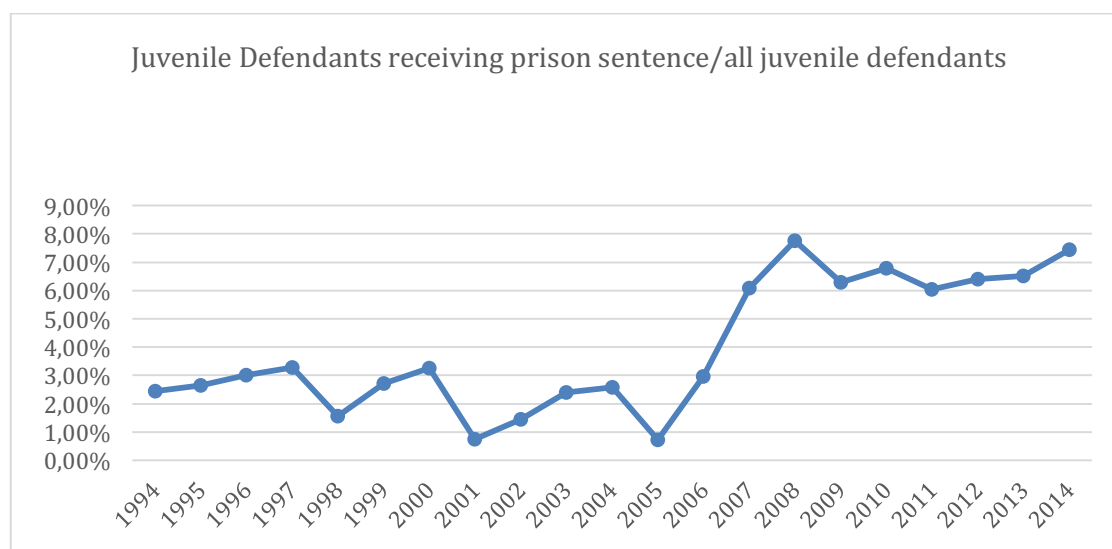


Graph 15: Percentage of convicted juveniles according to offence types, prepared exclusively for this thesis. **Source:** <http://www.adliscil.adalet.gov.tr>



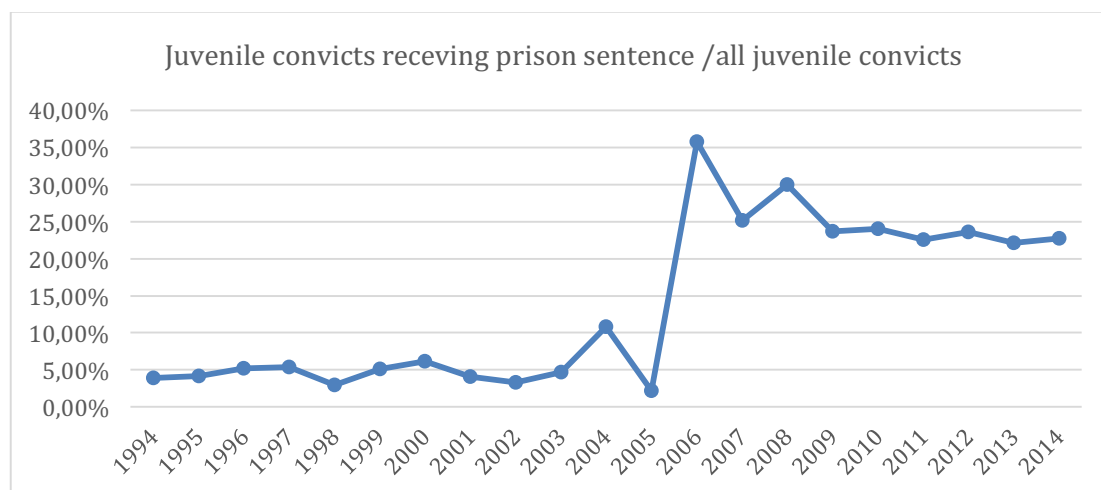
According to the above graph, conviction decisions are given mostly for crimes against property, including theft and robbery. As shown in Chapters V and VI, defendants on remand charged with property offences are the ones who have multiple experiences with prosecution services and imprisonment.

Graph 16: Juvenile defendants receiving prison sentence among all juvenile defendants, prepared exclusively for this thesis. **Source:** <http://www.adliscil.adalet.gov.tr>



Although the ratio of convictions in all decisions has declined, the ratio of juvenile defendants who received prison sentencing among all juvenile defendants (convicted and not convicted) has increased since 2005, as shown in the graph below. Note that the Turkish Penal Code, Criminal Procedure Law and Child Protection Law were renewed in both 2004 and 2005.

Graph 17: Juvenile convicts receiving prison sentence in all juvenile convicts, prepared exclusively for this thesis. **Source:** <http://www.adlisicil.adalet.gov.tr>



All in all, both the number and the proportion of juveniles prosecuted per 100,000 of the child population have been definitely rising. In a similar trend, the number of convictions in the juvenile and juvenile heavy penal courts has been increasing. However, the ratio of convictions within all decisions of prosecution has been in decline. Within the convictions, the decision of prison sentencing has increased to around 20-25% since the introduction of the new Child Protection Law in 2005. Moreover, though increasing from 4%, prison sentencing has remained below 9% for all juvenile defendants since 2005. Considering these trends and today's numbers, it is difficult to state that prison sentencing is a widely accepted practice in juvenile prosecution in Turkey. However, as demonstrated in Chapter VI where I analyze the law in praxis in the prosecution, imprisonment, whether remand or sentencing, has been used as both a last resort and first resort mechanism in crime control and deterrence, given the lack of possible means of intervention. Since social work has a central position in the means of intervention that do exist, I turn my attention to briefly looking at the current state of social work in Turkey below.

Transformation in the understanding of professional social work from the 1990s onwards

Starting from where Göbelez (2003) leaves the historiography of social services in the 1980s, Kartal scrutinizes the state-civil partnerships in the social services sector from the 1990s. Bearing in mind that the Turkish social work sector since its early days in the early-20th century was

considered to be within the realm of civil society and voluntary work, Kartal argues that from the 1990s onwards, the Turkish social work sector had to deal with the 'new poverty' with this semi-voluntary background. The 'new poverty' refers to the situation in which economic systems would let people to eventually find jobs throughout time, which would lead to social integration (Buğra and Keyder 2003). Within the 'new governance' discourse, the understanding of state changes from being the direct provider of growth, a night-watchman state of the 1980s or a regulatory state of the Keynesian era, to a partner among civil society, catalyst and facilitator. This blurs the boundaries between the state, civil society and the private sector, which eventually has impacts on the Turkish social services sector (Kartal 2008). Rose (1996) claims that this withdrawal of the state and privatization does not necessarily indicate a less significant role of the state but a neo-liberalizing governmentality that restructures the 'social'.

The impact of 'new governance' was not experienced in Turkey the way it was in the West because there was no established welfare system. In the Turkish case, the state was never a main actor and poverty was regarded in the sphere of volunteers (Kartal 2008: 65). Even the Child Protection Society was a civil society association rather than a state institution when it was first established. In her research, Kartal analysed how social workers perceived the appropriation of the new welfare model after the 1990s by focusing on the Social Services and Child Protection Agency (SHÇEK-1983) and the Society Centres (Toplum Merkezleri) established in 1993, the timing of which coincides with discussions on the changing role of the state (Kartal 2008).

Society Centres were established in 1993, following the change in the Law on Social Services and Child Protection Institution (no. 2828), which concluded the unity of the family within the responsibility of the Institution. Contrary to the aim of the Social Services and Child Protection Institution, which was rehabilitative, the aim of Society Centres is preventive (Kartal 2008: 51). These Society Centres, developed as a response to rapid urbanization, are established with protocols signed between Social Services and Child Protection Institution and NGOs or with Social Aid and Solidarity Foundation and the Provincial Directorate of Social Services (Kartal, 2008: 52). So even though the Social Services and Child Protection Institution is responsible for the financial support of the Society Centres, the main funding comes from NGOs and other institutions the Society Centres could sustain protocols with (Kartal 2008: 65-68). The Centres, writes Kartal, are: "places in which the controversies of the new governance regime can be observed as on the one hand the regulations and the planning of the services are centralized and controlled by the state while the presence of the state is not present for the sustainability and the realization of the services" (Kartal 2008: 55). So short-sightedness, projectization and microization come forward as opposed to traditional centralized bureaucracy as Kartal notes.

So focusing on how Turkey embraces a new approach where the state is one of the partners rather than a regulator who provides public services, like in Europe's de-structuration of its existing welfare system, Kartal asserts that: "discomfort of the social workers, manifested as the loss of institutional trust and not being able to define their role in the institution, is not resulting from a new structure within the institution, rather it is the new form of poverty they try to respond with the vaguely defined borders between the state and the civil society" (Kartal 2008: iii) Kartal also states that in their responses to her, workers emphasize that their roles are regarded as insignificant, vague and not useful. The "insecurity and temporariness of project-ized services" concern social workers (Kartal 2008: 60, 62).

In conclusion, in the history of the transformation of the political economy in Turkey, we see the birth and the transformation of social work in correspondence to its political economy. Accordingly, social work emerges in the late-19th and early-20th centuries as a voluntary sector and keeps its essence until very late. Social workers' institutionalization as an occupation was incomplete throughout the 20th century and found its way into the juvenile justice system in a developmentalist approach. Thus, social work does not find its place in a universal understanding of citizenship and citizen welfare. Within this residual welfare paradigm, Turkey entered into the second era of reforms in the 2000s, in the era of rights.

The compatibility of rights discourse with neoliberalizing governmentality

By the 1990s, human rights as a language structure started to gain strength and be embraced as the dominant discourse in the criminal justice system, alongside the rise of the neoliberal ideals surrounding the Anglo-Saxon world. I argue that the language of human rights is compatible with the neoliberal political economy. In the neoliberalizing political economy, in which an individual is responsible for his/her own welfare by contributing to the labour market, security rather than welfare needs becomes the dominant value in governmentality. So the security of individuals is ensured through the criminal justice systems, creating gated communities, and CCTV— basically through the design and use of space. In this securitization era, prisons, though used as a last resort in human rights, epitomize the security discourse that is totally legal and compatible with human rights discourse. Hence, there is compatibility among the concepts of liberal individualism, human rights, developmentalism, neoliberalism and security.

A bundle of social reforms since the 2000s and Child Protection Law from 1979 to 2005

Since the Justice and Development Party came to power in 2002, the Turkish criminal justice system has gone through a second big wave of legislation reform. Preparation to join the European Union has accelerated the law reforms. The Convention on the Rights of the Child (CRC) has been

the reference point for dealing with children in conflict with the law since it came into force in 1990. “Since 2003, in-service training programmes both in Juvenile Justice System and Child Protection System have become better in quality and quantity due to financial and technical support from international organizations and relevant ministries’ EU policies” (Uluğtekin, 2006:2). From 2004 onwards, new laws started to be enacted one after the other.¹⁸ Similar to the transformations in Turkey, transformations in Europe and the Western world, with repeated changes in England, Canada, Belgium, Spain, Romania and France for example, illustrate a will to change, but as Cartuyvels and Bailleau underline, they also reflect the uncertainties of political actors and lawmakers about the place that should be given to young people. They state that: “youth justice systems are oscillating between education and accountability; mediation and reparation, ensuring security and managing risk, prevention and punishment” (Cartuyvels and Bailleau 2010: 263).

The ethos of “rights” and the universally accepted regulations was a strong driving force in the enactment of the Child Protection Law in 2005. Cartuyvels and Bailleau state that references to human rights in reforming youth justice systems are either: “to correct ‘rule of law’ flaws in the social welfare model (Belgium, Portugal, Spain and Scotland) or to encourage the creation of a juvenile justice system that upholds the rights of the child in countries where such references were scarce,” such as in Turkey and Romania (Cartuyvels and Bailleau, 2010:279).

So, in Turkey, international standards such as the United Nations Convention on the Rights of the Child (1995), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules, 1985), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990) and the United Nations’ Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990), serve as the guidelines for national legislation.¹⁹

Until 1979, the former Turkish Penal Code (1926) was the only law in effect for children in conflict with the law. Between 1979-2004, they were subject to the former Turkish Penal Code and the former Law on the Establishment, Duties and Procedures of the Juvenile Court. The new Turkish Penal Code and the new Child Protection Law were enacted one after the other in 2004 and 2005 respectively.

Prior to the law being enacted in 1979, the absence of experts from the areas of psychology, social work, pedagogy and psychiatry was criticized. All in all, juvenile justice was limited to a reduction

¹⁸ First came the new Turkish Penal Code (Law no 5237). Secondly, the new Code of Criminal Procedures (Law no 5271) came into force. Thirdly, the Law on Execution of Punishments and Security Measures (Law no 5275) was passed, followed by the Child Protection Law (Law no 5395), enacted in 2005, and finally the Probation Law (Law no 5402).

¹⁹ The Constitution, Child Protection Law, Turkish Penal Code, Law on Misdemeanor, Law On The Execution Of Penalties And Security Measures, Law on Probation Services, Turkish Code of Penal Procedure and all the rules, regulations, notices and instructions in relation to these laws (Erdoğan 2012)

of punishment based on age and culpability. Taking into consideration the most recent amendments in the law, it is possible to state that the distinctiveness of the youth justice system compared to the adult counterpart in Turkey relies exclusively on the reduction of penalties for its ‘miniature adults’ (Uluğtekin 2014:207; İrtiş 2015) and there is no juvenile justice system independent from the adult counterpart (İrtiş 2010).

Prior to the 1990s, the presence of a defence lawyer was optional. The non-obligatory participation of a defence lawyer during the whole process until the 1990s is striking when compared to today’s strong rhetoric on the rights of the child and the indispensability of legal aid in contrast to dispensable social services. During the rule of the previous law, contrary to the optional presence of a defence lawyer, effective participation of social workers was promoted. With an amendment in the former Code of Criminal Procedure (law no.1412, article 138) in 1992, the presence of a defence lawyer was made obligatory during interrogation and prosecution for those under 18. Today, the presence of a lawyer (Criminal Procedural law, art. 150/3) takes primacy over that of a social work official. In the former law, the emphasis on social work was stronger, though vague, and eventually its praxis was non-existent.

Following the enactment of the former Law on the Establishment, Duties and Procedures of the Juvenile Court in 1979, social inquiry reports, protection measures, probation and social work officials were introduced into the system. The Child Protection Law was enacted in 2005 in a festive mood that celebrated children’s rights and protection. When examined carefully, however, it did not differ much from its predecessor in structure and content. The Child Protection Law, as the name implies, puts the emphasis on ‘protection’ and ‘children’s rights’ on display. Compared to the former Law on the Establishment, Duties and Procedures of the Juvenile Court (Law no. 2253, (1979)), the ‘protective and supportive measures’ are better categorized and varied. There are five different ‘protective and supportive measures’: a. counselling; b. education; c. care; d. health; and e. shelter.²⁰

Below, I will elaborate on these two laws, namely, the former Law on the Establishment, Duties and Procedures of the Juvenile Court (1979) (see Appendix E) and the current Child Protection

²⁰ As defined in the law, counselling is given to children about their education and development and to their parents/guardians on child rearing. Education measures mean the attendance of the child at a school or boarding school, receiving vocational or skills training and being involved in this objective. Care measure is taking the child from the custody of the parents/guardians and putting him/her in an institution or a foster family. Health measures refer to treatment for the physical and mental wellbeing of the child and substance dependence. Lastly, shelter measures mean providing shelter for people with children and pregnant women who do not have a home. Among the protective and supportive measures, counselling measures are conducted by the Ministry of Education, Social Services and Children Protection Institution, educatory measures are conducted by the Ministry of Education and the Ministry of Social Security, care measures are conducted by the Children Protection Institution, shelter measures are met by the Ministry of Education, Social Services and Children Protection Institution, and health measures are met by the Ministry of Health. The Ministry of Justice is responsible for the coordination of all these measures (Erdoğan 2012: 202-203). Only a juvenile judge is authorised to give the measures. The measures can be given by the request of guardians, Social Services and Child Protection Institutes and by the prosecutor.

Law (2005), by comparing and contrasting them. Interpretations of legal experts (Damar 2000, Sölez Tan 2001, Yurtcan 2006, Erdoğan 2012, Balıoğlu 2009) assist me in this. The main subjects that I would like to scrutinize, namely the categorization of childhood according to age, criminal responsibility which could be described as “determination of imputability” or “discretion” protection measures, duty of social work officials, social inquiry reports and probation, do not transform remarkably in essence, but do change in form.

As shown below, various categorizations such as ‘child in need of protection’, ‘child in conflict with the law’ and grouping according to age indicate the management of young people in conflict with the law through categorization and elimination. Contemplation of the laws demonstrates that determining the imputability or discretion; whether the child has criminal responsibility or in other words individual responsibility, forms the essence of the adjudication process in the youth justice system, which reflects the residual welfare governmentality of Turkey. Understanding of the profession of social work gets locked around this axiom of determining the individual responsibility of criminal conduct as well. Consequently, as shown in Chapters V and VI, the emphasis on the individual responsabilization for the criminal act, the avoidance of ‘habitus’ in Bourdieu’s terms and the ambiguity in the definition of social work have great implications for the praxis of remand imprisonment, especially for those that could be categorized as recidivists, charged with offences related to drugs and against property. Focusing on the young offender as the liberal, rational, decision-maker stripped of their social sphere results in an unwillingness to develop actions on the social environment and eventually situating remand imprisonment as a first-resort control mechanism for a great majority of young defendants. This aspect is elaborated upon thoroughly in Chapter VI.

In both the former and recent law, there is a clear distinction between the child in need of protection and child in conflict with the law. This distinction indicates that the child in conflict with the law is *not* in need of protection. Accordingly, there are protection measures introduced that could be applied to both groups but in different forms and under different titles. So, those in conflict with the law are in need of intervention through *security* measures. In this system, the General Directorate of Children’s Services under the Family and Social Policies Ministry officers, rather than probation officers, work for the children in need of protection or those in conflict with the law who are below the age of criminal responsibility. This is one of the indications of the distinction between a child in need of protection and a child in conflict with the law.

Additionally, the categorization of childhood according to age is essential. There is a distinction between those between ages 11/12-15 and ages 16-18. While those aged 12-15 are subject to social inquiry by social work officials to determine their criminal responsibility as liberal individual rational choice makers, those between 15-18 are by default considered to be at the age of criminal

responsibility, and so not subjected to social inquiry. In the recent law, those between 15-18 can go through social inquiry only if the judge decides on its necessity. Thus, as observed during fieldwork, those between 15-18 are not subject to social inquiry in praxis. Until 2003, children above 15 were not tried in juvenile courts although they were subjected to a reduction in sentencing according to the penal code.

So in both laws there are the following categories:

- i. Child in need of protection
- ii. Child in conflict with the law
 - a. Child below the age of criminal responsibility (11/12)
 - b. Child aged 11/12-15
 - i. Child found to be at the stage of discretion
 - ii. Child found to be lacking the criminal responsibility
 - c. Child aged 16-18

In both laws, social work officials are positioned in the system to evaluate *both* the criminal responsibility of the child to continue with criminal prosecution, and the social, environmental surroundings, family and school relations to determine protective measures. Social work officials of the court, along with forensic experts, are responsible for deciding upon the imputability of the crime: whether the child is at the stage of discretion or not, and whether he/she is aware of the meaning and consequences of the act or not. This categorization indicates two important aspects of the system: first, the emphasis given to “individual responsibility” for the criminal act; and second, the ambiguity in the essence of social work.

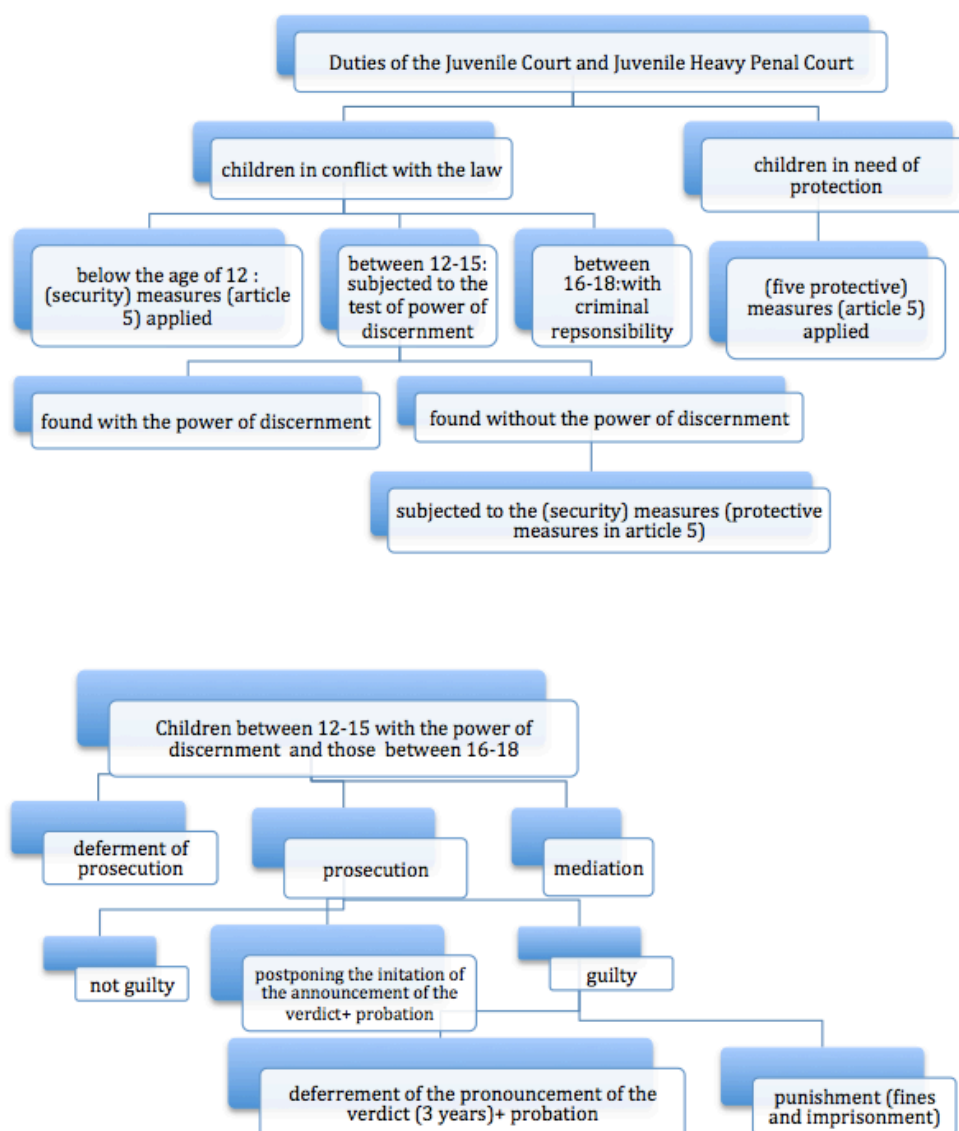
The picture below is a simplified²¹ schema of the Turkish youth justice system that I have prepared by interpreting the recent relevant Child Protection Law. This is to assist the reader in comprehending the details of the criminal procedure, firstly to locate remand imprisonment in the system, and secondly to better make sense of the accounts of the practitioners in Chapter VI.

²¹ Some sanctions such as for deaf-mute children are excluded from the schema to keep it as simple as possible.

Figure 4: Simplified Schema of Prosecution System, prepared exclusively for the thesis

Source: Child Protection Law (Law no.5395, 2005)

Note: Children in need of protection are excluded from the area of Juvenile Heavy Penal Courts



Note that those below 15 cannot be detained on remand for acts that are punishable with less than five years in prison.

Various diversion mechanisms have been introduced with the recent law, such as mediation, pre-payment and postponement of public prosecution (Erdoğan 2012: 133).²² If there is a prosecution and punishment, there can be deferment of the pronouncement of the verdict as the juvenile defendant can be held on probation for a period of 3 years. This is similar to postponement of the

²² If the suspect denies the accusations, then it is better to initiate public prosecution. Otherwise, the suspect does not get the chance to prove their innocence and remains accused throughout the entire period (Solez-Tan: 21).

penalty in the former law but with a different name. This peculiar diversion system has an impact on the young defendants' experience of the justice system and ultimately has an effect on those remanded, as shown in Chapters V and VI. In short, through the peculiar form of diversion, the young person does not experience intervention through social work and falls into the category of recidivist.

Probation is applicable for:

- i. Children in need of protection and subjected to protective and supportive measures.
- ii. Children whose prosecution is deferred
- iii. Children whose verdict's pronouncement is deferred (3 years)

Very importantly, Tarimeri states that the implementation of protection and supervision is realized in the form of verbal counselling, or rather "a piece of advice" in the praxis of probation (Tarimeri 2008: 171). Tarimeri, as a social worker with experience in Switzerland, brilliantly verbalizes his concerns over the implementation of the law in Turkey. He reminds us that the basis of the "protective and supportive measures" principally lies in the Constitution and civil law (Tarimeri 2007: 34). Turkish civil law is essentially adopted from the "Swiss Citizens' Law" just like the penal code and the criminal procedural law are adopted from Italian and German legislations. Tarimeri draws attention to the language use in this adoption and stresses the civilizing/developmentalist discourse of civil law. Civil (*medeni*) in Turkish refers to civilization and modernization. However, the original version of the law that is adopted is shaped around the concept of "citizenship" (Tarimeri 2007: 65). Tarimeri states that the supervision of children according to the Swiss law is executed by special institutions in practice. However, in the Turkish case, as judicial and executive power responsibilities are handled vaguely, a juvenile judge acquires the responsibility to evaluate and judge the child's needs (Tarimeri 2007: 34). Thus, Tarimeri draws attention to the civilization ethos behind the adopted legislations, and its practical consequences. Çiçek's accounts (2014) over the birth of the juvenile court supports this claim.

Leaving the judicial impracticalities aside, these protective measures, as mentioned above, are re-named 'security measures' for children committing a crime but reported to be not at the stage of legal discretion. The distinction between a child in need of protection and a child in conflict with the law has become more obvious since 2005. 'The child in need of protection' refers to a child whose development and personal security is at stake, who is neglected and abused, or has been a victim of crime. On the other hand, 'the child pushed to crime' refers to a child who has committed a crime and has been interrogated or prosecuted or subjected to 'security measures'. Strikingly, while the child in need of protection is subjected to protective measures, the child committing a crime but reported to be lacking the criminal responsibility is subjected to the same protective measures but renamed as 'security measures'.

In short, the very same measures that are listed at the beginning of the Child Protection Law take the name “protective” for those in need of protection and not in conflict with the law, and “security” for those in conflict with the law but without the power of discernment. The emphasis shifts from protection to security in the very same measure, addressing ‘dangerousness’. So, similar to the former law of 1979, children without criminal responsibility are subjected to measures but more varied and under the title of ‘security’ measures, while those criminally responsible receive only punishment or diversion from punishment through deferment. Social inquiry reports are not necessary to take protective/security measures. Moreover, studies on probation and social inquiry reports show that a considerable number of young people either do not go through social inquiry or experience it insufficiently, as social work officials do not scrutinize the clients holistically or do not make enquiries in the social environment (Uluğtekin 2001, 2012).

Topaloğlu, who scrutinizes the “security measures intrinsic to children”, claims that the implementation of the “security measures” is problematic due to its legal nature and attribution (Topaloğlu 2010: 62-66). According to Topaloğlu, this confusion stems from the lack of a separate formation and regulation of security measures and the short-cut attribution to the “protective and supportive measures”. Basically, he claims that while the protective measures are not sanctions, security measures are sanctions; thus in this equation the application of protective measures as security measures is not possible in legal terms, although it says so in the legislation. On the other hand, other legal authors (Balo, 2009; Yurtcan, 2006) do not refer to this distinction. Disregarding the applicability of the security measures intrinsic to children in conflict with the law, this literature review indicates the lack of attention given to the implementation of the protective measures, which has significant implications regarding children who enter and reenter the system multiple times.

Moreover, Topaloğlu claims that according to the law protective measures are applicable to all the children except those convicted (Topaloğlu, 2010: 74). I disagree with this interpretation and claim that, according to the definitions in the law, protective measures cannot be implemented for those who are in conflict with the law and are found to be criminally responsible. Once again, there is a deadlock in ‘individual responsibility’ over the act. Whilst the confusion and disagreement is very shocking, it does not raise any attention in praxis, as it is found irrelevant in the investigation around the criminal act itself. According to the legal nature of the security measures, these measures cannot be applied in case of penalty.

The fact that security (protective) measures cannot be applied where there is individual responsibility and there is penalty indicates that if there is individual responsibility, the response is either punishment or a peculiar diversion from punishment with no other means of intervention. So

we can conclude that the system is punitive in nature. However, Graphs 16 and 17 show that the ratios of penalties and imprisonment sentence are low among all the decisions, although they have been increasing since 2005/2006. Contrary to conventional debates stuck in the axes of punitiveness vs. rehabilitation or punitiveness vs. rights, there is a deadlock in individual responsabilization that is intrinsically linked to individual rights. The distinction between the ‘child in need of protection’ and ‘child in conflict with the law’ is a reflection of the imagination of the latter category as a population of *homo oeconomicus* and traditional legal subjects of the liberal tradition of law that are de-contextualized, disembodied of the social context and stripped of any habitus whose negative and civil rights are protected in the prosecution process. The criminal *agency* of the liberal, rational, choice-maker child in conflict with the law is recognized in a detached manner from the *structural* patterns of acquiring criminal habitus. This approach is compatible with the residual, informal, eclectic social security regime in relation to Turkey’s political economy.

The role of non-governmental organizations in today’s system and inspection

According to İrtiş, who has studied the Turkish youth justice system in relation to the protective model, the ‘silent period’ after 1979 (enactment of the Law on the Establishment of the Children’s Courts and Related Procedural Rules) has given way to ‘restructuring period’, especially since the late 1990s, as the NGOs’ demands and works and the relationship with the European Union and its expectations have shaped the government of children in conflict with law (İrtiş 2011: 104). However, as İrtiş underlines, the system is still not fulfilling the requirements of a ‘protective model’.

Turkey Children Re-Autonomy Foundation, Agenda Children Association, Association for Solidarity with the Freedom-Deprived Juvenile, the Children Foundation and Turkey’s Centre for Prison Studies (TCPS) are the national non-governmental organizations that are actively working on children in conflict with law. Besides, the Human Rights’ Common Platform has a strong stance based on the ‘rights’ of the child, as befits the name, and has published the most recent and most critical reports on the issue as part of an ongoing project named ‘Justice for Children’, initiated by the Ministry of Justice. These organizations play the role of an ombudsman in the system, along with international organizations such as UNICEF, CRC and Amnesty International.

The ombudsman system was introduced in Turkey in 2012.²³ Regular inspections are categorized as ‘political’, ‘administrative’, ‘judicial’, ‘independent’ and ‘international’. Political inspections can be conducted by the Grand National Assembly of Turkey Human Rights Review Committee, the Premiership Human Rights Supreme Council or by deputies. Administrative inspections are

²³ Law On The Ombudsman - Law No 6328

done by authorized officers from the Ministry of Justice or by the Chief Prosecutors of the Republic in a hierarchical way. Judiciary inspections are realized by Judges of Execution. The Prison Monitoring Board conducts the independent inspection. Finally, international inspection is conducted by the European Council Committee against Torture, the UN Committee against Torture, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and organizations such as Amnesty International (Erdoğan 2012: 259-261).

In 2014, after the scandal of torture incidents in different Children and Young People's Institutions for Execution of Punishment was reported by the media, over 20 NGOs got together to form the Shut Down Children's Prisons Platform. They have been organizing panels and collecting signatures to undermine the state's official rhetoric on modern prisons and to slow down prison construction. It must be noted that just as the issue of pre-trial detention started to be problematized after the detention of political prominent figures, youth prisons started to occupy some space on the agenda after the detention of children throwing stones at the police in public demonstrations in 2006.

All things considered, these non-governmental interventions from local and international civil society organizations within the rights-based language discourse focus on 'direct violence' and remain insufficient to analyse the 'indirect violence' (İrtiş 2012b) that requires scrutiny of the historical-structural patterns of crime control.

Concluding remarks

In this chapter, I have aimed to analyse the transformation of crime control through imprisonment through the broad perspective of governmentality studies, which scrutinize the governance of the population both in its relations with the sovereign power of the state and political-economy policies.

The history of the transformation of imprisonment shows that prison design and regime have transformed both in correspondence to Turkey's political economy, as the revisionist theories of imprisonment claims, and in response to the sovereign state's power relations with its citizens, in relation to citizens' claims over political economy or identity recognition. Youth imprisonment has had its share of these transformations. But a lack of knowledge production and policy-making about the youth justice system has led to the transformation of youth imprisonment in accordance with overall trends in crime control. As Juvenile Education Houses that emphasize labour-based education diminish, the high-security prisons in big prison campuses that are constructed to receive young defendants on remand gain recognition and significance. Hence, management based on

security through spatial control has become the main aspect of youth imprisonment. The lack of statistical knowledge production causes the problem of remand imprisonment to remain unrecognized.

The emergence of high-security prisons for youth remand imprisonment can be situated very well in the history of the political economy, social security and welfare institutions in Turkey. The discourse of rights prevails in the agenda from the 1990s onwards following insufficient attempts at establishing social work within a developmentalist discourse. Hence, social work and juvenile justice system develop in the developmentalist paradigm. Towards today, while the position of social work lacks a recognized space in the hierarchical- bureaucratic youth justice system, the language of ‘rights’ prevails in the legislation, judicial organization and civil society. Social work and all sanctions get interlocked around the concept of ‘criminal responsibility’, which I translate as the ‘individual responsibility’ of the residual welfare approach. In this rights approach, the youth in conflict with the law is imagined as aggregates of liberal, rational, legal subjects with the freedom and the agency of criminal conduct, detached from the structural patterns of getting in conflict with the law. Hence, remand imprisonment manifests itself as a spatial crime control mechanism in the inadequacy of the governance of young people in conflict with the law. The accounts of young remand prisoners in Chapter V and youth justice practitioners in Chapter VI complement this analysis.

CHAPTER IV: Methodology - Researching imprisonment for young prisoners in limbo between courtrooms and prisons and as numbers in graphics

Introduction

Researching imprisonment for prisoners in limbo, caught between prosecution and the executive power and questioning how remand imprisonment plays such a central and at the same time last-resort role in the Turkish youth justice system require a triangulation of methods. These are doing courtroom observations, examining court files, conducting interviews with youth justice professionals, conducting interviews with remand prisoners, complemented by various field activities that are all necessary for the research. The primary objective of presenting the details of this research process in this chapter is to give the reader a reflexive account of the interpretation of the findings as well as to locate these methods within the Turkish political context.

Getting ready to go into the field

The background of this research process lies in my MA research conducted in open prisons for convicted young people in Turkey called Juvenile Education Houses, voluntary NGO work done with young people on remand in a Children's Closed Institution for Execution of Punishment, as well as attending various international symposiums/panels since 2010 organized by the Turkish Ministry of Justice, the Police Academy and UNICEF. Being the head of handcraft workshops in one of the Children's Closed Institution for Execution of Punishment in Spring 2012, before the start of the doctorate program gave me overall insight of remand imprisonment as well as specific insight on the governing of young prisoners charged with crimes against the state.

Following heated discussions between different professions in the symposiums was especially informing about Turkish politics of criminal justice and diplomatic relationships between different professions. It helped to create an insight for managing my self-representation as a researcher. Experiences in these settings not only led me to determine the main research question, but also paved the way for the research and shaped the research design, together with getting all the necessary permission processes within the prisons, courtrooms and individual interviews.

The prerequisite for this research was understanding and then interpreting the past and current laws, and analyzing the discourse of the Turkish criminal justice system. Although the methodological triangulation involved being in various settings and communicating with people from various backgrounds in a balanced way, prison research was a must. This required a careful permission process both with the Turkish state officials as well as the ethical review committee.

A. Prison research

Why the prison?

The data that the Ministry of Justice shares, such as statistics and information about legal reforms, as well the data that it hides, tells us a lot about the roles of remand imprisonment in the justice system. Still, it is the day-to-day experiences and interactions from the moment the defendant is arrested to the moment he/she walks out of the prison, as well as the post-release process, that tells us about the jurisdiction and punishment. Accordingly:

Foucault's account of the difference between law and discipline is at its sharpest where he draws the contrast between universal law and 'counter' or 'infra-law', involving an 'infra' or 'micro-penalty' that takes possession of an area left empty or never colonized by the law, providing regulation for diverse types of behavior. These micro-penalties involve 'offences' such as lateness, untidiness, disobedience, insolence. His point is that these wrongs are, on the one hand, so trivial as to be beneath the attention of law but, on the other, are the very stuff and heart of the modern disciplines (Hunt and Wickham 1994: 51-52).

In this line of thought, written formal documents are the primary sources providing the overall framework of the law, but a thorough understanding of the roles of the remand centres requires consideration of infra-law. Statistics and policy documents do not speak for themselves, so it is necessary to try to comprehend the dynamics of the system through the experiences of people in custody, obtained through research inside the remand centre. Triangulation, meaning the use of different methods to study the same phenomenon, or the observation of the research issue from (at least) two different points (Davies 2011: 173; Davies 2000: 90-91)—in this case, the data gathered from written documents and the data obtained from the fieldwork—promises a valid research with credible conclusions.

Naming prison research

From a similar point of view, Wacquant, in his article "The Curious Eclipse of Prison Ethnography in the Age of Mass Incarceration" stresses the necessity of doing field studies of the carcereal world and carrying out close-up observations (2002: 386). By naming the study in the prison as 'prison ethnography', Wacquant calls for researchers to undertake extensive research inside to thoroughly grasp the everyday aspects of imprisonment.

Although it is difficult to disagree with Wacquant's belief in the need to understand prison life inside and through the prison, I would argue that the term 'ethnography' can lead to an

overestimation of his method. Although the researcher in prisons becomes part of the everyday life of the institution, especially in long-term studies, there are significant times that she cannot be part of the institution, such as during the night. Moreover, her presence in the institution is always recognized; she is never a fly on the wall. Moreover, she cannot play in-between roles. The only role she can play is being a researcher unless she mixes extraordinary methods such as voluntary work or legal representation to gain access.

Therefore, the study here is named qualitative research in prison rather than prison ethnography, as this is a better reflection of my methodology. As is discussed below, negotiating access into prisons is not always a smooth task. Each research question, each research setting, and moreover every single prison setting within the same country determines the research framework. After that, the researcher's creativity and patience in negotiation can change the outcomes within that framework.

Identifying prisons as research sites and negotiating access/permission into the prison

In studies that focus on the institution within the criminal justice system rather than the inmates inside, the researcher ideally has the responsibility of 'informing' the Ministry of Justice and prison administration/authorities about the object of study, in order for the research to run smoothly and to not encounter problems when publishing the final data. Making the theoretical framework of the research clear is necessary in building an ethical and sustainable relation with the authorities.

Wahidin and Moore draw attention to the importance of this, and add that:

Theoretical organization concerns attitudes towards the social world in which the research takes place, a particular view of the social relationships within it and its fundamental determination and a notion of the analytic procedures which will be used to provide the final account. It would also explain why certain topics have been chosen in the first place (2011: 295).

Explaining the aims of the research based on grounded theory avoids the risk of responsabilizing individual state agencies for the possible problems of the prison looked at by the researcher, and helps the researcher to draw a balanced picture of structural relations. Hence: "the work of the sociologist [or a criminologist] is to discover these [everyday] relations and to map them so that people can begin to see how their own lives and work are hooked into the lives and work of others in relations of which most of us are not aware" (Haney, 2002: 292). Smith proposes that rather than a researcher substituting their own analysis in place of the perspectives and views of those people they engage with, the work "learns from them and goes beyond what they know only in finding how they are connected beyond what is visible to them" (Smith, D.2002: 42). So, providing the theoretical basis of the research to receive the 'informed consent' of the prison authorities, rather

than just permission to get inside the prison walls, is one of the researcher's ethical tasks. This is important not only for the sake of the researcher's work but also for the future works to be undertaken by other researchers. During this research, a clear picture of the research process was presented to the Ministry of Justice as much as possible. However, walking into closed institutions of the state requires constant diplomacy, negotiation and remission.

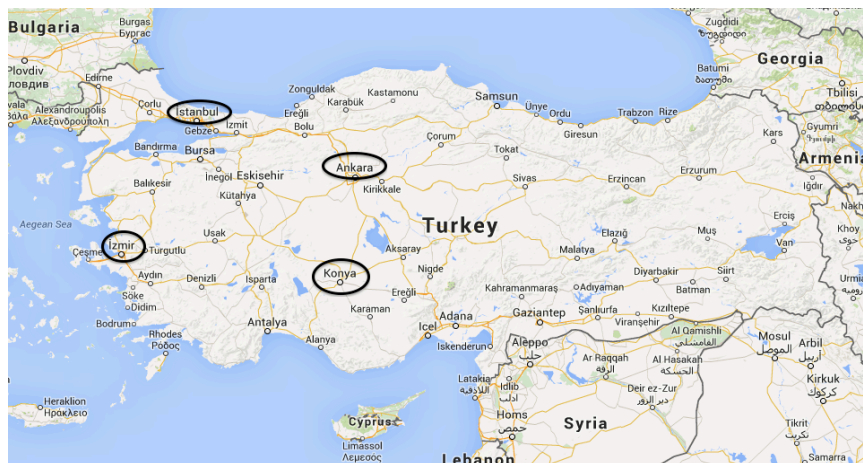
As stated in Chapter III, half of young defendants on remand in Turkey are imprisoned in the three Children's Closed Institutions for Execution of Punishment, while the other half are kept in the juvenile wings of adult prisons. Young female defendants on remand are kept in Women's prisons, preferably in juvenile wings. At first, I chose the Children's Closed Institutions for Execution of Punishment in Istanbul and Ankara, together with a Women's prison with a juvenile wing in Ankara, as the main prisons to do research. Getting permission from the state officials is a fragile process in a context where the key people might be appointed to different positions depending on power relations. In this research, applying for permission to get into the institutions was a careful process with stages in 2013 and 2014. Male adult prisons with juvenile wings were excluded first, to ensure a modest permission process with the authorities. Once access to these 3 prisons were secured, after discussing the best possible sites to do research with various NGO representatives and experts from the field, extra permission was sought from the Ministry of Justice for E-type adult prisons in Konya and Bursa, together with the third Children's Closed Institution for Execution of Punishment in Izmir (suggested by an idealist Ministry of Justice officer who stressed the great differences between the same type of institutions).

During fieldwork, Bursa Prison had to be left out in the end due to time restrictions. So interviews were conducted in 6 different prisons between February 2014 and October 2014. These are listed below.

Prisons visited between February and October 2014 in order:

1. Maltepe/Istanbul Children's Closed Institution for Execution of Punishment (males)
2. Bakırköy/Istanbul Women's Closed Institutions for Execution of Punishment
3. Sincan/Ankara Children's Closed Institution for Execution of Punishment (males)
4. Aliğa/İzmir Children's Closed Institution for Execution of Punishment (males)
5. Sincan/Ankara Women's Closed Institutions for Execution of Punishment
6. Konya E-type Closed Institution for Execution of Punishment (both males and females)

Figure 5: Map of Turkey showing the research sites



For the first time, a one-to-one application and ad-hoc meeting in the Ministry of Justice in Ankara helped me to ensure access by negotiation and making concessions. Originally, the preparations were towards conducting individual semi-structured to open interviews with defendants on remand in private spaces about experiences with the jurisdiction process. Themes and open-ended questions were listed to guide the research. During the short meeting held in Ankara, I was asked to do five things: first, not to conduct open interviews but to conduct close-ended questionnaires which would yield statistical results that the Ministry of Justice could make use of; second, not to use a voice-recorder; third, not to ask any questions about where the defendant was originally from; fourth, not to share findings with the media before the approval of the Ministry; and fifth, to share the thesis with the Ministry of Justice once completed. I agreed to all five conditions. The third request was made, according to the Ministry of Justice officials, so that the research would not present any discriminating conclusions. Or, from a different perspective, the research would not reveal any revolving-door effect for some sections of society. However, young defendants revealed their city of origin and ethnic identities while narrating their prosecution processes.

Remand imprisonment squeezed in close-ended questions

Once the research process was restricted with close-ended questions, formulation of sentences in the questionnaires got even more important. The language of the questions had to allow the respondents to communicate how they made sense of their imprisonment during the prosecution process. The questions also had to make sense for defendants, and had to be approved by Ministry of Justice officials. Defendants' and prisoners' rights language is a common familiar language for both the Ministry and the defendants. So many of the questions were inspired by the work of the 'rights' discourse' although my main goal was not to alleviate human rights violations that represented 'direct violence' rather than the 'indirect violence' as differentiated in Chapter II.

Three sets of questions about the court process, prison conditions and alternatives to remand imprisonment were directed to all participants. I prepared the alternatives to the remand imprisonment questionnaire by copying the relevant articles from the Criminal Procedure Law and Child Protection Law to test the reactions of young people in conflict with the law to these alternative control mechanisms. However, in the beginning, I attributed less significance to alternative-to-remand-imprisonment questions and even forgot to direct them to a few participants during the first week of the research. Later, I discovered that participants took those specific questions seriously, and thus interesting accounts, viewpoints and even stories emerged from the responses.

At the beginning, I thought every interview would develop its own structure depending on the participant, so I did not bother to ask the three sets of questionnaires in a particular order. However, after repeating the process a few times, the best order turned out to be starting with the prosecution and court process, then moving onto the imprisonment questions, and finishing with alternative control mechanisms to remand imprisonment.

So, some open-ended questions on police, history of being in conflict with law, and previous experiences of being in prison complemented the close-ended ones. Besides these approximately 100 questions, follow-up questions were directed and stories were shared at all times when questions led to conversations or the young prisoners were open to talking more. At the start of the research, the questions sets were shared with fellow academics to be improved.

Without doubt, the 100 close-ended questions led to boredom for many young prisoners even though I tried to divide them into three sessions in the beginning. Furthermore, young prisoners sometimes did not feel sure about their exact response, or sometimes I had already understood their responses from their reaction to the previous questions. So I ticked the boxes for some questions without wasting time to receive an exact response. After all, pushing a young prisoner or any person to compress his or her viewpoints into a check box does not produce any meaningful conclusions. Moreover, I had to bear in mind that the same questions could have different meanings or bring different experiences out. At the end, closed-ended questions helped me to build trust with the respondents because some respondents wanted to understand the research design they participate into in their fragile pre-trial circumstances. Once rapport was established, I could get into smooth dialogues. Having dialogues outside the structured research questions, did not raise issues as my presence and actions were under surveillance by prison officers waiting nearby the rooms, who were directly responsible to the central prison administration and to the Ministry of Justice. My way of conducting the research was not affected by the administration.

Ethical issues in doing research with young remand prisoners

Interacting with young people on remand requires the researcher to view her position from different ethical angles that are worth discussing. Doing research in a prison environment is a sensitive and critical issue on its own, requiring the researcher to take the participants' decisions and vulnerabilities into account. Sin refers to "The British Sociological Association's Statement of Ethical Practice (2002)" and states that: "the experience of participating in research may cause some participants to feel disturbed and anxious. It may also give rise to uncalled for self-knowledge with adverse psychological implications. The implications of this on the well-being of research participants should therefore also be considered" (2005: 279). Doing research in a remand prison necessitates extra care for the vulnerabilities of the population, who are under the control of the authorities and yet in the waiting period in which nothing is clear about the future. Freeman and Seymour note that:

The significance of uncertainty, particularly in the custodial remand environment, lies in the fact that it reduces an individual's capacity to cope...It is the ability to cope that determines how far an individual can minimize the psychological effects of imprisonment...Thus, the experience of uncertainty leads to negative psychological effects (2010: 127).

Freeman and Seymour refer to the unpleasantness of imprisonment and draw attention to the fact that remand prisons are both unpleasant and unpredictable, and thus intolerable. So, prisoners on remand may have high levels of anxiety, a sense of having no control, feelings of apathy and hopelessness, disruption to social relationships, housing difficulties and unemployment (2010: 138). Moreover, as "Goldson describes, child prisoners are 'routinely drawn from some of the most damaged and distressed families, neighborhoods and communities'. Their detention exacerbates their vulnerability" (Wahidin and Moore 2011: 296). Young people on remand are likely to be vulnerable by virtue of their age, lack of familiarity (or too much familiarity) with the prison environment, and their life experiences. Moreover, they might have a history of residential care, homelessness, the death of a parent or sibling and/or parental separation (Freeman and Seymour 2010: 131). This makes the remand population a difficult group to do research with, and yet at the same time a group that most deserves the attention of the researcher.

Safeguards for conducting ethical research

There are some safeguards that can be taken to avoid extra distress. First of all, throughout the criminal jurisdiction, young people are required to repeatedly discuss their situation and the charges against them with different professionals including but not limited to police officers, prosecutors, social work officials, forensic medicine doctors, psychologists, prison administrators

and prison officers. The researcher should make sure that the defendant/prisoner is not obliged to speak. Second, leaving the issue of distress due to participation in research, Stiles et al. (2012) draw attention to the potential risks of choosing not to participate in research in prisons. They underline the power imbalances between the prison administrators and inmates and state that decliners might face some negative consequences of not participating in research due to the disappointment of the prison administrations. Therefore, some people might participate just not to disappoint prison administrators. The solution to this problem, according to Stiles et al., is to inform the correction staff about the importance of voluntariness to curb enthusiasm in the recruitment process (2012:16). Prison staff and administrators should comprehend the meaning of informed consent.

A third consideration is that the participant might feel overexcited and later disappointed if he/she assumes that the accounts have an impact on the course of events in the criminal jurisdiction. When interviewing a defendant on remand, the researcher should be careful not to turn the interview process into a rehearsal of an upcoming trial, which the defendant is most likely to discuss in his/her uncertain situation. It is important for the research to have limits and to not interfere with the overall direction of the judiciary process, thus unintentionally guiding the defendant to a disadvantaged position. Stressing the researcher's identity as independent is helpful in this situation.

Fourth, the participant might feel overwhelmed and traumatized or just simply bored while discussing his/her experiences either of the offence or the criminal jurisdiction. Therefore the participant should be able to withdraw at any time. Fifth, the participant might narrate some events or give some information that he/she might later regret telling to a stranger. In order to avoid distress, the researcher should provide a mailing address or a phone number to all participants so they can contact the researcher should they wish any information to be deleted. Confidentiality should be ensured because the participant might fear that his/her accounts may be shared with prison administrators or prison officers.

Confidentiality

For young people in conflict with the law, confidentiality issues might arise under three circumstances. First, the respondent might discuss an incident that has taken place within the prison that might be defined as a violation of human rights, such as inhumane treatment, torture or sexual assault. In this case, reporting a human rights' violation takes priority over confidentiality, and thus I would argue that confidentiality might have to be breached. Second, an interviewee might talk about an incident that might take place between inmates. Prevention of danger must also come above confidentiality.

In these cases, the participant should be informed about the researcher breaching confidentiality. Lane et al. (2012) provide some recommendations for researchers doing research in residential juvenile justice facilities on various aspects including reporting self-harm and harm to others. They state that if a researcher reports harm to self or others, she should attempt to involve young people in the reporting process by including the young person in a phone call, meeting or preparation of paperwork. So the quality of relationship between the researcher and the young person is maintained, the accuracy of reported information is improved in the perception of the participant, concerns about liability are decreased and the likelihood of the participant withdrawing from the study is decreased.

Luckily, in this research, I came across no incident that was beyond the knowledge of the prison administration. However, there is another way that the researcher might question whether to breach confidentiality. The pre-trial detainee might reveal some information about the interpretation of his/her act that he/she does not share in the court hearings. During the research, a young defendant who was prosecuted for mugging revealed that the person he committed mugging was one of his clients in drug-dealing business that refused to pay for what he bought. Neither the prosecutor nor the judge knew this drug-dealing aspect, according to the young detainee's accounts, and the defendant did not reveal the truth of the matter because had they done so, both the defendant and the victim would be prosecuted for selling and buying drugs. In the end, I respected the participant's sincerity with me and I knew that the hidden information was not about any other violent act or victimization, so I did not breach confidentiality.

Power imbalances

Power and/or dependency imbalances inevitably arise while conducting research with participants under 18 who are in conflict with law. First of all, a young defendant on remand might view the researcher as just another professional that he or she must give an account or an explanation to. Taking informed consent and stressing the voluntariness in participation can avoid this power imbalance. Second, dependency problems might arise, as the researcher pays attention to the problems and viewpoints of the young defendants on remand. In this case, the prisoner who is away from his/ her family and friends and his/her own environment might develop close relationships with the researcher and might view the researcher as a potential close friend or guide/assistant in life. In order to avoid this dangerous attachment, the researcher can underline that the research requires interviewing and following the experiences of many prisoners like the respondent him/herself. The participants should not confuse the researcher with a psychologist or a lawyer from whom they can receive professional assistance. A young defendant on remand might want to transmit information or news to someone outside. In this case, the researcher should tell

him/her that this is beyond her responsibility and advise him/her to seek help from prison officers. Although this might cause the young prisoner to be disappointed, choosing not to transmit information is safer because the information may affect the course of events in court trials, and the researcher would most probably prefer not to have any impact on the final decision of the case.

Discussions about informed consent

Taking informed consent helps avoiding unintentional harm during and after the research process. In the case of young people, some ethics committees seek informed consent from the parent/guardians of the potential participant. However, Wolbransky et al. (2013), who search for alternative ways to seek informed consent for research in juvenile prisons, state that “multiple studies ... found that contact information for parents/guardians often is unavailable and, even when available, frequently includes non-working numbers for parents/guardians and/or parents who are otherwise unreachable (Wolbransky et al., 2013: 460). They state that, “If research is conducted at facilities regularly visited by parents/guardians, researchers may obtain permission from facility administrators to approach parents/guardians as they arrive for visits. Although this may sometimes be a successful method of obtaining consent, this approach may create selection bias and inadequate sampling if only a small percentage of parents/guardians visit their children in the designated facility” (2013: 464).

It is difficult for parents/guardians of youth in prisons to visit them regularly, mostly due to long distances and travel expenses in Turkey. A considerable number of young people on remand do not get regular visits either due to the above reasons or because the prisoner is excluded from the family. Thus, from the very beginning, I chose not to seek informed consent of the parents/guardians, as this might have turned out to be an unwanted selection process with unintended consequences. Moreover, it is highly likely that seeking informed consent from the parents might have harmed the trust relationship between the young prisoners and me as a researcher, as they might have blamed me for not taking their consent seriously and viewing them as incapable of making their own decisions, while the Turkish Penal Code Article 31/3 that states ‘there is no questioning about the imputability/discretion (mental capability to take responsibility of an offence) of a young person between 15 and 18’.

In this decision, I also followed Gillick competence, which is brought forward by Fraser Guidelines. Gillick competence refers to the ability of a child (not only below 18 but also below the age of 16) to give informed consent. Accordingly, a child can receive medical advice or treatment if she or he is competent enough to understand the meaning and results of the advice or treatment without parental consent. Today, the impact of Gillick competence is broader than in the medical sphere. The concept is taken into consideration not only by medical workers but also by people

from other professions who work with children under 16. Accordingly, I sought informed consent from children under 18 by making sure that the child understood the meaning, process and consequences of the research.

Instead of seeking informed consent from parents, the researcher can seek guidance from prison psychologists or social workers while recruiting interviewees if she is sure that there is an established relationship. Lastly, to be totally sure of informed consent, the researcher can also observe each participant while asking for consent to make sure that he/she does not have mental health problems or has not taken heavy psychiatric medicine or drugs that would effect the decision or make them reluctant to sign. Giving the potential participant a few days to make an informed decision is an option, too, which I used in this research.

Taking informed consent has many positive effects that avoid unintentional consequences. However, overstressing its significance during the actual research process might undermine the trust relationship with the participant. The concept of childhood is a historical and political construction. In his article, “The Politics of Kurdish Children Participating Street Demonstrations and the New Childhood” (2010), Yağcıoğlu, with a critical view of the modern childhood paradigm, refers to the invalidity and ineffectiveness of a universal construction of childhood and underlines that it is impossible to talk about a uniform childhood construction within a nation, especially for the inter-war-generation Kurdish youth. This uniform childhood category imposes an assumption of the inability of the child/young person to act willingly on his/her own. Taking Yağcıoğlu’s argument together with similar literature on war-generation youth, I claim that young people are able to make decisions on their own when given complete and coherent information. Young people in conflict with law are generally extra-careful about participating in research when there are/have been charges against them. Lastly, having signed contracts (that can be terminated at any time with the request of the participant) creates mutual respect between the researcher and the participant.

Getting informed consent in real settings

In this research, the research schedule was designed to give as much time as possible to meet each young prisoner and get to know him/her. Originally, the first day of the encounter was reserved to go over the informed consent sheet (see Appendix F) and to ask questions to each other.

Unfortunately, this had to change later due to time restrictions. If consent was given, I asked for the next court hearing date so that the defendant would not be released the day I came for the interview. Usually, defendants knew or guessed the outcome of that hearing and warned me that they could be released or that I could be ‘set at ease’ because they would be kept inside for more time.

I read the information sheet out loud and explained it to each potential interviewee along with extra information and emphasis given to certain parts when necessary. I told them that the names in the book would be changed (all participants' names including both the prisoners and the youth justice professionals are changed). I tried to give the message that the research would not have a positive effect on the court system or imprisonment in the short term, so would not have benefits for the participants. Questions were shown in advance if the participant was curious. Some defendants requested to read it line by line by themselves, while others just nodded positively as they grasped the general idea while I was explaining. 50 participants agreed to sign the information sheet (see appendix F), while at least 7 detainees refused to participate for various reasons. Some of the participants could not be sure whether their responses would not affect the court process or be transmitted to the prison authorities. Some, I suspect, did not feel comfortable discussing their situation with a stranger. Others basically did not feel like having a conversation. These were mostly the ones charged with simple theft who get in and out very quickly and do not bother to talk to other people. Reaching a considerable number of young defendants charged with simple theft/robbery was more difficult than any of the other categories. Three of the defendants preferred to take extra time to make a decision but eventually agreed to participate. I could not go back to one due to time restrictions. Some participants wanted to end the interview just because of boredom.

This research process is a proof that young people aged between 12-18 are able to provide informed consent and withdraw easily once given clear and coherent information about the research as well as the feeling of flexibility.

Getting in, being inside and wanting to get out of the four walls: counting down from 12 February to 22 October 2014

The first day of the research started quite unexpectedly and was hectic. On 12th February 2014, 'Shut Down Children's Prisons' Platform' staged a press conference on behalf of 13 civil society organizations in front of the Maltepe/Istanbul Prison complex, together with families of the children and the lawyers. I ran to catch this moment and was there after about two hours on public transport, the last leg of which was shared with visitors for the prisoners. The main part of the announcement was the bad treatment and torture of three young Kurdish prisoners transferred from the Sincan/Ankara prison. After this announcement, I went to reintroduce myself to the prison manager who knew me from past symposiums on juvenile justice.

Figure 6: Press conference of 'Shut Down Children's Prisons' Platform'

Stop the inhuman search torture! (Onursuz İşkence Aramasına Son)

Human dignity will defeat torture! (İnsanlık onuru işkenceyi yenecek!)

Lock up the prisons, not the children! (Çocuklar değil, cezaevleri kapatılsın!)



Entering the prison was a hectic experience every single time, and took around 20-30 minutes after arriving at the gate. Some of the rules applied to visitors, researchers, lawyers and prison employees are no electronic devices, no money, no food, no liquid, no metal worn (such as jewelry), and removal of shoes. Cutting contact with the outside world for prisoners meant being stripped of your identity, with very little audio/virtual communication.

Figure 7: Entrance to the Children's Closed Institution for Execution of Punishment in a big prison campus



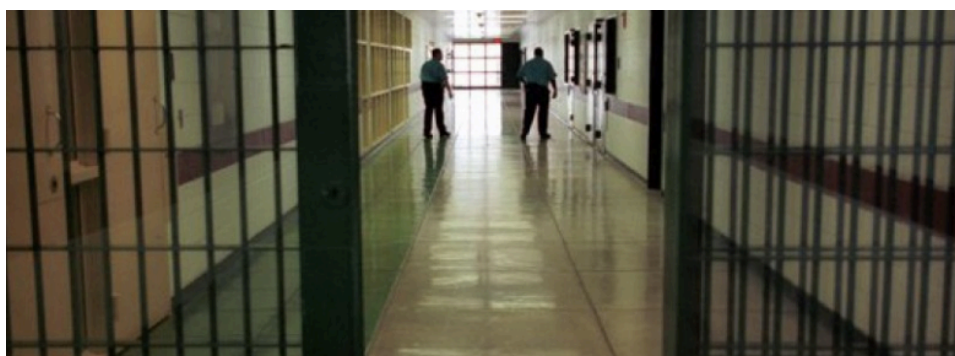
In all prisons, the primary contact person for me was someone from the psycho-social service

department or teachers' department, who, from the bird's-eye view, did all the same 'social' work with the kids. In Maltepe/Istanbul, it was the psycho-social service composed of a psychologist and a social worker, in Bakirkoy/Istanbul Women's prisons it was teachers, it was psychologists and social workers in Sincan/Ankara for males, a psychologist in Aliaga/Izmir, teachers in Sincan/Ankara Women's prison, and a psychologist in Konya E-type prison. Prison guards often assumed I was the 'new psychologist' who had just started working. A considerable number of participants were brought to my interview room thinking that the psychologist wanted to see them.

I developed friendly relationships with the psycho-social and teachers' departments and some prison guards in all prisons. We always had lunch together, which was cooked by prisoners in the prison complex, as well as shared tea/coffee breaks, travelling long distances together back home, lots of chats in between interviews, and sharing experiences. Watching a film with female prisoners and playing badminton with teachers were valuable experiences.

The number of participants I interacted with varied each day according to the conditions. No matter how many little interactions I had during the day, I could not help feeling exhausted with a headache, which prevented me writing field notes on the same day. This was also partly due to the long hours commuting. I also suffered from severe nausea and fever for two consecutive days at the beginning of the research period, which I associate with the heaviness of the subjects, especially incidents of sexual assault and general exhaustion. Although I could not start writing on the same day, I kept a separate diary for each prison and a folder for every single prisoner.

Figure 8: corridor in a Children's Closed Institution for Execution of Punishment in a big prison campus



Towards the end of the research, my primary feeling was not sadness but something close to claustrophobia; wanting to get out as soon as possible. This remoteness no doubt affected the prisoners' visitors, not to mention hundreds of prison employees travelling to work within huge prison campuses every day. Teachers, psychologists, social workers and wardens, especially the

younger ones without families, are offered accommodation within the same campuses. From my experience of being hosted in one of these apartments in Ankara Sincan prison campus, it is not difficult to understand employees' willingness to get out to have a better social life. The way a middle-aged male prison guard read a poem out loud at a cultural night organized by the Prison Administration in Istanbul about the hardships of being a 'prisoner', as if he were a prisoner himself, stuck in my memory.

Prison guards often complained that researchers like me always paid attention to the temporary prisoners and not the permanent prisoners who are the wardens. In her article 'Doing Research in Prison: Breaking the Silence?', Liebling draws attention to this unintended consequence and states that the staff might be sensitive and cynical about the research being only focused on the prisoners. In order to offset this bias, spending time with staff and engaging them informally, having chats and listening to the everyday difficulties of working in the prison environment constitutes an important part of the research process (Liebling 1999: 155-6). In this research, besides having many chats with the wardens, I had some very fruitful exchanges with the prison administrators during lunch, coffee breaks and when I was invited to their rooms or just passed by to update them. I was expected to give sharp and to the point responses when asked about my view over the prisons. While I found criticisms unfair at times, I was astonished to hear prison administrators' genuine critiques of the whole justice/prison system. I will share these accounts in Chapter V.

Who to talk to in the prisons?

Determining the right sampling is as significant as directing the right and meaningful questions to the participants. I had to pay extra attention to have an even sampling of offence categories in each prison. However, maintaining an even categorization was difficult due to some participants' unwillingness to give informed consent and the lower number of political prisoners in every prison. Moreover, categorization of offence types is not the same in the law books and in the prison. Offences are categorized under seven titles in the prisons of Turkey: murder, sexual crimes, bodily injury, theft, mugging, drug offences and political crimes/crimes against the state. I aimed to reach these categories evenly while interviewing 9 female and 41 male prisoners, in a total of 6 prisons in 4 cities. Age and gender were not taken as criteria as they would have narrowed the sampling in impractical ways. I interviewed all the female remand prisoners that I could reach who gave me consent. While taking informed consent, I explained to every individual prisoner why she/he was being asked to give an interview. I explained that I aimed at reaching many people charged with such and such offences and that's why the psycho-social service staff or prison guards chose him/her among many others.

Table 8: Participants: Young defendants on remand between 12 February 2014 and 22 October 2014

Prisons/ offence category	Maltepe/Istanbul	Bakirkoy/Istanbul Women's Prison	Sincan/ Ankara	Aliaga/Izmir	Sincan/Ankara Women's Prison	Konya E type prison for males	Konya E type prison for females	Total
drugs	2	1	2	1	0	1	1	8
theft	1	0	1	4	0	2	0	8
mugging	3	1	2	2	2	2	0	12
sexual crime	2	0	2	1	0	1	0	6
homocide	1	2	2	0	1	1	1	8
bodily injury	1	0	1	2	0	1	0	5
political crimes/crimes against the state	1	0	2	0	0	0	0	3
total	11	4	12	10	3	8	2	50

8 of the participants were sentenced but had been waiting for the final decision of the Court of Appeal, so they were still treated as remand prisoners. 3 of the detainees were actually sentenced and sent to the Children's Closed Institution for Execution of Punishment from Juvenile Education Houses for a period of six months as disciplinary punishment.

The number of interviews in a day changed according to that day's conditions but I had to get out of the prison before 5pm. I started the research in Maltepe/Istanbul prison. The first encounter was always just getting informed consent and chit-chat. The three sets of questions were divided across the next two meetings. Starting a meeting with a follow-up question from the previous time such as 'How was the meeting with the family or what did the judge say?' stimulated a natural conversation that helped to acquire unique exchanges rather than having the same standard interview with everyone. The structure of the questionnaire changed many times until the very end. Slowly, the number of meetings with participants decreased to two and finally to only one as I improved in guiding the conversation and being strict with time.

Each prison research was unique. Though the same laws apply to each prison, the top management's approach determines the daily life in each institution. Total privacy during the interviews was ensured in classrooms allocated to me the whole day, except in Ankara women's prison and Konya E-type prison. In all prisons, a guard had to wait close to the door at all times for 'security' and 'emergency' reasons, as requested by the administrators. The primacy of 'security' was felt at every corner, with the objective of protecting me as the researcher from the prisoners, protecting prisoners from me, and protecting prisoners from prisoners. No special room was allocated for the interviews in Ankara women's prison, which decreased the quality of our exchanges to a great extent. There, first the psychologist of the institution, and then some female prison wardens, accompanied us in different rooms during the three interviews. The lack of privacy created alternative communication methods like writing the follow-up questions on paper instead

of directing them verbally or sometimes using body language like nodding. A similar situation occurred in the last prison visit in Konya where the prison manager appointed a guardian to accompany me at all times. His presence did not seem to have an equally disturbing effect on the young prisoners but caused me to conduct the interviews faster, knowing that I would not get any genuine comments on critical issues. In all prisons, participants and I always sat always next to and close to each other, so that they could follow what I wrote down, and with which vocabulary. Me offering any treats was not welcomed. Having a cup of tea was uncomfortable at times when the young defendant felt reluctant to join due to the general pressure felt in the prison setting.

B. Communicating with professionals in the prosecution process in Istanbul, Izmir and Ankara from 17 June 2014 to 2 March 2015

Being inside different prisons helps a researcher to acquire invaluable knowledge on how the prisons are governed in day-to-day life, and how prisoners themselves perceive this control. Interviewing pre-trial detainees does not specifically help the researcher to explain the roles of remand imprisonment or how it has become the central institution and control mechanism in the Turkish youth justice system. However, observations in the prisons, semi-covert dialogues and discussions with youth justice workers in between prison interviews provide insightful material. This research question requires a triangulation of observations in the courtrooms and interviews with youth justice professionals to situate this pre-trial detention in the total system and grasp the structure better.

I had several reasons to speak to youth justice professionals. I wanted to learn about their daily life and hardships in their jobs, to see if they would provide some evidence of a managerialist mindset, to get their opinion on problems in the youth justice system, and to see if the issues I problematized in youth remand and the youth justice system attracted their attention. So I prepared questions for lawyers, social work officials, judges and prosecutors separately to conduct semi-structured interviews. All question sets had common questions to see if professionals from different backgrounds, educations and experiences had varying responses to the same issue. I shared the question sets with a sociologist, a pedagogue and a lawyer in Turkey for amendments. I reached all professionals via different methods, which I state below.

At the beginning, I presumed that the contacts I established in previous symposiums and the lists of participants in the symposiums/workshops published online would provide me a wide range of potential participants to set up appointments. So I spent hours preparing Excel spreadsheets of potential participants to reach via phone or email. I also did internet searches to learn about the person's previous work and viewpoints if he/she had shared opinions with the public. Referring to the participant's work kicked off our dialogues.

This method proved to be fruitful to contact lawyers. I even caught a small snowball effect to reach judges through lawyers. However, I soon got stuck with this method, especially in terms of reaching prosecutors and social work officials. Moreover, I really needed to observe trials in juvenile courts and juvenile heavy penal courts to comprehend the daily management of these institutions. So it was time to enter the courthouses.

The first time I entered the courthouse, I did not know anyone, so I ran into the room of a social work official, who chatted with me to understand what I was after. Then he took me to 'his judge' and the clerks' room. After having a dialogue or mostly a monologue with me to express his opinions, the juvenile judge happily gave consent for me to participate in the trials he conducted for as long as I wanted too. Later, I met with other social work officials and 'their judges', too. So, this is how the courthouse work started. The knack was to simply knock on the door and explain my objective.

In total I had the opportunity to interview 38 respondents. In addition to these formal encounters, I organized a discussion group with three employees of a children's prison together with an NGO member and an emeritus professor of social work to gain some insight before starting fieldwork. Meanwhile I benefited a lot from ad-hoc discussions and with prison guards, prison managers, social workers and teachers in prisons, court clerks and summoners. The closing discussions were done with two dedicated, senior probation officers.

It is very difficult to quantify the number of people and the number of encounters that I gained knowledge from. In the table below, I list the participants. The category of 'without formal consent' may catch the eye of the reader. In total, 6 participants refused to give formal consent but wanted to keep sharing their experiences and critiques with the precise awareness of me listening them as a researcher. Thus, I argue making use of knowledge that I gathered from these respondents should not necessarily raise any ethical concerns for two reasons. First, all the respondents had a clear idea of my identity as a researcher, and second, their identities will never be revealed as I do not share which cities the respondents are from. Moreover, it is extremely difficult and also useless for the researcher to distinguish and detach knowledge that is already processed in the brain as a whole. In other words, all the encounters and talks complement each other.

Table 9: Participants: Youth justice practitioners

	Istanbul	İzmir	Ankara	Total
Lawyers	5 individual interviews (1 without formal consent)	no interviews with lawyers	2 individual interviews	7 female respondents
Social Work Officials	3 individual interviews (1 without formal consent) and 2 focus groups with 2 social	1 individual interview	2 focus groups with 2 social workers each	12 respondents (8 females and 5 males)
Judges	2 individual interviews (1 without formal consent)	7 individual interviews	2 individual interviews	11 respondents (2 females, 9 males- 6 juvenile judges, 2 head judges of the juvenile heavy penal courts, 1 retired member judge of the juvenile heavy penal court and 2 criminal peace judges.
Prosecutors	2 individual interviews	5 individual interviews (2 without formal consent)	1 individual interview	8 male respondents
Total	16 respondents	13 respondents	9 respondents	38 respondents

Appointments with lawyers

Lawyers were the first group of professionals that I conducted interviews with. As a matter of course, I perceived the general framework of the system in everyday life, firstly from the lawyers' point of view. I arranged all the interviews by appointment in advance except one. This was the only method to reach lawyers, as I could not knock on their doors randomly as I did with social work officials, judges and prosecutors, whose offices are all in the courthouses. This is also why the number of lawyers I interviewed is slightly less than of judges and social work officials. Two lawyers that I contacted via phone did not get back to me for an appointment, which I interpreted as refusals.

Interviews with lawyers lasted between 45 minutes and 2 hours 45 minutes. Only 3 of the interviews were recorded and transcribed, as one of the respondents refused to give formal consent though still shared her knowledge, another respondent expressed her discomfort with a recorder, another one was talking in the corridor of prosecutors, so I did not bother to ask, and I preferred not to ask the last lawyer to record as it would have disturbed the vibe that we had from the beginning.

All things considered, the most holistic and severe criticisms of the Turkish juvenile justice system came from these accounts by legal representatives. However, it must be noted that most of the respondents chose to work with children in conflict with law in their careers.

Interviewing social work officials

The first encounter with social work officials happened in a meeting with two social work officials and a teacher from a children's prison, together with a NGO worker, organized by an emeritus professor of social work. Later, I started interviewing and doing focus groups by simply knocking on the door of social work officials in various courthouses and asking to talk. So, contrary to the interviews with lawyers, interviews with the social work officials were ad hoc and random. While lawyers have tight schedules with lots of travelling, social work officials have to stay in their private room in the courthouse throughout the working day. So I had four individual interviews, four small focus groups with two social work officials each time, and an ad hoc meeting/focus group with two social work officials who preferred to share a lot of insights for extensive hours without giving consent for an interview. With just one exception, all social work officials accepted my requests to conduct interviews within minutes of me knocking on their doors.

Interviews and focus groups lasted from 30 to 90 minutes, depending on the willingness of the respondent to talk, their work schedule and the work schedule in the courthouses. Only two participants' accounts could be recorded and transcribed—both of whom engaged in academic research besides their work. While some refused to be recorded, at other times, I chose not to interrupt the already started discussions by asking to record.

Contrary to the lawyers, who generally concurred, there was diversity among the reaction of social work officials to some of my controversial questions, which greatly surprised me. Basically, reactions and insights varied to a large extent while experiences remained similar.

Figure 9: Istanbul Courthouse (Palace of Justice): the biggest courthouse in the European side of Istanbul



Interviewing judges

Convincing lawyers and social work officials was generally a very smooth process, but reaching judges and prosecutors was exactly the opposite. I started talking to judges with appointments in İstanbul and Izmir. The first interview processes went smoothly with appointments until I decided to diversify my sampling in courthouses. Apart from the ones I reached through calling thanks to my networking, judges I came across in courthouses were very reluctant to give interviews. While going through the same disappointing process with prosecutors in İstanbul courthouse, I was told several times to get permission from the High Committee of Judges and Prosecutors, which I did eventually. However, I sincerely could not find a rational explanation why judges or prosecutors would seek permission to talk to a researcher from the High Committee of Judges and Prosecutors, as they are independent by the nature of their work. Plus, they could have refused to talk even if the High Committee of Judges and Prosecutors approved of the communication. This permission process is evaluated in relation to the authoritarian bureaucratic work culture in the field of justice in Chapter VI.

Receiving permission from the High Committee of Judges and Prosecutors to conduct interviews with authorities that are independent by nature

Receiving permission to question judges and prosecutors about how they do their work and why they choose to do it the way they do did not look promising at the beginning. So, instead of sending an application letter by post, I arrived at the High Committee of Judges and Prosecutors building in Ankara to express myself openly and to leave no doubt. After making myself understood to the authorities, I shared the questions to be addressed to the judges and prosecutors together with the letter of application.

Ironically, when I put the permission from the High Committee of Judges and Prosecutors in my bag and arrived at the courthouse, conducting interviews suddenly got easier. Only one prosecutor asked for a permission document to accept my request. Looking back, I realized that I started the courthouse work in quite a hectic time period. It was the month of Ramadan: a religious-national holiday was fast approaching, around the same time as the yearly judicial holiday. Many judges and prosecutors had time off, leaving a small number of their colleagues on duty with a pile of cases.

When I returned after this yearly judicial holiday, life in the courthouses got back to its normal pace, which had a positive impact on my encounters. Consequently, I interviewed one retired juvenile judge who was a member of a Juvenile Heavy Penal Court, two head judges of the Juvenile Heavy Penal Courts, five juvenile judges of Juvenile Courts, and two Criminal Peace

Judges who are responsible for sanctioning pre-trial detention or alternative control measures to defendants who are sent by the prosecutors. On top of this, I had long and multiple discussions with a juvenile judge who refused to give formal consent because ‘he would not say anything nice about the system’.

The interviews lasted between 30 minutes and 2 hours. Among the 11 interviews, I could only record the one conducted with the retired judge. All the other interviews took place in the private offices of the judges inside the courthouses, within a limited time. The judges almost always spoke behind a pile of case folders that they sometimes kept signing while talking with me. Some of them refused to allocate time to a researcher due to their workload. I chose to not ask to record since it would have definitely affected the sincerity of our discussions.

Forgoing recording and obtaining direct quotes provided me with sincere criticisms that I doubt I would have heard if I had recorded. It was interesting to listen to judges touching upon different issues, which I will raise in Chapter VI. I started talking with criminal peace judges towards the end of the research process, and managed to speak to two of them, although I tried to reach more. During the research, there were times I had to remind myself to distinguish between the prosecutors and criminal peace judges to direct the right questions. The fact that criminal peace judges decided about pre-trial detention from the claim of prosecutors somehow led me to direct similar questions to both parties.

Many of criminal peace judges felt reluctant to speak to me and chose not to contribute. Almost all of them had started their new duty as a criminal peace judge just a few weeks before I encountered them. Until very recently, ‘criminal peace judges’ were ‘criminal courts of peace’ that were responsible for giving the decision of pre-trial detention, as well as being responsible for some criminal cases indicated in the related law. After an operation by the police accusing government members in 2013, the judges of criminal courts of peace were dismissed, so changing the structure of this position from courts to judges. By making this change, which was legal but politically questionable, almost all the judges of criminal courts of peace were re-allocated. This eventually affected the number of participants in the research, but not the outcome of the research.

It must be noted that this change in the structure of the courts is just one of the many areas that affect the juvenile justice system, which is why it is impossible to study the juvenile justice system in Turkey without paying attention to the political tensions and to the transformations that the general criminal justice system is going through.

Interviewing prosecutors: getting used to 'no'

After encountering unwelcoming gestures from prosecutors in one city, probably because I happened to meet them just before their summer vacation, I decided to take a different tack with my permission letter and headed to a courthouse in another city. I interviewed eight prosecutors in the juvenile interrogation section in the courthouses. They were busy with many files all the time, even while sharing comments with me. I tried to choose the most significant questions on my list and make it sound like a natural conversation. Once again, many prosecutors refused to give an interview either for time concerns or to be on the safe side. One of the prosecutors invited me to watch a few interrogations one after the other, and held a long conversation with me about the whole system and his personal approach.

The interviews lasted between 30-40 minutes. Interviewing prosecutors was a significant part of the research process since most of the remand decisions are given during the interrogation process by the prosecutors and directed to criminal peace judges.

Concluding remarks on interviewing youth justice professionals

Conducting interviews, or rather, running around in the courthouses to organize interviews, was a hectic but a surprisingly productive business. It took me some time to sort out the courthouse structures and learn the busy and less busy times, in order to get hold of the right person at the right time. But once I had worked it out, I could move through different levels and corridors, running between the offices of social work officials, judges and prosecutors to be in the right place at the right time to get an appointment or start the interview straight away. Thus, separate sheets of questions together with the consent forms were always ready under my arm. I had to be able to switch between the questions addressing prosecutors, social work officials and judges very quickly. Prosecutors and judges would not show patience for any lingering or introductory small talk. They were more willing to respond if they believed that I would be fast. That's why I sometimes chose to not show the consent forms in order not to encounter any hesitation. They knew that I was there for research from the very first minute.

Once I established a good communication in the first minutes, I could then ask almost all the questions I wanted to. A considerable number of participants put down their papers on their desk as they found the interview more interesting than any task they could have undertaken at that time. Yet, I was always careful not to misuse their acceptance of a researcher during working hours, as leaving a good impression as a researcher increases the chances of future researchers getting access.

If one of the rules was to use the time efficiently, the other rule I learned through experience was to approach sincerely. The most fruitful discussions emerged when the participants asked me ‘where I was aiming to reach’ and what my opinion was regarding the question I asked them. For some participants, being interviewed was a chance to exchange knowledge, so they asked me the policies and practices in the UK and elsewhere in Europe. Some of the questions about European practices were asked with the purpose of stating how Turkey’s prison system was a lot better than its European counterparts. I will touch upon these comparisons in Chapter VI.

The interview structure changed constantly, as I acquired more information and got rid of some questions while adding new ones. After some point, I started asking follow-up questions to every new participant that I met. For instance, a social work officer would bring up an issue that mattered to him or her, and I would take the issue to the next youth judge or a prosecutor that I interviewed to raise some debates. So conducting about three interviews per day allowed me to lead more productive discussions than conducting just one, because I could start up with discussion topics right away that were fresh in my mind. After a while, understanding the interaction between different professional groups and their perception of each other gained equal weight in the research as participants’ viewpoints on the issue of remand imprisonment. Even the way judges, prosecutors, social work officials and lawyers address each other indicate significant aspects of how juvenile courts run in daily life.

Most significantly, the findings in Chapter VI reveal that each profession as prosecutors, lawyers, social work officials and judges has a certain professional culture of approaching the youth justice. So, the findings are discussed separately for each group because different themes arise in each professional occupation.

Reading court files page by page

While I was waiting for permission to be granted from the High Committee of Judges and Prosecutors for the interviews, which took about three weeks, I got permission to have a total of 200 terminated case files of young remand prisoners from various courthouses in Turkey.

First I thought I would be given permission by the youth judges to take the court files with me, with all the information on identities deleted, so that I could take as much time as I wanted with the folders. Later it became clear to me that it was almost impossible to delete all information on identities mentioned in the cases. So they gave me permission to go through the cases in the clerks’ rooms and note down what I needed in a systematic manner in standardized sheets. I prepared a standard sheet with boxes to fill in the offence category, age of the defendant, whether he/she was subjected to any protective measures, any judicial control mechanisms alternative to remand

imprisonment, and most importantly the reasons listed for detaining the young defendant on remand, the reasons for releasing him/her free, and the final decision.

The primary objective in going through cases was to prove the claim that pre-trial detention reasons in Turkey are ‘fixed’ rather than individualized, as the European Court of Human Rights demands. The second benefit of going through court files would be to show the judges’ tendency to use protective measures. However, after sitting down in front of a pile of cases, I discovered that each case took me at least 45-60 minutes, which meant I would have had to spend 25 full working days if I wanted to go through 200 cases. So after a while I stopped, due to time restrictions. Consequently, the files I went through cannot provide me with statistically meaningful conclusions, though they definitely helped me to gain knowledge about courts’ bureaucratic business.

C. Theatrical experiences in the courthouse

Interacting with people in pre-conditioned interview settings gives the researcher what she strives for. However, simple observations and casual conversations can give equally salient data to the formal interviews. Thus, observations in different settings such as prison entrances, offices in the prisons, prison cafeterias, prison classrooms and corridors, security gates, court corridors, buses going to and from prisons and courts, and bureaucratic buildings such as the High Committee of Judges and Prosecutors provide at least half of the insights that shape the researcher’s interpretations.

Just being in the hearing rooms in the courthouses certainly provided the primary source of data. Not knowing how many theatrical scenes I would watch from the last bench in the hearing rooms, I attended 65 hearings in Istanbul and Ankara: 15 in the Juvenile Court of Heavy Offences in Istanbul, 39 in a Juvenile Court in Istanbul and 11 in a Juvenile Court in Ankara.

My first day of watching hearings in a juvenile court was very intense. I could not feel comfortable taking notes and it was difficult to understand what was going around as hearings finished one after the other, within minutes. The first day went on like this for more than four hours without a break to take a breath. Later I got used to the pace and starting writing down every aspect of the hearings. I took notes of every single detail in these hearings along with conversations between lawyers, prosecutors and judges.

I sat in the last bench with the permission of the judges, but summoners often confused me with a lawyer waiting for the next hearing to start. I was first concerned about the ethical implications of my presence in the hearing rooms since hearings of juvenile cases are closed to the public for the privacy of the child. So I thought of introducing myself to the parties at the beginning of each trial.

However I could not introduce myself to the prosecution or defence sides as hearings followed one another within seconds and my interruption would have ruined the court order and undermined the judges' authority. Moreover, as I was thought to be a lawyer waiting for the next trial, I assume my presence did not have a negative impact on the young defendants or the other parties.

Spending days in a clerk's office of a Juvenile Court in Istanbul and going through the files with the clerk with the permission of the judge definitely led to fruitful conversations, and even to arguments and heated debates which took us to different prosecutors' offices to try to get clarification. I rather got confused due to the lack of coherence between 'law on the books' and 'law in action' in the judicial bureaucracy.

Most importantly, the prison interviews I conducted after my time in the courthouses definitely got easier and better as I could visualize what young detainees were referring to when talking about certain issues such as communicating with their lawyers in the courtrooms and alike.

Figure 10: Image of a trial room



D. Sorting out the right questions to ask, and receiving a fraction of the information you want

There are many missing parts in statistical data that would answer how pre-trial detention has acquired the primary role to fulfill different tasks in Turkish youth justice system. After identifying the potential right data to fill the gap, I directed over 30 questions to the Ministry of Justice (see Appendix G). After warning me verbally against disappointment, they sent a written document with only 2 small Excel tables of data from recent years that I could have got myself anyway. I suspect that while one reason for providing extremely insufficient data was to hide it, the other reason was the lack of know-how on keeping data to analyze the system (see Chapter III for more discussion on the missing data). This inability to present data reveals the knowledge-production in Turkey's judicial governmentality that adds up to actuarial managerialism to be discussed in Chapter VI.

E. Producing statistical data exclusively for this research

The lack of sustainability in the recording statistical data in the form of graphics in Turkey's judicial governing led me to produce statistical knowledge, which would yield meaningful conclusions on the prosecution and imprisonment. The available data in the formal websites are insufficient to draw conclusions on prosecution and imprisonment trends. Hence most data is presented in tables just showing numbers year by year. This method of presentation limits researchers and policy makers to follow the transformations and making connections between data. The lack of data as well as the fancy presentation of limited data indicates to an actuarial managerialist mentality in governing, which I will discuss in Chapter VI. I have made use of the formal websites and a historical statistical book (İstanbul Külliyyatı, 1997) to gather the data together. I share the graphics in Chapter III.

F. Analyzing the transformation between the formal and current laws on youth justice

During the analysis, I paid particular attention to not to limit my analysis to the current single party governance. So, one of my goals was to trace the transformation of the legislations on youth justice from their emergence to their most recent versions. So I compared and contrasted the former Law on the Establishment, Duties and Procedures of the Juvenile Court (Law no.2253, 1979) and the current Child Protection (Law no. 5395, 2005) together with their regulations. Legal experts' books assisted me in this task. I also attended several Criminal Procedural Law and Turkish Penal Code courses in Istanbul University Law Faculty in Spring 2014 with the permission of the lecturers. The analysis is presented in Chapter III.

G. Working with non-governmental organizations

Analyzing remand imprisonment in the juvenile justice system requires the researcher to view the issue from different angles. Members of the "Shut Down Children's Prisons' Platform", representing many NGOs in Turkey, worked hard during 2014. My encounter with them started in a two-day panel in Mersin in May 2014. I joined the meetings in Istanbul every two weeks during the spring and summer of 2014, discussing how to influence society and the media through different activities, and which common concepts to use. Collecting signatures from pedestrians in public squares in Istanbul and engaging in debates over closing prisons was a good practice to develop arguments. At the moment, civil society organizations such as 'Agenda Children', 'Turkey's Centre for Prison Studies' and 'Turkey's Re-Autonomy Foundation' are some of the non-governmental organizations that work actively on reforming the juvenile penal system.

Interpretation

Analysis of the data took a long time, after finalizing my research ‘in law in action’, in which I aimed to constitute an interpretive understanding of the meanings participants attach to their positions and actions in the legal arena both as young defendants and as youth justice professionals. After all, law on the books differ from the law in action as both the legal subjects and the practitioners of justice attach meaning to their actions that are not prescribed necessarily in the books. Accordingly, remand imprisonment could be interpreted in various ways. During the interviews, I especially wanted to see how remand imprisonment was rationalized. In order to understand the rationality and the interpretations, I did not direct specific questions by making mention of the term remand imprisonment unless the conversation got to that point by itself. So during the analysis, I connect the prisoners and professionals’ interpretations of their actions to remand imprisonment. I scrutinized the interviews together with the field notes that were taken on the same day, to extract and cluster similar patterns of interpretations. I analysed the data mainly around the particular concepts of ‘individual responsibility’, ‘security’, ‘managerialism’ and ‘professionalism’. I conducted all the interviews in Turkish and translated the quotes into English myself.

I analyzed prisoners’ interviews by clustering them first into prisons that they were incarcerated in. Second, I clustered them according to offence types. Patterns emerged as I read the interviews according to offence types over and over again. Bourdieu’s (1990) concepts of capital and habitus provide the key tools to present a balanced account prisoners’ experiences and interpretation of remand imprisonment by overcoming the dichotomy of structure and agency. The concept of capital reveals the diversity of the prisoners that could not be explained thoroughly merely by ‘class’. The concept ‘habitus’ which in Bourdieu’s theory of social action, refers to a socially constituted system of dispositions, a set of guidelines that orient agents’ perceptions and actions and permit agents to strategize in situations arising in the field (Bourdieu 1990: 55; Houston 2002: 157). This approach emancipates the analyst from structure and agency dichotomy and more importantly creates a space to re-evaluate and contextualize the decontextualized, traditional, liberal legal subject. The concept of ‘habitus’ invites the scholars to revisit the liberal, individualist language of rights discourse. This approach is embraced in Eylem Ümit’s research (2006).

In Chapter V, I share the interpretations of prisoners by analyzing them as ‘pains of imprisonment’ (Sykes 1958; Crewe 2011; Liebling 2011). The concept of ‘pains of imprisonment’ helps the researcher to conceptualize the descriptive accounts of imprisonment and also shows the researcher how imprisonment is experienced differently by different prisoner groups, that I categorized according to offence types. Last but not least, the concept of ‘pains of imprisonment’ guides us to

see the blurred boundaries between pre-trial detention and sentencing, which eventually helps the researcher situate it in crime control.

I analysed youth justice professionals' accounts within their occupation group. Accepting that an interpretive/explanatory understanding (Verstehen), (Weber 1978, Vol.1: 4) of youth justice professionals' accounts would reveal how they interpreted their own position and own action (decision making), I analysed different themes from different occupation groups. Together, they give a composite picture of the state's governance of young people. Different themes emerged in each occupational group as I read the interview notes over and over again. For instance, Eurocentrism and managerialist system efficiency dominated the dialogues with the prosecutors while the role of social work officials dominated the dialogues with the lawyers. On the other hand, social work officials' accounts led me to analyze their views in relation to the hegemonic relations they sustain with *their* judges. Analyzing the judges' accounts was the most difficult as I later discovered a consistent pattern of contradiction. The contradiction itself revealed the interpretation of remand imprisonment from the judges' point of view. I discuss these interpretations in Chapter VI.

Limitations

The gaps of this research that I will briefly touch upon will hopefully be filled in by further research. In the initial research design, I aimed to diversify the sampling both in terms of prisons and courthouses. However, the institutions that I conducted the research are in Turkey's three biggest cities, except the E-type prison in Konya. Research conducted in small cities and towns would surely lead to different outcomes for various reasons, such as the scale of institutions and the prison population, or the diversity of crime categories clustered in certain geographies together with different formal and informal control mechanisms.

In this study, I paid specific attention to the running of institutions that are responsible for carrying out the juvenile court's decisions of (protective) measures and alternative control mechanisms in relation to remand imprisonment. Thus, I directed questions on (protective) measures and alternative control mechanisms to almost all participants. However, interviewing the police officers, social work officials, teachers, doctors and probation officers in the executive power who carry out the required measures would provide equally important insights from a different angle. Research on policing definitely provides invaluable data on how youth gets in conflict with the law and the criminalization process. However, within scope of the research question, I limited the research in the prosecution service, the court and the prison. Interviewing practitioners outside the courts and prisons would have been impossible here as it would have created time restrictions in

the whole research process and would have expanded the scope of the research, leading to a loss of focus. Nevertheless, it would have provided interesting insights.

Last but not least, although I aimed at reaching a balance on the diversity of offence types to get a balanced understanding of the roles of remand imprisonment, the views over young defendants charged with drug and property related offences dominated the interviews with the youth justice professionals. I did not address any specific questions on any specific offences. Naturally, there was a weight on offences related to drugs and property. This weight on ‘recidivists’ by itself has implications on the roles of remand imprisonment and its ‘deterrent’ role through spatial managerialism. On the other hand, insights on the roles of remand imprisonment for those charged with crimes against the state remained weak. I aimed to fill the gap of knowledge from the professionals with knowledge from the young prisoners and the literature review.

Concluding remarks

No matter how much time a researcher spends in the field, it never feels enough. One always feels that something very important is missing if she does not make use of the opportunity to meet and talk to new people or to be in new settings. Meetings and discussions with various NGO members, on the other hand, always keep the field alive. Thus, I can say that the research has continued through talks with NGO members until the very last minute of the writing process.

In this chapter, I have shared a clear picture of the research process by quantifying, categorizing and framing it as much as possible. The data that came out at the end of this period stands there as a solid whole in which the formal interviews are blended with the most informal encounters, which provided equally valuable insights. In fact, it was the informal encounters that drew the framework for me to interpret the data.

CHAPTER V: Seeking security through spatial organization within four walls

Introduction

Until now, I have claimed that remand imprisonment occurs not as an administrative inter-phase of the criminal justice system but as part of penal politics that could be ascertained through scrutinizing the governmentality of the state. Hence, imprisonment in Turkey transforms with the changes in the relations of production as well as the sovereign state's claims to control its population's political tendencies, which intersect at the claim to provide security through spatial control. The conduct of remand imprisonment is shaped within the broad transformation of the prison/penal regime. The ways in which young prisoners experience and interpret remand imprisonment through spatial control and the interpretations of the youth justice practitioners of their own professions and actions reveal this outcome. So, we arrive at the gate of high-security prisons in big prison campuses, wholly segregated from city centres.

Day-to-day prison regimes (which vary from prison to prison) and prisoners' accounts of how they interpret their incarceration reveal much about the governmentality of Turkey. However, entering into these prisons and taking accounts from the young remand prisoners themselves is no help to the researcher in explaining how these remand prisons acquire the most central position in the system and what role they fulfil. The answer to that is provided by accounts from youth justice professionals, which are presented in Chapter VI. Even so, the response to what the remand prisons fulfil in the system cannot be completed without deciphering the management of these special prisons and how young prisoners and the employees inside perceive this management of crime control as citizens.

Data of this research demonstrates that Closed Institutions for Execution of Punishment operate through the relations of security power for the ordinary young remand prisoners and through relations of sovereign power for the political young remand prisoners by ensuring spatial confinement for an uncertain period of time without any objective of disciplining the defendants. So the element of space strikes out the elements of time and discipline that are claimed to constitute the modern prison.

In fact, according to the Convention on the Rights of the Child, the elements of time and discipline/labour should not be part of an ideal youth justice system. For adult offenders, punishing them by depriving them of the abstract freedom that is linked to abstract human labour, measurable in time, is a widely accepted thesis. However, in capitalist industrial countries today, where child labour is practiced within limits and restrictions, depriving the young person who is not yet eligible

to be in the labour force of his/her liberty does not constitute a satisfactory explanation of the prison. Nevertheless, since the juvenile justice system has developed mostly by reducing the punishments that are imposed on adults, the system for young people does not diverge significantly from the adult system.

Looking for the hidden functions of institutions like the remand centres in the youth justice system in Turkey definitely opens up new paths to explain the current situation of defendants on remand. However, taking into account Ignatieff's stance (1981) as introduced in Chapter I, it is always necessary to be aware that what is observed in these institutions may be the result of a lack of imagination for an alternative system.

In the high-security prisons incarcerating youth on remand, what is observed is a managerialist approach to keep young prisoners as aggregates under control for an indeterminate amount of time, keeping them occupied through distance learning and activities that provide some very limited cultural capital and psychological remedies to cope with incarceration. Feeley and Simon have named this approach 'New Penology' (Feeley and Simon 1992) in relation to the older idea of disciplinary and inclusionary regime that aims at including the target groups in the capitalist mode of production. Maintaining security through segregation via spatial boundaries and technological apparatuses and keeping prisoners occupied and under efficient control and the rule of prison manager(s) can be clearly labelled managerialist.

The particularity of managerialism in Turkey is presented in Chapter VI in a discussion of the term managerialism. The shift of emphasis from education/labour-based Juvenile Education Houses to high-security Children's Closed Institutions for Execution of Punishment for remand prisoners constitutes a novelty intrinsic to the managerialist governmentality in the Turkish youth justice system. The aim of this current chapter is to decipher the management of high-security remand imprisonment, highlight the prominent aspects of this management, and transfer the interpretation of this remand imprisonment through the diverse accounts of young remand prisoners.

Prisoner diversity is a significant aspect of analysis in this chapter. The diversity among prisoners in this research indicates that it is important to manage the data in typologies according to attributed offence types rather than approaching the subjects merely as a prison population, as if prisoners are all one unit. The experience and perception of imprisonment heavily depends upon the prosecution process for remand prisoners, in contrast to sentenced prisoners with determinate sentences. The offence type that the prisoner is prosecuted for constitutes the number one determinant in the length of incarceration, the prisoner's experience in being in conflict with the law, coping strategies with imprisonment and his/her approach to imprisonment. For instance, those accused of 'crimes against the state' experience imprisonment as, what I call, a 'collective

political pain' as being incarcerated in state of exception whose prosecution process depends on the relations with the sovereign power of the state. So, different groups, diverse experiences and some structural patterns emerge while scrutinizing the prison population according to offence types.

Eventually, variations in 'habitus' and 'capital' (Bourdieu 1990; Houston 2002) are revealed according to different offence types. The diversity among prisoners can also be detected through the cultural and symbolic capital they hold along with their social and economic capital. Variations in the capital, young prisoners hold, affect the strategies they develop in their field of action prior and during imprisonment. This is important to contextualize their agency as real human beings in contrast to traditional, liberal, legal subject.

These variations among prisoners also cause the 'pains of imprisonment' (Sykes 1958; Crewe 2011; Liebling 2011) to be experienced differently based on their capital, as stated in Chapter IV. The variations in experiencing the pain caused by the lack of access to formal education constitute an important aspect of this argument. The cultural capital acquired through education prior to detention shows how the prison reproduces the social status of some groups while destroys that of others. I argue that although the pains of imprisonment are distributed equally among everyone, the experiences vary according to social and cultural capital.

So interpretations of the experiences reveal significant data over Turkey's governmentality and its comprehension by its minors. Those who hold lower cultural capital and are charged with drug and property-related offences interpret remand imprisonment as an inevitable result of their activities while those with higher cultural capital and charged with sexual offences or offences against the state tend to question the legitimacy of the prison system. The first group's tacit consent to being imprisoned on remand should be considered together with the hegemonic relationships social work officials have in the criminal justice system that is elaborated upon in Chapter VI.

Gathering and organizing the information based on typologies according to offences provides data to test widely accepted arguments on imprisonment such as the 'revolving door effect' for marginalized groups: to test whether the prison functions as a revolving door to control the poor and marginalized sections of societies. Critical criminology scholars often draw attention to how prisons are reserved for the marginalized poor and minority populations who could engage in drug-related and property-related offences (Wacquant 2009; Feeley and Simon 1992; Garland 2001). As will be explained in the further sections, prisons incarcerating youth in Turkey do not work as a revolving door for all prisoners, but only for a section of the prison population, namely those charged with crimes against property and drug-related offences. Prison functions as a controlling container while being implemented as a last resort. While prison reproduces the social, economic

and symbolic capital of some young prisoners, it destroys the social, economic and symbolic capital of others, and never constructs capital for upward mobility in society.

Any proposal to restructure the system should firstly acknowledge the diversity. It is simply meaningless to research the physical and managerial structures of prison as a total institution (Goffman, 1961), its architecture, its security and control mechanisms, its everyday life, its rules and its regime if the diversity among prisoners is disregarded. The socio-economic and ethnic background of prisoners, the ways in which they get involved in unlawful activities and the ways in which they experience the prosecution process have an impact on their experiences of remand imprisonment. These patterns should in fact form the essential knowledge for shaping and formulating the tasks of the legislative, judicial and executive branches in policy-making.

However, at the moment young defendants on remand in Turkey are managed as aggregates, as if this diverse population constitutes one coherent unit. Only the method to deal with prisoners charged with acts against the integrity of the state differs significantly, as it has always historically. The aim of this chapter is to show how the high-security prisons are governed, by whom and through what means. I report on the tasks of different occupational groups in the management of the prison to reveal the prominent aspects of remand imprisonment. The sections below show that the diverse range of prisoners are managed the same way—primarily by security officers under the rule of the managers, while other professions such as teachers, social work officials and psychologists have secondary roles, in line with Turkey's residual welfare governance. Ultimately, spatial organization and control is the prominent form of management. The agenda is to provide security; psychological intervention within the four walls comes out as a remedy to adapt to this imprisonment, disregarding the structural patterns of being in conflict with the law. As remand imprisonment is no determined *time* and with no long-term policy on *education* or *labour* fulfils security-oriented managerialism, coping with remand imprisonment is a prisoner's individual responsibility.

Moreover, as mentioned in Chapter III, these high-security Children's Closed Institutions for Execution of Punishment are facilities of disciplinary punishment for sentenced young people who commit disciplinary offences within Juvenile Education Houses. Leaving aside this irony of categorizing the high-security prison for young defendants as a punishment site for undisciplined sentenced prisoners, neither the young prisoners nor the prison staff and not even the judicial staff in the courts differentiate and recognize this categorization. A prison is a prison just as a prisoner is a prisoner. This is therefore one of the most important reasons why the regime and the characteristics of these high-security prisons for remand prisoners have implications on Turkish penal governmentality.

It is important to be careful about the actuality/reality of criminal acts, as the reputed actors are only defendants and guaranteed the right to the presumption of innocence. As a matter of fact, 48 out of 50 participants in this research did not deny coming into conflict with the law; indeed, some of them enriched their criminal narratives with other criminal acts that I would otherwise not have known about. So in this thesis, rather than emphasizing the right to presumption of innocence, I prefer to acknowledge the acts of being in conflict with the law as narrated by the young prisoners. The ‘right to the presumption of innocence’ blocks an interpretative understanding of remand imprisonment, as the subjects of the praxis do not claim it. Equally important, as will be demonstrated in Chapter VI, youth justice practitioners’ accounts did not imply to an obsession of ‘pre-crime’, a will to control the risk, uncertainty, precaution (Zedner, 2007), the will to control the risk of acts that might not have taken place yet.

So, in this work, identifying the structural patterns of being in conflict with the law comes before claiming the right to presumption of innocence or a criticism of ‘pre-crime’ control. Young prisoners’ lack of concern over the presumption of innocence also indicates an indistinction between remand imprisonment and prison sentencing, which leads the researcher to consider remand imprisonment as an important aspect of crime control policies. As one of the prisoners said, while complaining about the security officers,

“Did I come here to serve my sentence or for enforcement security officers to swear at me?” I replied, astonished, “but you are not sentenced yet?” He replied, “I will get about 3 years, 1 day counts as 2, but you serve it all if you do not behave well.” That sounded to me as a sequence of sentences, revealing that he perceived his days in prison as a part of his sentencing. Hence, there was no differentiation between a prison sentence and a remand imprisonment. For most prisoners detained due to crimes against property and drug-related crimes, the prison worked as a first and last resort control mechanism—in other words, a warehouse.

Here I would like to state that before entering the field, I had expected to hear verbal insurrection from remand prisoners on their status as unsentenced prisoners. However, this verbal insurrection did not come out as a primary narrative. I had three reasons not to intervene in the narrative and not to question prisoners on not differentiating between remand and sentenced imprisonment. Firstly, I refrained from creating an artificial narrative that would naturally not come out. Secondly, and more importantly, I refrained from any intervention that would have had a negative effect on their security and welfare by triggering a probable active insurrection. Thirdly, even without insurrection, this new thought would have caused unnecessary distress in incapacitated position.

Who rules the prison: guards, psychosocial staff or managers?

As set out in Chapter IV, a time-lapse of the prison research with young remand prisoners in Turkey would show a researcher going in and out of security checks, body checks, locked doors, turnstiles opening with retina scans and walking through corridors greeting each other with the security officers in between walls covered with pictures and plastic flowers. So as a researcher, going through electronic gates and walking down corridor after corridor to get to the classroom to conduct the interview, what you see most in the prisons are security officers everywhere. While having breakfast together with the security officers, I asked about the number of officers employed in the prison. They told me that there are as many officers as children and even joked about it, saying “it would be better if each of us took them and looked after them at home.”

Other employees in the prisons are psychosocial staff members, permanently employed teachers, temporary teachers for workshops, deputy managers, the manager and the prosecutor. In contrast to officers positioned everywhere to provide security, psychosocial staff members, teachers, deputy managers, the manager and the prosecutor are all in their separate rooms. Within a network of employees with different tasks, the prison belongs to head managers, assisted by deputy managers who are all responsible for keeping the total institution²⁴ secure and under control. The teachers guide the young prisoners to sign up for distance learning and get diplomas, and keep them occupied through workshops. The psychosocial staff members are reserved to offer mental solace to the young prisoners, so life continues undisturbed. Those who are responsible for security in the prison; those who prevent escapes as well as disputes exceed those who are responsible for the prisoners' social and mental well-being and education by about 25 times. It is expected that 2-3 psychologists and a social worker be employed in a prison, where they are responsible for 450 young prisoners.

Comparing the level and intensity of contact with the guards and the psychosocial staff members along with the teachers and considering the roles attributed to these prison employees, security and control take the upper hand. Mandıracı (2015) together with lawyer Yıldız identify one of the problems in prison management as a lack of distribution of tasks among different employees and the centralized power of the prison managers. In short, there is a work culture where prison manager is the decision-maker by himself or herself. The report suggests a participative management approach through the involvement of social work officials with greater authority, prisoners themselves through feedback, and NGOs through opening the doors of prisoners to civil society (Mandıracı 2015: 9). In contrast to the emphasis given to security in these regular prisons, in Juvenile Education Houses, designed for sentenced youth, there are fewer officers and more psychosocial services' staff.

²⁴ A place of residence for a significant number of people are cut off from the wider community and completely institutionalized (Goffman, 1961; Foucault, 1977).

The broken framework of psychosocial services: psychological remedy to social problems

The psychosocial staff members are composed of graduates of social work and psychologists. Inside the prisons, they are either referred as the psychosocial services or the psychologist, ignoring the existence of 'social work' as they are unable to define its function. Apart from filling out forms, communicating with families at times of release, providing psychological relief to young prisoners upon prisoners' requests, psychosocial staff members are assigned to conduct group work on various topics, such as anger management or drug use.

Based on the accounts of the participants, communication with psychosocial staff was very limited in quantity and quality. Young defendants were in contact with the psychosocial staff members rarely and certainly not systematically, based on an evaluation of predetermined topics. In principle, the psychosocial staff members are expected to interview each newcomer to fill out a form about them. But according to young defendants' accounts, the first encounter did not always occur in this standard timeframe. **Mesut**, who was charged with drug dealing together with his brother, and willingly told me about his suicide attempt in the prison, said that when he first came to the prison, he slept in a temporary room during the weekend. He then wrote a letter of request like all other young prisoners to see a psychologist after 2-3 weeks, and that was his first encounter with a psychologist in his lifetime. **Mert**, charged with sexual crime, responded "negative impact!" when I asked him whether he has spoken to one of the psycho-social staff members in the prison. **Dikmen**, charged with mugging, used to take anti-depression pills before he was imprisoned. Now that he was unable to take them anymore, he started having nightmares. Once he took some pills given to him by a fellow prisoner and then could not regain consciousness for two days. So he told his friend to quit as well. "They prescribed 4-5 sleeping pills to a child inside. Poor guy: how could he [the doctor] sign off so many things?" he reproved.

According to prisoners' accounts, psychosocial services were there to offer relief when needed, but did not provide systematic and regular assistance. There are highly motivated staff in the prisons who are willing to create transformation through therapy, but also those who view their job as just dealing with paperwork. Apparently, psychosocial services could not function efficiently in prisons due to various reasons such as uncertainty in the nature of remand imprisonment, the insufficiency in the number of workers and having secondary significance after the management of security.

Psychosocial service staff in the bureaucratic hierarchical prison administration

The low positioning of the psychosocial service staff members was visible in the everyday prison management. Their low position in the hierarchy of occupations is a reflection of the residual welfare approach in Turkey that I presented in Chapter III. The hierarchy between social work

officials and the judges in the courthouse that is elaborated upon in Chapter VI complements the picture. The vagueness of job description of each individual psychosocial staff member affected the value and quality of psychosocial work. The psychologist and the social workers were responsible for exactly the same tasks in their shared rooms, just like it in the courtrooms (see Chapter VI). The emphasis given to security, and hence significance to the position of those who conduct security such as the managers, contributed to the loss of professional autonomy for the psychosocial staff.

I attended a cultural event organized by and for the security officers where they celebrated retiring colleagues and enjoyed a concert. There, the hierarchical triangle, starting with the head managers, followed by the deputy managers and finishing with the security officers was crystal clear. The psychosocial staff members along with the teachers whose positions were not designated found their place at the bottom of the hierarchy.

In this limited service framework, the psychosocial service dropped the ‘social’ out and aimed at providing short-term remedies to the effects on the psychological balance of the young prisoners. Thus, the social care professionals’ productive role as welfare agencies, which would be viewed critically by Donzolet or Foucault due to its original principle of mollifying target groups in the crisis of capitalist relations of production (Houston, 2002: 160), occurred so infrequently that the psycho-social staff members did not produce obedience or normalization of behaviour to the dominant culture, but only really gave temporary relief to the prisoners. Being in conflict with the law as a social act got simplified to the psychological coping abilities of the rational, liberal, responsible individual stripped of his/her *field* and *habitus* or as Bauman would say, being in conflict with the law and coping the pains of imprisonment was individualized. I argue that, in Turkey, the individualization of crime which is a social act, makes the actors of crime, ‘clients of lawyers and psychologists’ while withdrawing them from the field of social work.

Concurrently, the hierarchy between managers and psychosocial staff members and the emphasis given to security is very well revealed in the anecdote below. I always had my lunch with the psychosocial staff members, teachers, officers and managers in every prison I conducted research in. Once, I sat at a table with three psychologists and a deputy manager. The deputy manager complained about not having knives on the table. In fact, nobody can ever use knives in a prison, but apparently this deputy manager could. This was a real sign of the hierarchy between the managers and the psychosocial staff members. Just after this awkward moment of not finding a knife on the table, the two psychologists and the deputy manager went on chatting and the third psychologist turned to me and whispered, “I will apply to become the manager.” Since an amendment to the law in June 2014, education specialists, teachers, psychologists, social workers, sociologists, engineers, doctors, dentists and accountants can become managers by completing 8

years of service (Regulation No. 29023). According to this psychologist's account, managers had more autonomy than the psychosocial staff. Hence, a psychosocial staff member can aspire to become the manager to be recognized.

As this was a striking piece of information for me, I immediately sat down to write it word for word in my notebook once we returned to the teachers' room after lunch, which turned out to be ethically risky behaviour. As I was finished the notes revealing the names of the small lunch-hour story, the manager entered and approached me so quickly that I was unable to shut my notes in time. While addressing whoever was in the room, he tried to scrutinize my notes in the corner of his eye, as he wanted to be in control of every single movement in that institution. Hopefully, my handwriting was not easy to follow. After teasing me about several things, including my earrings my university and my handwriting, he asked me whether I had visited a specific prison yet and asked if there were any disciplinary problems there. Apparently, he was trying to get some managerial gossip from other institutions, and I should be the messenger.

I asked him whether I could have a look at the internal security regulations because once I was told that I could understand the rules of the institution by looking at the regulations. I had shot his nerves with his question, and he snapped, "What are you going to do with the internal regulations? Did the Ministry of Justice ask for it? The internal regulations cannot be in conflict with the general regulations, anyway..." Then, I understood that the internal regulations had information about the windows and physical barriers, which was totally about security. And he went on, "In the future, when you conduct research in other institutions like the military, leave their internal regulations to them. Some day, some people who learn that you've got such information can find you, put a gun to your head, receive that information because you've got to share it with them, break in here, and then the lives of teachers working here are under attack." The crisis of paranoia about security was not over yet, as he then asked, "Who arranges your schedule to come here?" "Who would tell me? Of course, I arrange it myself—nobody can tell me," I replied in shock. Thereupon, it was clear that the order and security mattered most inside the prison. Accordingly, security officers shouldered heavier responsibilities than the other professionals.

How do young prisoners spend their time?

After gathering all the accounts about 'just an ordinary day in prison', a strictly structured day is marked by roll calls and mealtimes as the determinative routines of the day. Strikingly, roll calls are the most mentioned 'things to do' in prison life by the young prisoners. Moreover, the number of prisoners at any time of the day is probably the only exact data that the prison administrators are able to keep. So, prevention against absconding—in other words, keeping the remand population under control in institutional confinement—is the determinate feature of remand imprisonment.

Any other activity holds secondary importance. The rest of the day is mostly spent in various workshops.

So, the day starts with a roll call and continues with roll calls at specified time intervals. Weekends are different as workshops are mostly organized during the week, plus the number of officers decreases at the weekend. The dynamism of the weekdays diminishes during the weekends, which causes boredom and distress for some young prisoners. Closed visiting days take place once a week, where prisoners and visitors can speak to each other face to face without any physical contact. Open visiting days that visitors and prisoners can have physical contact in common areas are once a month. Distance learning to sit exams and get diplomas is the only way to be integrated into the education system.

Workshops offering certificates on various subjects vary between different prisons according to the managers and the availability of the courses and their teachers. Some of the common workshops are hairdressing, making jewellery, wood or glass painting, tailoring, looking after the aquarium and playing PlayStation. All the workshops are accorded the same value, although they differ extensively in purpose and function. Certificates are given if workshops are related to a trade such as hairdressing or handicrafts. Workshops on theatre, cinema, handicrafts and poetry are offered by university student volunteers, and are accepted into the prisons on a regular basis. Distance learning and literacy courses are regarded as workshops in the prisoners' accounts, which imply meaningful conclusions on education that I discuss in the following section. Moreover, these workshops are offered to fill time, keeping prisoners busy and under control while introducing them to some new skills that ultimately do not allow them to build up any capital to use once they are released.

Who to spend the time with? Security officers

So, young defendants have most of the social interaction among themselves and with fellow "paid prisoners", meaning the security officers. Since 2010, security officers have been subjected to special training. Although the ultimate goal of the training is to enable them to carry out needs assessments for the young prisoner, from inside the prison, it sounded more like a way to empower the security officers. The training involves learning how to fill out forms for every single young prisoner that enters the prison and assess the risks and needs related to him/her. Security officers received training to implement these forms. Consequently, some security officers who were responsible for the rooms started to be called ARDEF, after the name of this form (Research and Assessment Form for Children and Youth in Conflict with the Law). So today in some prisons, young prisoners call the security officer that is responsible for their room 'our ARDEF', whom they find friendlier than the others. Some security officers make a joke about it and call themselves

‘infalog’ which is a short name combining the names of a security officer and psychologist, to draw attention to the burden on their shoulders. Interestingly, none of the 50 participants in my research mentioned anything about a form or needs assessment procedure.

Throughout the research period, I was often asked why I was not conducting research on the officers, as some saw themselves as ‘paid prisoners.’ One of the officers complained about the imprisoned children’s ‘spoiledness’ and ‘selfishness’ whenever he caught me on the way back home. Even though nobody gave me precise accounts of work life in prison, probably because they were afraid that what they say might be used against them, I must say that working conditions inside the prison are not easy at all. Officers come to work in full uniforms. It’s forbidden to carry phones to prevent prisoners contacting the outside world. So officers spend time pacing the corridors, sitting on chairs next to each other, having chitchats at times they have no specific duty. They are responsible for roll calls, transferring young prisoners and accompanying them between rooms, workshops, classes, and psychosocial staffrooms. They are on duty to provide security for the young prisoners. So, time passes in lightless and airless corridors. They narrated stories of hardship such as being abused by bad words and not being able to respond back to it because the addressee is a child. I link this passivity to the constant close scrutiny of the non-governmental organizations which aim to prevent degrading behaviour to young prisoners.

Diversity among young remand prisoners

Youngsters aged 12 to 18 (and in reality up to 22, due to false birth certificates) charged with theft, mugging, drug dealing, bodily injury, murder, sexual crimes and crimes against the integrity of the state are locked up on remand together and managed and controlled in the same facility under the same regime, despite their diversity. Reasons to be in conflict with the law vary according to the Turkish Penal Code but prison staff narrow down the categories of infringement of the law to 7, as stated in Chapter IV namely: drug dealing, theft, mugging, sexual assault, bodily injury, homicide and political crimes. Within the prison system, it is possible to reduce the young remand population into 4 categories according to the nature of the offence as well as prisoners’ reaction and interpretation of remand imprisonment. First of all, the intrinsic relationship between drug use, drug dealing and property-related offences leads the researcher to approach property-related and drug-related offences as one category. These have a common ground that there is no *will* to harm bodily integrity. Although mugging involves violence and bodily injury, the intention is to reach financial means rather than causing physical harm to the victim. The young prisoners accused of sexual offences form the second category. As a third category, there are those accused of offences against the bodily integrity, meaning bodily injury and murder. Fourth, there is the category of political defendants accused of crimes against the state. This is the categorization made according to offending patterns and subjects’ habitus and their coping strategies in the prison. From the

viewpoint of court professionals, the categorizing can be done in three groups by including sexual offence into the category of offences against bodily integrity. As will be seen in Chapter VI, professionals' approach to remand imprisonment is based on the equivalence of the severity of the offence in these offences.

The concept of "habitus" provides a fruitful ground to emancipate the researcher from the normative, liberal language of human rights that approaches the person in conflict with the law as a decontextualized, autonomous, rational agency with a freedom of choice. It is a concept to avoid the dilemma of 'structure and agency' and 'individual and community' and thus the axiom of 'individual responsabilization' in the criminal justice system, and works as a useful tool to illuminate the criminal activity that young defendants admit to having engaged in. In Bourdieu's theory of action, habitus refers to a socially constituted system of dispositions, a set of guidelines that orient agents' thoughts, perceptions, expressions and actions and permit agents to strategize, adapt, improvise or innovate responses to situations arising in the field (Bourdieu 1990: 55; Houston 2002: 157). Habitus tends to generate all the 'reasonable', common sense behaviours as they are adjusted to the logic characteristic of a particular field (Bourdieu 1990: 55). Here, the concept 'field' forecloses an overly structuralist interpretation of social space. 'Field' recalls a battlefield, in which agents confronting each other compete (Bourdieu and Wacquant 1992; Weininger 2005: 95-96). Thus, "habitus is a structuring mechanism that operates from within agents, though it is neither strictly individual nor in itself fully determinative of conduct" (Bourdieu and Wacquant 1992:18). In this respect, actors/agents' rationality of action is socially bounded (Houston 2002: 155).

In relation to this, in *Visions of Social Control*, Cohen brilliantly shows the logical flaw of the 'reintegration' ideology. He states,

"Sensitive as it appears to be to the social rather than individualistic notions of deviance causation, the community ideology picks out only one element of the social. This is the idea that the main cause of deviance lies 'in' the community, especially in the form of weak or defective social control exercised by the family, school, religion, neighbourhood and other such institutions" (Cohen, 1985: 125).

However, under the ideology of 'reintegration', "it is still the offender who has to change, not the community" (Cohen, 1985: 126). The offender who has succeeded in developing the habitus to survive in the community is viewed as someone lacking integration skills. Hence, it is illuminating to refer to 'habitus' and 'capital' as conceptual tools to explore the social aspect of criminal behaviours. In this line of thinking Houston (2002) suggests 'culturally sensitive social work' in which social workers can offer much by strategically using their cultural capital by adhering

Gramsci's prescription of the 'organic intellectual' and refrain from imposing class-normative values.

In Bourdieu's theory of social structure and stratification, actors' self-positioning and habitus can better be understood through the concept 'capital' that Bourdieu elaborates in four categories as 'economic', 'social', 'cultural' and 'symbolic'. Capital is a set of usable resources and power (Weininger 2005). Briefly, "economic capital refers to wealth defined in monetary terms; cultural capital involves a person's or institution's possession of recognized knowledge; social capital is constituted by social ties; and symbolic capital refers to one's status, honour or prestige" (Houston 2002: 158). Economic and cultural capital hold significance in mobility. The concept of 'capital' is especially helpful in analysis of the data that does not involve direct responses from prisoners on social status but narratives about their neighbourhoods, the visibility of police officers in their areas, police stations, school registration and their family and friends. In this research, educational status, participants' involvement in school and their educational aspirations revealed a great deal about their cultural capital and their perspectives on economic capital as well as showing the diversity among young prisoners.

Since the main research is not about how defendants get involved in crime and whether their socio-economic background is a factor but rather about how they interpret crime-control mechanisms, I posed no direct questions on narratives of criminal activity or socio-economic background. Rather, I acquired this data from the accounts of the names of the neighbourhoods, the relations with the school and the police stations, their employment history and such. So, below, I would like to present more information about the young remand prisoners and point out the diversity by referring to Bourdieu's conceptualizations of 'habitus' 'field' and 'capital'. Ümit's thesis (Ümit 2006) on youth in conflict with the law that is studied in Bourdieu's theory of action and Acar's work (Acar-Baykara 2011) on the life stories of children involved in sexual crimes contribute to the present work and complement the researcher's understanding of the habitus of youth in conflict with the law. Ümit aimed at questioning the validity of the practice of determining 'criminal responsibility' practices that were laid out in Chapter III through the concept of 'habitus'. However, both of these studies provide a more or less coherent, unified habitus of youth while the present research reveals a more diverse pattern. Strikingly, a group of participants accused of sexual crimes together with defendants accused of political crimes against the integrity of the state were observed to hold high amount of cultural capital while others charged with offences against property and drugs held higher amounts of social and symbolic capital as well as high amounts of economic capital in unsustainable manners. Paying attention to the diversity of prisoners' habitus and capital is important to determine the structural patterns of them getting in conflict with the law and to propose crime control mechanisms other than remand imprisonment. Hence, this is a call for future researches focused on different types of offences.

Charged with crimes against property

In this research, defendants charged with offences against property comprise those who are accused of theft in public and private spaces, theft of and from vehicles and mugging involving violence. Mugging constitutes a significant category for prison management. Those charged with property crimes excluding mugging are detained for shorter periods, mostly for a couple of months until the court takes the testimony. As this group perceived their confinement as temporary short-term pain, they did not show any willingness to participate in the research. Those charged with mugging were willing to talk, as most of them had already been incarcerated for a long time.

Reading the interview notes one after the other, I came to the conclusion that these fourteen youngsters²⁵ who were charged with crimes against property, whether theft or mugging, shared some similar, perceptible aspects of life, including: residing in impoverished neighbourhoods; history of migration; other family members and acquaintances incarcerated; irregular school attendance; hard-core experiences of substance abuse and repeated pattern of offences against property together with drug-related offences; and a routine of visiting the prosecution services with ‘case explosions’, from 4 up to 147. The strength of the correlation between substance use and property-related offences is striking that is discovered in prior research as well (Cankurtaran Öntaş, 2006). For some, prison was viewed as a force-quit curing centre for their substance addiction, which indicates the lack of recognition of harm and of harm reduction policies. Contrary to others with higher cultural capital who had concern about the *future*, for this group the loss of liberty in the *present* mattered the most. Many relied on their social and unsustainable economic capital as survival strategies in their habitus and much less on any cultural capital that could be acquired from schooling.

Mithat’s case is a typical one of mugging actually related to a drug-dealing dispute. His father was in prison too. The case is typical as the defendant is an internal migrant settled in a newly gentrified neighbourhood and a school truant. If he were not incarcerated he would be sitting in his family’s tailor shop. Normalization of violence is another typical aspect. He committed a mugging after a drug-dealing issue, which the Juvenile Heavy Penal Court that tried him did not know about. Mithat smashed the head of a guy against the wall, broke his nose, twisted his arm, and got his phone and money because the guy owed him 400 Turkish Liras (€130) for drugs. He later returned the property, probably because he thought the sentence would be reduced. The victim withdrew the accusation after Mithat’s father offered him 10,000 Turkish liras (€3,400) as hush money. Mithat says he was beaten by the police, handcuffed and verbally abused by the prosecutor, “you clown, let me put you to the prison and you’ll see”. However, he did not want to be examined by the

²⁵ I conducted a total of 20 interviews for crimes against property. I could not add anything from the rest 6 participants due to lack of data on their backgrounds or social life outside of prison.

doctors, which would be the general procedure, probably because they would discover that he had been using drugs and he would be criminalized even further. He thought that he would get a penalty as he had already got two penalties from previous trials during the three months he was imprisoned on remand.

Anil's case is also typical as he had acquaintances in prison and he himself had done stretches in prison. His narrative reveals the normalization of violence. He had been drifting between the streets and the justice system for some time. Anil told me that they would choose homosexuals and transsexuals to mug, but not *normal* people. So, they kicked and punched, stabbed and lastly threatened a 25-year-old homosexual victim. I could not help but wonder, "Wouldn't it be wiser to first threaten and then to stab? Maybe he would surrender." Anil nodded, "I don't really know. That's how they taught us." Reportedly, his previous cases of (probably just consuming) drugs were closed. He probably had 5, 6 or 10 cases that he got away with after giving testimony to the prosecutor. He said, "How should I say... I knew that I would get into the prison, but I did not know that it would happen now."

Ziya stood out with the number of cases of mugging, theft and drugs, reaching 147 altogether. He was being held on remand for the fourth time. The police knew him well enough to warn him not to get involved in anything on the actual night he was caught. Reportedly, his family was economically deprived. The last trial that he was remanded for was postponed for about three weeks, which he remarked "is good for the drugs", meaning his addiction. He tried all kinds of substances due to his distress. As he told me, in cases of burglary to victims' homes or any acts at night, they take him to the psychologist and hand him to a children's residence but then fights take place there. They tell him, "The door is open—leave!". But Ziya was one of the few respondents who reported to be taken to an education and research centre.

Makbule, one of the young female prisoners, surprised me at the end of our consecutive meetings, when I learned that her family's financial situation was sort of ok. Her mother was a cook, her father a taxi driver and her brother studied at university. She was 16 at the time of our interview, a graduate from the 8th grade, and was charged with mugging, which was also intermingled with drugs. The effect of drugs or simply being consumed by the seductiveness of transgression (Hayward 2002) could have led her to mugging. This was her second spell behind bars, this time for 2 months. She had about 15-20 other cases in total. "They do not detain pretty girls on trial... but this time it was heavy. I sort of *expected* to be detained. They will keep me for a long time and then release me," she said, in a tone of voice that revealed she thought she deserved being locked up.

As in many other cases, **Faruk** lived in a neighbourhood with everyone involved in the drug business. Not surprisingly, his family considered imprisonment as the best way for him to quit his addiction. His case was mugging to get money and a phone by pulling out a knife, which he and his friends later gave up. “I am charged with two cases [now] I am a drug addict. Isn’t it obvious sister?” About quitting, he said:

“[the will to quit] must come from inside... I don’t like alcohol, cigarettes or weed, [I like] only heroin. You can’t make ends meet by working.... I worked in a barber's shop... you go home, a month passes, you start heroin and then do not go home. 'Be imprisoned, so we know where you are, we are afraid of your death' the folks say.”

He talked about an impoverished district of Ankara. “The elderly, young people, women—everyone sells drugs. 10 Turkish Liras (€3.5) for one, 20, 50, 100 Turkish Liras.” They once obtained 17,000 Turkish Liras (€5,500) at once and it was finished in two days. “Drugs, crack cocaine, heroin, renting a car, buying clothes and so on” he explained. He had a total of 50 cases of carrying drugs, causing bodily harm, mugging, stealing by snatching, violation of immunity of residence, etc. “I am known in police stations and in the courthouse. Whoever sees me says, ‘Faruk, it’s you again!’”

Remzi was charged and detained for theft. He had 35 cases. In most cases he was found not guilty. His neighbours from the community always hired the same lawyer—the one who looks after the cases of the whole neighbourhood and is capable of releasing “detainees charged with 100 kg of weed or murder”. He was convicted and sentenced and received by a Juvenile Education House due to drugs, and later put on probation where he had to sign at a police station. He had an elementary school diploma given by the headteacher of the school who first kicked him out and then gave him the diploma certificate 2-3 years later. He was engaged before this latest detention and had already promised to quit illegal activities. However, when he turned 18, the cases started to ‘explode’ one after the other.

It was **Zeki**’s first detention. He was not detained for the other three cases, which were all about ‘heavy theft’. About the relations between the police and his neighbourhood, he said, “Everyone sells drugs. There are police officers that know the people. It’s about heroin, weed, cocaine and bonsai [synthetic drug that looks like weed] (Tremblay, 2014).” Both his brother and he went to AMATEM, the Treatment and Education Centre for Alcohol and Substance Abuse. He was addicted to heroin before. “It is over now, why should I use it? Shall I waste money on heroin?” he uttered. A considerable number of prisoners had experiences with AMATEM, though it was not successful for many of them.

Residing in impoverished neighbourhoods, substance use, prior experience with the prosecution services due to drug use and drug dealing, normalization of violence and irregular school attendance or drop-outs constitute not the determinant but the common characteristics of young remand prisoners accused of property-related offences. Both the ones charged with crimes against property and the ones accused of selling drugs had been in and out of the justice system numerous times, and could easily be referred to as repeat offenders, which they themselves did not deny. Eventually, the accounts reveal that there was an expectation of being imprisoned as a penalty and deterrence. Moreover, the experience occurred as ‘being imprisoned’ without a distinction between remand imprisonment or a prison sentence. For this group, remand imprisonment worked as a first and a last resort of crime control; a warehouse for deterrence as part of their exploding cases.

Charged with crimes related to drug consumption and drug dealing

Similar to conclusions drawn from the accounts of youngsters charged with crimes against property, defendants charged with drug dealing are also mostly migrants, residing in impoverished areas of the big cities as part of minority communities. They also have irregular school attendance and are sometimes illiterate. They are all experienced with prosecution services, if not imprisonment, like their family members. So they rely on their social capital through networking in organized illegal activities rather than cultural capital, which is non-existent.

Lale was a 15-year-old with purple under-eyes due to heroin and with an 18-month-old son left with her mother. She had dropped out of school when she fell into the trap of heroin at the age of 12. She is illiterate. She had other cases of drug use besides her current trial, for which she was detained along with all of her relatives, except her mother.

Doğu, who had already been convicted of drug dealing, said: “I wish my family was selling something else.” He had knife scars on his legs, one arm was totally twisted and had healed in the wrong direction, and the other arm had other problems. He had scratches all over the body. His entire neighbourhood was imprisoned. “There is no one left who has not been inside from my family; only two small cousins who are younger than 12 have not been in any trouble, but soon they will be.”

17-year-old **Mesut** had got into the drug business with his family. He was psychologically fragile. He said, “Are you going to ask questions about here, too? I have things to tell...I hanged myself. Cut myself with a razor blade. I would not do these kind of things before coming here...the task of officers is hard here because if somebody hangs himself, it’s the officer’s responsibility.”

Hüseyin was charged with drug dealing. He was used to being arrested due to political activism, but he also had 3 ongoing cases for drugs, breaking into a house and stealing a car. He was illiterate. One of the questions on my questionnaire was: what would you be doing if you were not incarcerated at the moment? “I would probably be found dead in a canal or be murdered. God threw me to the prison because he knew something,” he said calmly. Apparently, one of his friends died in front of him while they were smoking a synthetic drug called *bonsai* together. He was terrified that the family members of that dead friend would find him to exact revenge.

Clearly, there was no medium- or long- term, not even a short-term intervention policy in drug abuse. One of the staff members denied the lack of services for treatment of drug abuse by denying the existence of a population harmed by drug abuse, though later admitted the lack of policy. While identifying the interviewees to have an even sampling of each offence category, the low number of those accused of drug offence in the whole list, caught my attention. “How come?” I asked to the psychologist. “There are few children detained for drug offences in this city,” he told me. I could not believe that it was true for one of the biggest cities in Turkey. “But, in other cities where I conduct interviews, there are drugs in the background of other offences,” I reminded him. At the end of that working day, he revealed that they could not do much in terms of drug treatment and added, “but actually we come across no one who goes through an abstinence crisis or trembling.” Then I asked about the pills and he said they provided light sleeping pills and added, “We do not know what to do if someone actually goes through an abstinence crisis because the hospitals are full.”

Prisoners charged with drug dealing had extremely precarious lives with no recognition of vulnerabilities or need for harm reduction mechanisms from the state prior to remand imprisonment. Ümit’s (2006) research on the social environment of young people involved in crime in cities supplements information about their *habitus*. According to the research, a significant number of children involved in crime in cities are employed in the formal and informal labour markets before interrogation and prosecution. They change jobs very frequently, which indicates a focus on immediate access to economic capital rather than a sustainable, future-oriented cultural capital. Neighbourhoods in the periphery, migration, school drop-outs, working on the streets, consuming and dealing drugs and normalization of violence come to the forefront.

However, neither in Ümit’s research (2006) nor in this current study did neutralization of criminal activity, as proposed by Sykes and Matza (1957), appear in the accounts of the participants, except a case of hate crime: mugging victims identified as homosexual in the current study. The *habitus* shared by these youngsters in impoverished fields provides an explanation of how they are involved in illegal businesses, and more importantly how the criminal justice system revolving around the axiom of individual criminal responsibility, the ability to comprehend the consequences

of one's own act, gets into deadlock, as shown in Chapter III and Chapter VI. Stevens (2011) draws attention to the discrepancy between the *homo economicus* model and the social and economic reality and suggests adopting sociological approaches to the study of drug use and drug policy. He states that the employing the concept of 'habitus' that reveals the interplay between structure and agency would guide us to understand how individuals consume and trade drugs.

Charged with crimes of bodily injury and murder

Not surprisingly, contrary to the above groups charged with property- or drug-related offences, repetition of acts against the law was a lot less or did not exist at all for those charged with bodily injury and murder. As Ümit (2006) categorized the youth as recidivists and non-recidivists, murder and bodily injury fell, not surprisingly, within the non-recidivist group. Significantly, Ümit detected the cause of offences against bodily integrity as tension and being involved in disputes between groups of youth who share a habitus not different from those accused of property- and drug-related offences.

In this study, 12 out of 13 participants charged with either bodily injury or murder and detained across all six prisons, both male and female, chose to remain reserved when speaking about themselves or their lives. So the interaction was limited, probably because any small detail could have served as evidence in their serious cases, and why would they have talked to a researcher they had just met? In line with the ethical concerns laid out in Chapter IV, I chose not to extract data from those who wanted to have limited communication.

Cem, sentenced due to a homicide attempt and bodily injury, was an exception about sharing some information about his life outside the prison, probably because he was already convicted and so had nothing to hide. He received a 10-year sentence for attempted homicide and bodily injury. He was originally sent to the Juvenile Education House but then sent to the Children's Closed Institution for Execution of Punishment in the same prison campus due to his escape as a disciplinary punishment. He had 85 days left out of 180 days of disciplinary punishment before he could go back to the Juvenile Education House. He was 17 when we met, and stated that he could stay in the Juvenile Education House until he was 21. He was back in the Juvenile Education House from family-visit leave for a few days, but he ran away and was put into Children's Closed Institution for Execution of Punishment as a disciplinary punishment for running away. The day he was caught, he was inside his school with his girlfriend when everyone was leaving at the end of the day. 4-5 police team cars were in front of the gate. I was baffled. "Why were there police teams in front of the gate anyway?" I asked. He shrugged his shoulders, "To prevent trouble, 4-5 police teams always wait in front of the gate." So these officers caught Cem from his neighbourhood that

was “in the centre of Elazığ, a place full of disputes,” he quoted. He was from a rough neighbourhood, dangerous enough to necessitate police ensuring security around the school.

Charged with sexual crimes

Below are the accounts of 3 youngsters accused of sexual crime, out of 6 that I interviewed. I did not get any information about the lives of the rest as they were reluctant to speak generally, probably because of the nature of the accusation, just like those charged with bodily injury and murder. It was almost impossible to observe repetitive offending behaviour for those charged with sexual crimes, just like the former group. In Acar’s work, 65% of the defendants accused of sexual crime were non-recidivists, and this was also the case for the majority of the 6 I spoke to. Data from Acar’s work indicated low socio-economic status, irregular schooling and acquaintance with the victim. Data from participants accused of sexual offences in this study did not necessarily indicate low socio-economic status or irregular schooling, however. Ümit did not provide any accounts on youth involved in sexual crimes. It is not surprising due to its rare occurrence and difficulty in interviewing youth accused of sexual crimes, and this exclusion means a more coherent group of participants than this study.

The three who were willing to speak mostly narrated their education life and aspirations for their future careers, which led me to meaningful conclusions about their socio-economic conditions and family lives through their cultural capital and social capital. Thus, their economic, social and cultural capital had not marginalized them. Their experience and perception of the prison was different than the others and they were more eager to criticize the system as a whole. In short, young defendants with a higher level of education, a continuous school career and sustainable socio-economic income from their family stood out among the whole prison population. The marginality of the young defendants with higher social, economic, cultural and symbolic capital in the youth prison population indicates how the prison system is reserved for the poorer and more deprived sections of the society and acts as a revolving door for repeat offenders as it is shown by Wacquant who elaborates on the penalization of the marginals and the relation between ghettos and prisons (Wacquant, 2009; 2010).

Criminalizing sexuality

One of the findings of this research is the victimization through the criminal justice system of minors having sexual intercourse. According to the law, it is illegal to have sexual intercourse with a minor under 15 even with consent (Law 5237, art. 103), which aims to stop exploitation through the excuse of ‘consent’. The same law applies to minors who have sexual intercourse. The perpetrator is determined as the one who penetrates, which automatically criminalizes males in

case of heterosexual sex, as found in prior research (Akço, 1996). Incidents get criminalized if the female accidentally gets pregnant and ends up in hospital or if the family complains, assuming their daughter is being exploited. This criminalization of sexuality constitutes an example of the weakness of a separate youth justice system in Turkey as well as the strong patriarchal paradigm of the system. Consequently, those victimized because of sexual acts tend to speak about the criminal justice system and imprisonment more than those whom I assume that forcefully get into sexual intercourse with the victims and later find it difficult to speak about. So while half of the defendants charged with sexual crimes speak up, the other half keeps silent. I also interpret the silence first as a careful decision to prevent giving away information during an ongoing trial.

So the accounts below belong to those who willingly spoke about the effects of prosecution and remand imprisonment on them and especially on their cultural capital through education and their future aspirations. Here I would like to draw attention to the different ways of conceptualizing time between those charged with property and drug-dealing offences and those charged with sexual offences. While the accounts of the former group focus on the ‘present’ and how they cope with the pains of imprisonment, the latter group’s narratives focus on the ‘future’ and their aspirations for their education and future occupation. Besides, those charged with property offences and drug-related offences rely on their social capital—their social ties for acquiring economic capital post-incarceration.

In **Mert**’s case, sexual intercourse was a wilful act of both parties, but he believed he had to deny the whole thing in court. Mert was already 17 and was on the 50th day of detention. His main concern was taking the university entrance exam. He spent his time in the library of the prison as a librarian and tea-boy to forget the fact that he was imprisoned. He aimed to study electrical engineering at a prominent university. When I tried to motivate him about post-incarceration, he said, “What you say is [only] *psychological relief*.”

Kenan was 16 and was in the 5th month of his detention. At the time of the sexual intercourse, he was above 15 but his girlfriend was below 15. Similar to Mert, Kenan referred to his education and stated that he had not completed 9th grade yet because he was detained in April. The next trial would be in October, so he would miss another semester. Upon my appreciation of his ability to express himself, he said, “It was better before—adaptation [to prison conditions] to social environment is inevitable.” He later referred to his anxiety about his future, and about finding a job. He assumed that the accusation would be on his criminal record if his pre-trial detention exceeded 6 months. This was not true according to the laws but indicated how remand imprisonment and punishment could fuse in Kenan’s mind. He refused to be registered for distance learning provided by the prison system, and refused to accept any vocational training provided, saying, “A person can change his partner but not his occupation! I would not do any job that they choose.” For Kenan,

like many others, being imprisoned, whether on remand or sentenced, was the ultimate punishment because of its labelling effect.

Bahri was waiting for the results of his DNA test when I met him. The young girl he had sexual intercourse with was pregnant and the authorities wanted to identify the father. He had been incarcerated for the last 20 days but expected to be locked up for another 2-3 months. He was put in a room of his own, as he had to be separated from his peers due to being charged with a sexual crime. He mentioned that he was a vocational training school student in electronic devices. He was anxious not to miss his electronic courses and entertained hope of being subjected to alternative control measures rather than detention.

“It’s hard to catch up in the electronics in vocational training. I had drawings, I had to design a house and the last thing I was doing the plugs. I have no idea how to catch up. I like to deal with infrastructure and laying cables. I used to work in construction in the summers in order to comprehend electricity and I also worked after school...”

In all the 3 accounts above, young defendants directed the dialogue around the criminal justice system’s interference with their education, which they felt posed a risk to their future careers. Here I would like to draw attention to the difference between how the defendants accused of sexual crimes (though the agents claimed to have had consensual sexual intercourse) focus on their cultural capital and imprisonment’s effect on it and their potential economic capital. This emphasis is not detected in any accounts of defendants charged with property or drug-related offences. Imprisonment’s impact on cultural capital is discussed more thoroughly below when I look at the pains of imprisonment. Basically, the prison that serves for the majority as a warehouse, a first and last resort control mechanism, works as the commencement of punishment for those accused of ‘immoral’ offences.

Charged with crimes against the integrity of the state

Remand prisoners charged with crimes against the integrity of the state are treated as a distinctive category in the prison. All the three interviewees in this category were Kurdish, incarcerated in various prisons in the eastern Kurdish-dominated provinces of Turkey as remand prisoners before transferred to the Children’s Institutions for Execution of Punishment in the West and detained as part of an organization but not individually. In relation to this, the interview process with the political prisoners was difficult for me. I had a feeling of loss of autonomy over the research because of the uneasy attitude of the psychosocial staff members and the security guards who tried to control the length of the interviews and asked to check my notes.

All the 3 interviews were completely different in structure than those conducted with ordinary prisoners. The accounts had direct links to the history of imprisonment of political prisoners in the last decades. As a distinctive group of prisoners, they were going through distinctive pains of prosecution and imprisonment, had been developing coping strategies for these pains, had disassociated themselves from other prisoners charged with ordinary offences and could acquire special treatment from the prison authorities through various resistance movements that they had been developing as a politically bonded group.

Therefore, participants stated the irrelevance of interview questions for them to express themselves about their experiences of prosecution and imprisonment, their coping strategies and their view of the state and the justice system. So our dialogues were shaped primarily by the messages they wanted to convey to me. Moreover, these political prisoners spoke not just for themselves but on behalf of all prisoners confined for political reasons. The remainder of the interviews were about the coping strategies for the pains of imprisonment, especially the ‘collective pain’ of being a political prisoner and their view of the state’s sovereign power. As revealed in the accounts below, building cultural capital through all means mattered as a survival strategy to overcome the collective pain.

The first interviewee **Semih** had already been sentenced to 7 years, 6 months and a 1000 Turkish Lira (€330) fine when we met. He was waiting for the decision of the High Court of Appeal. He had moved with his parents and 14 siblings to the western part of Turkey through forced migration as a Kurdish minority. When we met, he had been detained for the last 2.5 years.

Tamer had been detained for the last year, was moved between prisons in different Kurdish populated cities, and then moved to Ankara. The interrogation process for the commencement of a case did not rely on evidence, and the treatment during the prosecution led him to suffer through pain. “I think they do not let us out, cause our case is in the media.” His home was shown on the news, with the title, “those sabotaging the peace process”. For Tamer, the uncertainty of his case caused him to suffer a great deal of pain. He said,

“... there is a big slander.. no evidence, nothing. I don’t know why I am in prison... in the first trial, the records were being investigated.. now we are waiting for that... the state gives money to the witnesses.”

Nuri, like Semih, was waiting for a decision from the High Court of Appeal. He was sentenced to a 32 years in the 6th month of his trial and had been waiting for the last 18 months for the appeal. He was sentenced because of wilful murder as part of a terrorist organization. He claimed that there was no evidence of murder or any accusation from the victims’ side and stated that his

psychological health was deteriorating due to charges with no evidence. To him, his case was an extra-judicial punishment.

The collective pains of political prisoners

Besides the inherent pains for all prisoners that are mentioned in the next section, there is a form of pain that is experienced collectively by political prisoners, stemming from the relationship they are in with the sovereign power of the state. **Semih**'s narration of his perception of imprisonment was directly related to his coping strategy. He informed me that the political prisoners decided to speak only to the manager and the prosecutor (of the prison) as the guardians caused trouble for them. They had given a declaration with 14 articles to the manager, stating requests such as, "No more rude manners, no (Ardef)-specialized guardian to spend the majority of the time with, no intervention in daily order, and no contact with the ordinary prisoners..." This list resembled the demands of former political prisoners in the recent history of Turkey (see Chapter III).

Right away, Semih started talking about his organization, and the significance of education and health for society. He had knowledge about the location of other young political defendants, which he thought was a maximum of about 50. Like other political prisoners, he did not like the questionnaires and shared his opinion instead: "I think it is better if they [researchers] take our opinions about the state and justice." He secretly handed me a two-page list of human rights violations directed towards the political prisoners. He underlined that imprisonment and prison conditions constituted a trivial detail for him and for his people:

"We are not unfamiliar with prisons. Every single political person entering the prison for the last 30 years, 100 years has been trying to develop him/herself and has been released with greater consciousness. Ordinary prisoners are not like this. Within an organization, you become pluralist and diverse... The prison does not affect us. We affect the prison. There is no sharing for the ordinary prisoners, no equality. Big fish eats the small. Since we are a socialist party, we share everything equally... We have six principles: love, respect, discipline, order, collectivism and communalism."

So most of Semih's accounts were about the strategies that he and other political prisoners had developed to cope with the pain of being incarcerated, the pain of being deprived freedom and the will to stay as a commune. The source of the pain was not the criminal justice system but the sovereign state. He had been in another prison for eight months, writing 10 notebooks, and reading 24 books. He said, "You either go crazy or gain wisdom." Similarly Ertan stated his will to continue with university education upon release. Moreover Semih stated:

“Three years ago, there was another case ... the state makes us enemies against itself, it nurses grievances... We have lost our belief in the state... Those getting out of the prison become presidents of districts and cities. In fact, the state knows us. We carry out a more serious war... and there is no just punishment. Even speaking different languages is enough to be prejudiced against...”

Then there were other sources of pain such as torture, blackmailing, blocked access to communication with the outside world, and the uncertainty of the political cases. Semih stated he had been tortured four times. Moreover, he said that his trial lasted 18 hearings, and he physically suffered on the way between the prison and the courthouse every time. Tamer stated similar concerns. When his testimony was taken, Semih refused to be accompanied by a soldier but a soldier was there for threatening purposes and did not allow a doctor's report.

“None of us can get a report, anyway, it might be evidence in the future... I was taken to the commando brigade. I was held for four days, so they could not help me to escape. I was under psychological and physical pressure. Then I was transferred to the court.... In Maltepe/Istanbul prison I was held in the observatory room for fifteen days but since I had my books, I did not have any problem. They took me to a temporary room without ventilation.”

He complained about not being able to transfer his thoughts to an external committee visiting the prison and stated, “Nobody feels secure in the wards of the prison. There is naked searches and battery.” He went on: “Now I have a TV and my books.” His family brought books every month. Plus he had two newspapers, one in Kurdish, and the other in Turkish. However, some of his pictures in yellow, red and green were taken away. “If we were Africans, they [the pictures] would be allowed. They are forbidden because we are Kurdish.”

He could not talk to the lawyer appointed by the state, and later he hired a private lawyer. He could see the formal criminal charge, the accusation, only after being detained. He did not know the specific law article but he knew the content:

“Membership of an armed terrorist organization, damaging the state's unity and solidarity... they have put everything in it, like food... doing propaganda... since I am a warrior in the mountains, they have given me more punishment... I was meant to receive less sentencing according to the articles... To keep us inside, they would like to keep us locked up for an average of 7.5 years... they make us serve two-thirds of it.”

The pains of incarceration were intermingled with the pains suffered through prosecution for the political defendants, which were interpreted as not individual but collective pains. About the interrogation process, Semih said,

“I received a slap on the face for claiming the right to keep silent. In the last decade, they detained 40,000 people, there are 10,000 complainants... 130,000 detainees, so there are many complainants in Turkey.”

In conclusion, the above accounts are on the collective pain of being in conflict with the sovereign power of the state that could suspend the law while maintaining its force in the state of exception of the ongoing civil war in Turkey. These accounts should be viewed as a continuum of the prosecution process in the former state security courts and current specialized courts, criminalization of youth in demonstrations, and reports of incidents of inhumane treatment in prisons like Pozantı, as laid out in Chapter III.

As put forth in Chapter III, unlike the other young prisoners on remand whose prosecution process and imprisonment is dependent upon penal law, the young political defendants' imprisonment is dependent on the state's sovereign power. Hence, as part of Turkey's governmentality, the young political defendants' lives are suspended in the state of exception in which the integrity of the Turkish State is considered to be above the rights of people. I claim that this uncertainty in the suspension of civil rights constitutes the punishment of these bare lives. The young people counted the amount of time they would be imprisoned without differentiating between remand or sentencing.

As the above experiences and accounts of young prisoners demonstrate, the prison population is far away from being a unified group. Not only do the reasons for being imprisoned vary greatly, but what young defendants occupy themselves with, in other words the very subject matter of being incarcerated, varies immensely. While those charged with drug dealing and property offences focus on their present situation and languish over the current pains of imprisonment, loss of liberty being the foremost, those accused of sexual crimes worry about their cultural capital through their education, and thus focus on the future. Political prisoners, on the other hand, focus on their case, their relationship with the sovereign power of the state and coping with the collective pain.

Managed inside the four walls in ‘pains of imprisonment’

Here, I would like to elaborate more on the diversity of prisoners by contemplating their differences in experiencing the pains of imprisonment. The modern prison, which is essentially accepted to be reserved for sentenced people, constitutes the epitome of punishment by ensuring

deprivation of liberty through its spatial limitations and regulations. Within the pain of deprivation of liberty, imprisonment also comprises other varying pains depending on the prison regimes (Sykes 1958; Crewe 2011; Liebling 2011; Cox 2011).

As Sykes first puts forth, the experience of imprisonment can be categorized into five pains:

- “i) Isolation from the larger community,
- ii) Lack of material possessions,
- iii) Blocked access to heterosexual relationships,
- iv) Reduced personal autonomy,
- v) Reduced personal security.” (MacGuinness 2000: 85)

Crewe divides up the pains of imprisonment into three categories:

- i) Pains that are inherent to the nature of incarceration,
- ii) Pains resulting from the deliberate abuses and derelictions of duty,
- iii) Pains that derive from the systematic policies and institutional regimes (Crewe 2011: 509).

In this particular study, pains resulting from the deliberate abuses and derelictions of duty did not arise as an issue in itself, except for those charged with political offences, although there could be infractions resulting from bad manners and specific personal characteristics of staff members. The Turkish state’s willingness to establish a standardized treatment for its young prisoners and its adherence to young prisoners’ rights on the surface would lead to this. However, the fact that the maltreatment of young prisoners due to derelictions of duty from prison staff did not appear in this research does not necessarily mean that young prisoners do not suffer various pains of imprisonment already inherent in confinement or arising from systematic policies or prison regimes.

Inherent pains exist in the nature of confinement, even under the most perfectly managed prison regime with absolutely no derelictions of duty. Distinguishing the inherent pains is significant to understand the experience of remand imprisonment, which in essence works as a mechanism for unconvicted defendants who are not subjected to punishment. Remand prisoners experience all these inherent pains of modern punishment, which by itself can undermine the legitimacy of an institution of remand imprisonment.

Some burdens of confinement most intrinsic to being young and inherent in youth imprisonment

On top of these, as the focal point of this research, there are pains resulting from being a remand prisoner and being under 18. As already pointed out in Chapter IV about ethical issues, uncertainty in remand imprisonment reduces an individual's capacity to cope with imprisonment, creating a sense of hopelessness and lack of control (Freeman and Seymour 2010; Reed, 2011). So remand imprisonment may pave the way to other inherent pains such as **anxiety caused by uncertainty**. Prisoners in other prison regimes with indeterminate sentencing experience this form of anxiety. Thus scholars tend to associate indeterminate sentencing with remand imprisonment (Matthews 2009). There is one difference, however. While prisoners with indeterminate sentencing are subjected to executive power, as they have to prove their progression and change in behaviour through prison programmes, remand prisoners' futures rely solely on the adjudication process to be conducted by judicial power. In fact, the roots of anxiety caused by uncertainty differ existentially. The anxiety due to the uncertainty of the imprisonment period can be extracted from the majority of the following excerpts of the participants, although there was no direct question on this topic.

Moreover, as indicated in Chapter IV, child prisoners can experience extra vulnerabilities as they are drawn from disadvantaged sections of society; they might have experienced problems within the family, homelessness, death of a parent, and/or parental separation (Wahidin and Moore 2011; Freeman and Seymour 2010). Harm caused by bullying and peer violence, loss of freedom and constraints on development are pains especially suffered by young prisoners (Cox 2011: 592). **The pain of sharing a collective life** in a total institution comprises distress similar to what Cox draws attention to.

In this research, it was expected that young remand prisoners would have experienced the inherent pains of imprisonment to some degree, although not all kinds of pains were referred to by the participants, such as 'blocked access to heterosexual relationships', 'lack of material possessions' or 'reduced personal security'. Based on the observations, 'lack of material possessions' and 'blocked access to heterosexual relationships' were the least of prisoners' concerns. A question on perception of personal security was especially directed to all young prisoners, and the great majority had no issue or concern, responding 'absolutely no problems'. As discussed in Chapters III and IV, the three prisons in Istanbul, Ankara and Izmir are high-security prisons built in large prison campuses, organized in room systems. A high population of prison guards, conducts surveillance for security. So the prison design and the presence of prison guards most probably ensure the feeling of security for the young defendants.

Pains that are inherent to the nature of incarceration may be experienced at varying levels. Based on the narratives heard and observations conducted, young prisoners experienced '**reduced personal autonomy**' as a result of being subjected to prison rules, various disciplinary punishments and obligatory workshops. An inherent pain caused by isolation from the larger community was not expressed explicitly in this research, but **pain suffered due to reduced access to family members** occupied a great deal of the dialogues. Pains resulting from **loss of liberty** and **sharing a collective life in a total institution** were revealed strongly as inherent pains of imprisonment. More importantly, as an inherent pain of imprisonment in a high security prison, **the pain of the lack of access to formal education** amplified by the **prevailing uncertainty** as part of being on remand mattered to some of the young prisoners, especially those holding a higher level of cultural capital. Lastly, political prisoners' accounts revealed they experienced a **collective pain of imprisonment** as part of their relations with the sovereign power of the state.

I would like to bypass the accounts of the inherent pains, and leave them to the empathetic imagination of readers. These are the pains of loss of liberty, loss of autonomy, the pains of being forced to sharing life with strangers in a total institution and the pain of blocked access to family. Here, it is worth mentioning that the pain of limited access to the family is used as a control mechanism by the prison administrations. Well-behaved prisoners get more opportunities to communicate with their families such as extra phone calls or open family visits. As it is presented as a gift and an opportunity given by the prison administration, it is a strong method to better control prisoners.

Likewise, labour in prison can be used as a reward mechanism. As mentioned above, prison management is highly determined by its manager and staff members. Accordingly, one of the Children's Institutions for Punishment and Execution had a well-established reward system based on labour that the others don't. Being chosen to be in the workers' dorm was a reward; an opportunity given by the prison administration.

Pain of blocked access to education: Reproduction of social class through education

As presented in the earlier section, education level and cultural capital varied between prisoners. The cultural capital was fairly low for those accused of property and drug-related offences and moderately high for the ones accused of sexual crimes and crimes against the integrity of the state. Drop-outs, irregular attendance and repetition of school years was a common characteristic of the majority of young defendants in detention. For all young prisoners, remand imprisonment meant losing the right to formal/organized education and being entitled only to distance education. Apart from the distance learning, there are literacy courses for illiterate prisoners. However, in some cases, the teachers and psychosocial services staff were unaware of the educational level of the

young defendant, or the young defendant themselves had no desire to engage in distance learning to get a diploma. In some interviews, distance learning and literacy courses were listed together with the workshops, revealing that, in some young defendants' interpretation, school education and temporary workshops had equivalent value, and were some means to be occupied.

On the contrary, for those who had a regular school life prior to pre-trial detention, being forced to do distance learning was an unacceptable situation, downgrading them socially and causing irreparable damage to their future lives. Apple states that, "there has been a clearer recognition that our educational system can only be understood 'relationally'. Its meaning, what it does culturally, politically, and economically, is missed if our analysis does not situate the school back into the nexus of dominant class relations that help shape our society" (Apple 1988: 117). The education offered in remand imprisonment in high-security prisons indicates that this form of imprisonment is reserved exclusively for the marginalized sections of society who (are supposed to) reproduce their cultural and symbolic capital in these total institutions. Basically, prison for young defendants downgraded their social position in life if it did not reproduce their educational and social capital. As prisons are reserved for the poorer and thus socio-economically and culturally deprived community members, the pedagogic work in these prisons was hard to adapt for those who did not belong to deprived communities.

This was the case for some of those accused of sexual crimes, for instance. When **Mert** asked the prison social worker how to follow the courses during detention, the social worker responded: "You are enrolled in a private school, so your teachers will come to give you exams." Mert cried out desperately to me, "Would teachers ever come? I would not come to the prison if my student ended up in the prison...I do not propose it for everyone. You would not put someone who really committed serious crimes here, but if this is a *children's prison*, you have to build a school." Apparently, not surprisingly, workshops and distant learning do not occupy the young prisoners enough to ease their distress. Moreover, being a remand prisoner meant being imprisoned, without a distinction being made between remand imprisonment or a prison sentence. Young defendants preoccupied with gaining cultural capital cared about the labelling effect.

Clearly, the curriculum of distance education, literacy classes, workshops and other cultural and sportive activities—basically, the overall environment in these prisons for young defendants—is found insufficient by young defendants with higher social, cultural, economic and symbolic capital. The prison is reserved for socio-economically deprived sections of the society, and as a revolving door for these communities. Consequently, it is possible to agree with Bourdieu and Passeron that: "total institutions ... unambiguously demonstrate the deculturating and reculturating techniques required by pedagogic work seeking to produce a habitus as similar as possible to that produced in the earliest phase of life, while having to reckon with a pre-existing habitus" (Bourdieu and

Passeron 2000: 4). For some prisoners with a higher amount of capital, prisons had not a reproductive but a destructive effect.

The limited opportunities for education, either in formal or vocational training, have wider implications on the governmentality of the Turkish youth justice system. The weakness of the element of ‘labour/education’ in the high-security remand imprisonment, as opposed to the Juvenile Education Houses where there was an emphasis on vocational training and labour, highlights the element of space for remand imprisonment, and thus the crime-control aspect of remand imprisonment through spatial organization. As shown in the later sections, the emphasis on security allows for managerialism of remand imprisonment through spatial control.

I would like to underline that the inherent pains of sharing collective life in a total institution, loss of autonomy, loss of liberty, loss of access to family and loss of access to education—hence cultural capital—can be alleviated to some extent via changes in the degree of security, prison design from closed to open, amendments in the systematic policies and regimes, and inclusion of a separate educative institution within the prison, but cannot be erased. Prison changes through new policies “governing mail, education, visitation, telephone, contact, television, furloughs” that reflect judicial attitudes (Riley, 2006:445) and the pains of ‘total institution’ (Goffman, 1961) can be weakened by the prisoners’ rights movement, judicial activism and changing policies (Riley 2006: 445). However, I argue that, children’s rights and prisoners’ rights remain limited and tied to the nature and the degree of spatial segregation to ease the pains of remand imprisonment.

In short, for all these groups of prisoners with different backgrounds, remand imprisonment is managed in the same way with a great emphasis on security. As shown below, spatial re-organization within the prison and in between prisons serves as the primary solution to control the population, just as remand imprisonment as a mechanism of spatial confinement works as the first and last resort to control citizens in conflict with the law. Within the prison, the psychosocial staff members are obliged to formulate solutions and comfort young people about structural problems related to outside life or pains inherent in youth remand imprisonment by focusing on the individual. In other words, psychosocial employees serve individualized remedies to structural problems of the young individuals. In line with Turkey’s residual, eclectic and informal welfare governmentality, adaptation to remand imprisonment is an individualized problem.

What if life in the total institution does not continue undisturbed? Shrink the space!

An evaluation of the prison management indicates a spatial arrangement, which is shrinking the space as a form of punishment or transferring between different spaces, differing from other disciplinary mechanisms such as the subjectification of inmates (Foucault 1977, 1997) or training them to be obedient labourers for the future. Most importantly, personal contact and

communication is minimized to establish order; order and discipline is secured by the use of space.

Makbule reported that once they were angry with some of the security officers, so made lots of noise by hitting the door with mops several times. Eventually they got a disciplinary punishment, being locked up in a small observatory room with an open toilet for 36 hours. “It was very dirty place—where you step you make a mark on the floor. There is one bed and a closet. There are insects in the toilet,” she said. **Ziya** was once held there for 8 hours due to disrespectful behaviour towards the officers. **Anıl** said, “Now there is the observatory room. It is a cell.” “So what is it like?” I asked, “It is covered with carpet, cold like ice... If you happen to commit a crime here, they first put you in the observatory room and change your room. It’s a punishment, plus your ‘good conduct’ gets a minus.”

So, if there are disputes, the solution is to control prisoners via the use of physical space; in other words, locking them up in even smaller rooms or let’s say cells. So the disputes are not solved through human interaction, but by containing the protagonist in a room by himself/herself. This use of space instead of human resources is worth keeping in mind, as I refer to it many more times while discussing the prosecution services in Chapter VI.

Remand imprisonment as a site of punishment

Following the use of cells as disciplinary punishment within remand imprisonment, I would like to decipher how remand imprisonment itself is used as punishment for those already sentenced. As already stated in Chapter III, according to Article 46 of the Law on Execution of Sentences and Security Measures (Law no 5275), young sentenced prisoners in the Juvenile Education Houses can be sent to the closed type prisons if they commit disciplinary offences. According to previous research, being sent to this closed type of facility is referred to as “being packaged”²⁶ among the young sentenced prisoners (Kavur 2012). During this previous research conducted in a Juvenile Education House in İzmir 2010-2011, this type of disciplinary punishment was practiced so often that the population structure of the Juvenile Education House would change from one month to the next.

During this current study, I was not supposed to interview sentenced young prisoners, but there were some interviews in which I found out that the participant was in fact sentenced and has been sent to the closed-type prison from a Juvenile Education Houses. They were not be filtered out from the sampling before meeting with me, most probably because for the officers there was no need to differentiate between the sentenced and the defendant—all were prisoners in their eyes.

²⁶ *Paket olmak.*

This failure in differentiation by the prison staff could be observed in young prisoners' accounts, too. This indistinction gets most striking in prosecutors' and judges' accounts in Chapter VI.

Doğu, who I introduced before, was sentenced to Ankara Sincan Juvenile Education House for drug dealing in İzmir, but was serving his disciplinary punishment for 6 months when I found him in Sincan Children's Closed Institution for Execution of Punishment. "So what's the difference between a Juvenile Education House and Children's Closed Institution for Execution of Punishment?" I asked. He said, "The open [Juvenile Education House] is better, as there are fewer officers. There are the army members that we contact for cigarettes. We can talk on the phone 24/7, we go on family visits, and the visits are 4.5 hours when families come to see us."

Similarly, **Cem**, who I met in Ankara and who was sentenced for attempted homicide and bodily injury, had also received a disciplinary punishment, being sent from the Juvenile Education House to the Children's Closed Institution for Execution of Punishment because of his escape. Out of 6 months of disciplinary punishment, he had 85 days left. Clearly he was counting the days. He explained to me that he would soon be 18 and could stay in the Juvenile Education House until he was 21 for education purposes, as long as he continued his formal or vocational training. He was about to start to work in the Juvenile Education House before he got this disciplinary punishment to be locked up with remand prisoners.

Considering these differences between the open and the closed, I wanted to receive Cem's thoughts on the following question, "Why are pre-trial detainees put in the closed prisons?" He replied, "Because you might abscond before the sentence is given, plus the probability of going abroad... There are fewer officers in the open one and more psychologists; let's say, there are 2-3 psychologists in here and 6 in the open. When you have an ongoing trial here, soldiers take you to the court. If you have an ongoing case when you are in the open, the officer accompanies you on a normal bus. In the open one, the officer is also dressed in civilian clothes. The officer takes you to the hospital and even takes you out for lunch if he wants. There is a 100% difference between the open and the closed," Cem explained to me thoroughly. His emphasis on how they are accompanied outside in public on the way to the court and to the hospital is striking as it shows how some prisoners might concern themselves over the labelling effect of being a prisoner. However, almost no prisoner elaborated on the legitimacy of this prison system.

Obviously, by having a law article to send the sentenced youth from Juvenile Education Houses to a closed prison for the purposes of disciplinary punishment, the state positions the Children's Closed Prisons for Execution of Punishment as a closed prison—as a site of punishment. The state brings the Juvenile Education House to the forefront as it is the final destination for a young person

in conflict with the law if he/she received punishment. So, “the Juvenile Education House stands out as a distinctive and positive looking, child-oriented institution which, as I would like to emphasize, is always comprehended in relation to regular prison” (Kavur, 2012:10). While the liberating characteristics of the Juvenile Education House are presented in relation to the closed prison, Children’s Closed Prisons for Execution of Punishment that are reserved for pre-trial detainees stand out with their incarcerating and delimitative characteristics.

Most strikingly, this ironic distinction between these two types of prisons goes unrecognized by many of the employees in the Juvenile Justice System, as will be shown in Chapter VI. Nevertheless, angry interpretations of this distinction can be heard from unexpected people at unexpected times.

At lunchtime in one of the prisons, one of the administrators asked me what exactly I aimed to get from the research. It was an awkward moment for me as a researcher, as the other administrators, the officers and the psychologists were gazing at me. I responded as openly as I could, saying: “I focus on the perceptions and interpretations of the children about this prison. What’s its function? 75% of all the imprisoned youth is held on remand but not sentenced.” He replied, “You read the laws, so what conclusions did you draw? ... The most important thing here is that we send the sentenced to the Juvenile Education House and receive the pre-trial detainees here. This is the biggest absurdity.” The psychologist intervened, “we cannot justify this to the children, this nonsense...” And the administrator kept saying: “Stupid nation! The bureaucratic mentality! In Europe, a prison for children is with a capacity of 50... it should be away from the adults...Judges and prosecutors in the General Directorate of Prisons and Detention Houses in Ankara stay there on duty for 2-3 years. They see that place as a stepping stone to higher positions.” So he was complaining about not being able to develop a better system because those who would undertake this task did not stay there long enough to start long term and sustainable models.

Mert who was charged with sexual crime and criticized the education system of the facility as he dreamed of entering the university exams, made a long speech that I would like to share directly here. The question was, “What is the function of the prison?”

“When you enter the prison, you should be reintegrated in society. The education level should be the top level. Troubled children come here and I do not mean myself. Would he come to himself within four walls? Let’s say a guy received a 9-year sentence. Instead of building a residence for the officer, build a hospital. What would I do if my head explodes here? I was studying in high school; now I am here and I am not sentenced. I was aiming for points (in the university entrance exam) Education, health, shelter...”

He listed the human rights and eyed me for a moment if I comprehended. He then continued,

“I also do not get healthy food. And it is spent from the taxes, from the taxes of my mother and father. This prison is the most insufficient among the most insufficient of the most insufficient and this can drag a person more into crime. I had big dreams. When I am not treated right, I go down. Let him use sports facilities. The prisons should be like hotels. You put [me] together with someone who is detained 3-4 times for the same offence; someone who does not come to his senses? The two are not the same. I do not advocate for the same standards for everyone but for the well-behaved ones. If they send the ones receiving disciplinary punishment in the open prison to the closed, does it not mean that this closed prison is the worst prison of the state? But they only build mosques... The State puts the adults in the closed prison to serve their sentences. Why am I here? Because of ABSENCE! Because there is no specific prison for children. The ones who receive [disciplinary] punishment in the open prison come here for punishment. I am on pre-trial detention here. There is the reward system in the adult prisons for those who start the last phase of their sentences. The psychology of the child is less strong. We don't have such thing here [like the reward system]; there is only one closed visit per week...”

The marginality and outstanding talk of Mert is worth focusing on. Apart from Mert and Kenan, among the other 48 young defendants it is almost if not totally impossible to find a genuinely structural criticism of the prison and the justice system. On the contrary, apart from small-scale negative comments about family visits, the quality of workshops and sports facilities, young defendants appreciate what is provided and organized for them such as cultural events and workshops. The fact that work dorms or family visits can turn into rewards to keep the prisoners under discipline and control is appreciated by majority of the young defendants.

The most striking aspect for the nature of the research question is that apart from **Mert**'s accounts on the contrast between the Juvenile Education House and the Children's Closed Institution for Execution of Punishment, no other young defendant explicitly questioned their legal status as a defendant—as a young prisoner locked up in a punishment facility for an unlimited period of time without being sentenced by the court. Let's remember **Makbule**'s narrative. She had been incarcerated for the second time and this time for about 2 months. She had about 15-20 other cases in total. She told me that: “They do not detain pretty girls on trial... but this time it was heavy. I sort of expected to be detained. They will keep me for long and then release”. So in her line of thinking, the nature of the offence was balanced by being locked up during the prosecution period, which is seen as part of punishment if held on remand.

For the majority of the prisoners, there is an internalization and tacit consent of individual responsibility in breaking the law. The direct contact with the state is strongly secured through the

police, the prosecutor, mostly weakly by the lawyer, by the judge, the prison manager, and the prison guards, and weakly by the social work official at the court or in the prison and in the society. Despite the bitter taste of incarceration revealed through the accounts, the young prisoners did not question the imprisonment's justification in the vast majority of the narratives.

The majority of the young defendants accept the repressive, security-oriented, control-dominated regime of the remand imprisonment. The fact that I could not lead them to utter any systematic criticisms though any of the questions reveals a hegemonic relationship. Incorporating previous Marxists such as Lenin's conceptualization of hegemony and scrutinizing it, Gramsci speaks of a hegemonic relationship where tacit consent is the key, rather than domination through force (Sassoon 1982; Joll 1977). Sassoon explains the Gramscian sense of hegemony in the following way,

“...hegemony is used in the sense of influence, leadership, consent rather than the alternative and opposite meaning of domination. It has to do with the way one social group influences other groups, making certain compromises with them in order to gain their consent for its leadership in society as a whole. Thus particular, sectional interests are transformed and some concepts of the general interest is promoted. Hegemony is cultural, political and economic aspects and is the foundation of Gramsci's argument that the modern state is not simply an instrument of a class which it uses for its own narrow interest” (Sassoon 1982: 13-14).

Or in Williams' words, hegemony is:

“a moment, in which the philosophy and practice of a society fuse or are in equilibrium; an order in which a certain way of life and thought is dominant, in which one concept of reality is diffused throughout society in all its institutional and private manifestations, informing with its spiritual taste, morality, customs, religious and political principles, and all social relations, particularly in their intellectual and moral connotation” (Williams 1960: 587).

Hence, in hegemonic relationships, the dominant group does not use direct force over the subordinate group to get obedience, but gains the tacit consent of all sections of society by intellectual and cultural means. Force through the judiciary is in operation where hegemony declines. Here, what stopped the young prisoners from questioning the prison system was not because they were dominated by the justice system, but that their views of themselves fitted well into the governmentality which refers to Turkey's political economy, residual social security regime, emphasis on the rights language as a mode of knowledge production and its sovereign power's relations with its citizens. Eventually, young prisoners did not question their process of criminalization that incarcerated them through remand imprisonment.

The acceptance of remand imprisonment by the young defendants would be interpreted as a façade of “neoliberal hegemony” by many scholars. Interestingly, the legitimacy of incapacitation through remand imprisonment was questioned by a minority of prisoners accused of sexual crimes on the basis of the impact of imprisonment on their education and future aspirations. The prisoners accused of sexual crimes had a different ‘habitus’ and a higher social and symbolic capital acquired by their education level, both in terms of quality and years of continuity, than their peers accused of property or drug-related crime. These prisoners criticized the lack of educational facilities in the prison, prison’s incapacitating feature leading to absences in school and the possible labelling effect the prison might have on their future careers. Many defendants expressed a feeling of betrayal by the state as they denied exploiting their sexual partners, despite their accused position as a result of Turkish state’s peculiar articles on sexual crimes. Thus, their denial of guilt might have a strengthening effect on criticism of the justification of remand imprisonment.

The formulation of criticism in ‘educational and occupational aspirations’ is worth paying attention to. This form of criticism based on future aspirations stands in contrast to consent given to remand imprisonment by young defendants accused of property and drug-related offences, who focus on their present. Here we observe the Gramscian hegemonic relationship between the young defendants accused of property and drug-related offences, and the state, based on the acceptance of individual responsibility of illegal acts. In the later sections in Chapter VI, I demonstrate that social work officials’ lack of resistance towards their social positioning in the hierarchical judicial bureaucracy indicates the hegemonic relationships they hold within the bureaucratic organization. Hence, social work officials and young defendants accused of property and drug-related offences constitute the flip side of the same coin of hegemonic relationships in Turkey’s governmentality.

This majority of prisoners who lack economic and cultural capital are reminiscent of the ghetto population referred to by Wacquant (2009, 2010). Referring to Wacquant, Bauman draws attention to the similarity of ghettos and prisons; “prisons are ghettos with walls while ghettos are prisons without wall.” (Bauman 2001:121) “Ghetto life does not sediment community” (Bauman 2001:121) that would provide compensation. Almost contrary to the narratives of youth provided by Ümit (2006), which show the communality shared by youth, Bauman underlines that “sharing stigma and public humiliation does not make the sufferers into brothers... ‘The others like me’ means the others as unworthy as I myself have been repeatedly told that I am and been shown to be; ‘to be more like them’ means to be more unworthy than I already am” (Bauman 2001: 121,122). Thus Bauman underlines the loss of the protective mechanism of communal pains in the ‘hyperghetto’.

Though compensation and solidarity could be experienced by young people in conflict with the law in Turkey, the above quote from Bauman highlights a lack of collective consciousness about a common status, preventing macro-structural issues being conceptualizing that are already difficult to grasp for those with low cultural capital. Similar to the findings of the current work, Piacentini, who conducted prison research in post-Soviet transitional prisons in Russia, draws attention to the fact that the participants did not question why the prison works the way it does, but only problematized the living conditions. ““Well it certainly feels punitive here. We have to work really hard, just to get an extra slice of bread or some new clothes”” (Piacentini 2004: 68).

Concluding remarks: Management of prisoners through the use of the element ‘space’: being locked up in a nice big container

Observing the daily life in the these high-security prisons—its roll calls, workshops, its rules, rewards and punishments— and scaling up to take a look at the juvenile prison system from the bird's-eye point of view, reveals that all practices implemented by the officers, the teachers and the psychosocial staff members serve the purpose of containing the young defendants securely and controlling them with minimum hassle through the use of space; through incapacitation at different levels via the use of space. The characteristics of these special high-security prisons work around the element of ‘space’ to ensure security while the elements of ‘discipline/labour/education’ and ‘time’ diminish in remand imprisonment.

Starting from the beginning, the most significant activity of the day is the roll calls. While workshops are the highlights of the prisons, a sustainable formal education programme to prevent drop-outs does not exist. On the contrary, young defendants lose their right to formal education as a consequence of long periods of absence. If there are disputes, the solution is to shrink the space, to lock up the young defendant in a smaller unit, a cell, so he/she can come to her senses through a lack of human interaction. Similarly, Özkazanç refers to the ‘creative’ methods to control street children who pose ‘risk’ for the security of the society in Turkey and lists numerous spatial control mechanisms such as deporting children to an island, extending school hours to keep them away from the public spaces (Özkazanç 2011: 188-191).

The term managerialism defines the prison system very well—not an emphasis on risk, but control through various categorizations. The diversity of the prisoners is disregarded. However, this diversity is revealed through the prisoners' pains of imprisonment such as blocked access to education or the collective pains of political prisoners. While being controlled in the container-like high security prisons for an uncertain period of time, young prisoners live through various pains of imprisonment that is reserved as a site of punishment in modern law.

Strikingly, for the majority, the distinction between remand and sentenced imprisonment is irrelevant. Remand imprisonment is interpreted as an inevitable control facility for those charged with offences related to property and drugs. For those charged with offences related to bodily integrity, it is an integral part of punishment for immoral behaviour. For those charged with crimes against the integrity of the state, imprisonment, whether remand or sentenced, is a manifestation of the sovereign state. Thus remand imprisonment works intrinsically as a major part of penal politics and social control mechanism with an emphasis on security in Turkey. In this framework, the decline of Juvenile Education Houses with their emphasis on labour and the rise of high-security remand centres with an emphasis on security reveal Turkey's governmentality.

While the majority of the young defendants did not touch upon a distinction between remand and sentenced imprisonment, 48 out of 50 of them did not seek to stress their right to presumption of innocence. On the contrary, the lack of criticism to structural patterns of being in conflict with the law and being imprisonment and not referring to the presumption of innocence, together, indicate to an acceptance of the individual responsibility of the crime as the traditional, liberal, rational, free choice-maker, legal subject in the criminal justice system of a liberal governance would take. Thus, structural diversities are disregarded and coping with this remand imprisonment is an individual responsibility that the majority of the young defendants, in the hegemonic liberal individualist discourse of Turkey's governmentality, take.

Chapter VI: Remand imprisonment at the intersection of legislative, judicial and executive powers

Introduction

Chapter V was mainly devoted to one part of the executive power of the youth justice system, prison management. Remand imprisonment is a special period in the criminal justice system, where judiciary power and executive power are most interconnected. However, accounts of professionals in this research reveal a tremendous disconnection between the judicial and executive branches of the state, eventually leaving the young defendants on remand in a no man's land. According to Vogler, since the young defendants: "occupy a no man's land between criminal jurisprudence and penal theory, their plight is not always given the attention that it deserves" (Vogler 1991: 258). Young defendants in conflict with the law are accused according to the legislative power, subjected to judicial power and detained on remand by the executive power, which altogether constitute the huge bureaucratic organization of the youth justice system within the criminal justice system.

Bureaucratic structure of the Turkish Youth Justice System

In Turkey's bureaucracy, the judiciary is composed of judges, prosecutors, lawyers and social work officials. Within the executive power, there is the prison administration under the general directorate of prisons and detention houses, and the Probation Administration ruled by the Ministry of Justice. On the other hand, the ministries of health, education, and family and social politics are supposed to work in collaboration with the Ministry of Justice according to the Child Protection Law. Young defendants on remand are the subjects at the intersection of the judiciary and executive powers and are managed as cases and folders as part of the paperwork process that constitutes the essence of bureaucracy. According to the legislation, and at first glance on paper, actors and institutions in the judiciary and executive powers work coherently together. However, in everyday practice, they are very disconnected. It would not be wrong to say that young defendants constitute a group of the most vulnerable subjects in the bureaucratic organization, which Weber refers to as an iron cage (Weber 1930) due to the impersonal and dehumanizing handling of matters through written documents.

The main constitutional principle of the 'separation of powers' (Weber 1978, Vol. 2) is that the judicial and executive institutions shall not influence the legislative power. In other words, according to the 'separation of powers' principle, that was developed by Montesquieu (Hansen, 2010), laws should not be proposed based on the institutions of the executive power. However, when laws are enacted, or rather adopted, from widely accepted international standards like in the

Turkish case, they may not have corresponding institutions to implement them in real life. Consequently, the criminal justice system is sustained in theory in written law, but not law in action.

As demonstrated in Chapter III, in the ethos of developmentalism, legislative attempts proceed at different paces in various time intervals, accelerating in certain time periods without analysing the existing infrastructure to implement the legislations once they are enacted. Thus, when the judiciary actors use their power to adjudicate according to the laws, they lose connection with the executive institutions. Moreover, as revealed in judges' accounts in the following section, the law-making process excludes law-implementers in a dominating and hierarchical manner that creates antagonism between legislation and the judiciary. Consequently, 'law in the books' does not match with 'law in practice', leading to a series of ambiguities and uncertainties.

On the other hand, as demonstrated widely in the sections below, discrepancies arise between youth justice professionals in the judiciary and the legislation due to judicial professionals' lack of knowledge of the legislation, such as the roles attributed to different prison types in the youth justice system. This provides significant insights into the interpretation of remand imprisonment.

Moreover, I observed that actors within the judiciary power that are prosecutors, lawyers, judges and social worker officials are disconnected from each other. This lack of interaction outside the formal, mandatory documentation is worth considering due to its impact on efficiency and interpretation of praxis. Now it is time to put the judiciary bureaucracy with its extensive vertical, hierarchical and complex structure under the microscope, so this chapter analyses the interaction between professionals in the judicial bureaucracy and their interpretation of their actions.

Judicial Bureaucracy in the Palace of Justice: Prosecutor's Thesis, Lawyer's Anti-thesis, the Judge's synthesis and Social Work Officials as Others

In the modern criminal justice system, the adjudication process is based on the idea of dialectic: a thesis brought forward by the prosecutor on behalf of the state for society; an anti-thesis brought forward on behalf of the defendant; and a synthesis, namely the verdict, formulated by the judge. In the Turkish youth justice system, a fourth actor comes onto the scene, the social work official, who works in the courthouse and informs the other youth justice practitioners during the adjudication process using the knowledge they have acquired through training.

As mentioned in Chapters III and IV, in Turkish criminal law, prosecutors and judges are bound and appointed by the same committee, namely the High Committee of Prosecutors and Judges. The Bar Association appoints defence attorneys. Finally, the Ministry of Justice appoints social work

officials as ‘civil servants’ to the judges that they will work with in collaboration. In other words, judges are commanders/superiors of the social work officials.

Taking the judicial bureaucracy in the Turkish youth justice system, it is possible to observe two basic axes of hierarchical relations. In the following sections, besides scrutinizing the role of pre-trial detention for various actors, I demonstrate the high position of judges and prosecutors relative to the other professionals, and the superior position of the lawmakers over the law-implementers, namely the judges and prosecutors.

Although prosecutors, lawyers, judges and social work officials work as parts of the same mechanism to establish justice by prosecuting young people in conflict with the law through the executive power within the legal framework, they remain in exclusive groups within themselves with minimum interaction, rather than viewing themselves as colleagues. Analyzing professionals’ accounts within their exclusive professional groups enabled me to recognize patterns intrinsic to specific fields of prosecution, defence, judgment and social work, and the implications of these patterns upon the interpretations of remand imprisonment. As Gramsci remarks, bureaucratic organizations are established on political conduct as well as technical means, which structure the relations between the leaders and the led (Migliaro and Misuraca, 1982). Dismantling and scrutinizing the bureaucratic relations in law in action reveal the governance of youth in conflict with the law. Interpretive understanding (Weber, 1978, Vol I) of what meanings justice professionals attach to their actions in the legal field is essential in this study of governmentality. So, in the rest of the chapter, I focus on the actors of the judicial bureaucracy and their interpretation of their positions, roles, view of legislation and executive institutions, their preferred practices and proposed methods to re-construct the youth justice system. These provide insights into what role they attribute to remand imprisonment.

The Prosecutor’s Thesis

Role of the prosecutors in the dialectic

The juvenile prosecutor not only puts forth the thesis of criminal conduct in case there is sufficient evidence to prosecute, but also has the right and the responsibility to claim pre-trial detention or alternative control mechanisms from the criminal peace judges at the start of a trial procedure. Hence, prosecutors’ views about remand imprisonment within the youth criminal justice system are significant in comprehending the roles of remand imprisonment in the Turkish youth justice system. Juvenile prosecutors are responsible for interrogating children in conflict with the law, requesting protection measures where necessary, and communicating with the relevant institutions

to meet the needs of the children who are victims of crime or commit a crime and who are in need of assistance, education, work, and housing.

Although not proved by statistics due to a lack of formal data collection at the state level, using interview data and court-room observations it is possible to state that the majority of pre-trial detention decisions are given at the very beginning of the prosecution, while a small percentage of pre-trial detention starts in the middle of the trial process.

Upon my inquiry to the Ministry of Justice, I have been given the information that “between 2005-2014, 382 young defendants (according to the article 20 in Child Protection law, Law no.5395) and 15,469 young defendants (according to article 109 of Criminal Procedural Law, law no. 5271) have been detained on remand after violating the alternative control mechanism articles.” Accordingly, majority of the children are subjected to alternative control mechanisms to divert from remand imprisonment. However this statistical data contradicts the qualitative data gathered from young remand prisoners and youth justice professionals.

None of the 8 prosecutors interviewed had approached the issue of remand imprisonment as an issue of the ‘rule of law’, which would imply the ‘presumption of innocence’ until proven guilty. Similarly, presumption of innocence did not matter for young remand prisoners. On the contrary, it is possible to conclude that prosecutors view remand imprisonment as an inevitable element of crime control, as a part, a beginning and continuum of a prison sentence. Accounts revealed that system management and facility improvement of high-security prisons preoccupied the prosecutors rather than the rationalities of imprisonment.

Becoming a prosecutor in the bureaucratic organization

The High Committee of the Prosecutors and Judges appoints prosecutors of the juvenile bureau. Those who have specialized in juvenile justice, and who have received education in child psychology or social work, are preferred. However, according to **Prosecutor Hasan** there are no special criteria for being a juvenile prosecutor other than being married and having children. This criterion indicates a paternalistic view that results in a peculiar understanding of diversion from prosecution in that it encourages prosecutors to be emphatic and forgiving rather than taking a systematic approach to intervene in cases. This peculiar diversion will be discussed further, as the data suggests that this particular understanding of diversion renders remand imprisonment the first-resort crime control mechanism.

The disconnection between lawmakers and law implementers was criticized by prosecutors because it was experienced in the form of hierarchy, resulting in the discontent of the law implementers and

the services they could depend on. More precisely, law implementers revealed discontent about being trapped in the bureaucracy and being reduced to bureaucratic technicians.

I asked **Prosecutor Hasan** about the distribution of the justifications of remand imprisonment as listed in the Criminal Procedural Law. He said that the “European Court of Human Rights asks for justifications, but in UYAP (National Judiciary Informatics System), the remand imprisonment template is fixed... though there is exaggeration [in criticisms], I change the term ‘suspect’ with ‘child pushed to crime’ in this template.” So I asked him why the justifications are fixed, and he gave three reasons that were wholly related to the work mentality of the justice system, which he had already criticized as only working on paper, and in which success is measured by scoring. The first reason cited by Prosecutor Hasan was caseload, and the second as habits, being inured, and viewing the work as ordinary. He said, “If you work every day in the youth justice system, you would also view it ordinary... the third reason, I cannot mention it, it will be heavy,” I insisted, so he answered: “the notion of the law... I am not a legist/legal expert, I am a law implementer, we are law implementers.” So, besides blaming the workload and how individual cases start looking alike and becoming ordinary, Prosecutor Hasan reflected on the hierarchy between the lawmakers and law implementers with a voice of remonstrance towards his position as a simple bureaucratic staff member. He was upset about not having any decision-making power within the notion of the law as science, and being restricted in the bureaucratic system that only measured success according to the number of cases, meaning scoring.

Both judges and prosecutors like Prosecutor Hasan expressed discontent and dissatisfaction about the work culture in the courthouse and how they feel trapped in their position, which has been downgraded to office work. They have to complete law cases rather than making interpretations based on their distinct legal education. Judges’ narratives enrich this reaction of discontent that is provided in the coming sections, which indicates a managerialist mentality; in other words, a concern over bureaucratic organization management.

Benchmarks and developmentalist/Eurocentric discourse and concern over system management

The language of Eurocentrism and developmentalism in the form of benchmarking dominated the interviews with prosecutors. Reflecting on my identity, I assume the Eurocentric discourse emerged easily as some of the participants asserted their comparative ideas between Turkey and “the West”. They viewed me as a researcher carrying Western values, since I have been studying in Europe. This Eurocentric, developmentalist approach was revealed in accounts comparing and contrasting the prison or overall system management between Turkey and the West, highlighting the technological advancement of the Turkish system.

Kenan has been a prosecutor in the juvenile bureau for the last three years of his nine years of prosecution experience. He started the conversation, “Before 2005, there was no UYAP (National Judiciary Informatics System), and then they distributed computers to us. Training started. I bet it does not exist even in Europe... Our prosecution system is very fast [referring exclusively to the arrests]: instructions and warrants arrive in the same minute. It takes 5 minutes to scan folders...” He manifested his satisfaction with the efficiency and fast tracking of the system, and did not pass over the benchmarking opportunity of comparing Turkey's system with European systems. These accounts indicate an aspect of a managerialist (Bottoms 1995) mentality that attaches importance to system efficiency with no agenda of penal welfarism (Garland 1990). Crime control practitioners talk the ‘can-do’ private sector values (Garland, 2011:188).

Referring to the new big prison campuses that also have high-security youth remand prisons, **Prosecutor Ali** stated, “This prison campus is very good. I was there yesterday...” He added that the prisons in this campus were constructed to higher standards than in Europe. “Did they show you the aquarium, the football field, etc.? If I were you, I would visit that campus,” he said. Not only was there an aim to convince me about the superiority of the Turkish prison system, but participants could easily assume I was interested in the prison facilities rather than imprisonment rationalities. Opportunities to keep the prisoners occupied revealed the significance given to short-term control objectives. Benchmarking remarks were made not only on the system efficiency and prison facilities but also on crime rates. **Prosecutor Adnan** referred to the lower crime rates of Turkey in contrast to Europe or Philadelphia in the USA. The correctness of the claims is beyond the scope of this thesis, but what is significant is the constant comparison of different aspects of criminology.

However, not all prosecutors embraced the developmentalist discourse. On the contrary, some revealed their contempt for this approach. I asked **Prosecutor Basri** where sentenced youth was taken in his city. Giving the wrong answer, he referred to the Juvenile Education House. “There is a Juvenile Education House in Ankara, a place only for marketing purposes for Westerners. Whenever someone comes to visit prisons, they take them there.”

Thus both embracing and disapproving accounts were given in the Eurocentric paradigm. Regardless of the positive or negative attitude towards the comparison and developmentalism, the will to benchmark indicates that the discourse of developmentalism prevails in approaching and handling issues in the juvenile justice system. In this approach, opportunities provided by prison designs and facilities and system management matters more than imprisonment rationalities, and so the distinction between prison sentence and remand imprisonment is disregarded.

The gap between the laws and the facilities of the executive power: developmentalism

Prosecutors also underlined the disconnection of lawmakers from the facilities and services provided by the branches of the executive power in terms of education/vocational training, health, counseling, care and shelter. This disconnectedness of the lawmakers from the law-implementers in the judiciary power and the infrastructure of the executive power had an impact on remand imprisonment, meaning that it has acquired the role of first-resort control mechanism, given the lack of alternatives.

Prosecutor Hasan mentioned the disconnectedness of the laws from the implementation and said, “In Turkey, laws always come before the infrastructure to implement them....The system is only running on paper. The police bring under-18s and want their duty to be finished early. If the child is below 15, an imputability report is requested and then the social inquiry report. Could you write a report in 10-15 minutes?”

I asked **Prosecutor Basri** which institutions needed to be empowered to reduce juvenile offending in his city. He said, “Every kind of institution, because they are all very weak.” Then he added, “formal education, apprenticeship, a place they could also serve their punishment, a place they could learn through work. They need to learn through work.” Apparently, some prosecutors paid attention to the gaps between the legislation and the judiciary and the institutions of the executive power. However, when asked about what kind of social policy institutions could be developed to prevent crime, the response was to put the individual responsibility on the child in conflict with the law, and assert that they should be guided through work discipline.

Apparently, prosecutors viewed young people in conflict with the law as a more or less unified unit of underclass who had trouble acquiring societal norms. Accordingly, being in conflict with the law could be controlled through acquiring work discipline, which was the responsibility of the individual, as the executive power could not realize other measures of protection or diversion. As a consequence of the disconnection of lawmakers from the services of the executive power and law implementers, remand imprisonment is interpreted as a warehouse, in other words, first-resort crime control mechanism.

The disconnectedness of the law-implementer prosecutors from the prison system

On the other hand, the law-implementer prosecutors were disconnected from the definitions given in legislations. A lack of knowledge of the roles of the different types of prisons in the youth justice

system revealed itself which I later systematically tracked and which has direct implications on the interpretation of remand imprisonment.

This lack of knowledge on the institutions first became clear to me while sitting in a court clerks' office, when the summoner of a juvenile judge started explaining the documents and I realized that his knowledge contradicted the law. We got into a disagreement about Juvenile Education Houses and the Closed Institutions for Execution of Punishment and ended up finding a prosecutor specialized in the administration of the measures and sentences. Apparently, the prosecutor did not know the functions and differences of these two different prisons. So, in order to understand the familiarity of the prosecutors with the institutions of the executive power, I directed the same question to the prosecutors: "Which institutions receive sentenced young people in your city?" Instead of asking which prison receives remand prisoners and receiving the right answer as "the Closed Institution for Execution of Punishment", those newly established but widely-known institutions, directing the question in reverse helped me to elaborate on whether there was a distinction between the legal status of remand prisoners and sentenced prisoners in the law in action. 5 out of 8 prosecutors (**Kenan, Hasan, Korkut, Fehmi** and **Adnan**) said that the Closed Institutions for Execution of Punishment took the sentenced young people, though by law they are entitled to detain remand prisoners.

All this lack of information or misinformation on the law implies a gap between law in books and law in action. Through the bureaucratic route, young sentenced prisoners and remand prisoners end up in the right prison as indicated by the law. As one of the prison managers told me while discussing the lack of coordination between the executive and judiciary powers, young sentenced prisoners are first received by the Closed Institutions for Execution of Punishment and then transferred to the Juvenile Education Houses, or they are already detained on remand in the Closed Institutions for Execution of Punishment and so transferred to the Juvenile Education Houses or adult prison facilities if they turn 18. Prosecutors and judges' lack of knowledge tells us about the prosecutors' rule of law, penalty and the principal perception of remand imprisonment as warehousing.

After wrongly stating that the Closed Institution for Execution of Punishment is the prison designed to receive sentenced youth, **Prosecutor Kenan** told me:

"That is the new place for the children. The opportunities and standards offered there are very high. The children have the courses and everything but they refuse to go there, as they are drug addicts and steal as an occupation. The parents are in prison, and they want to take cigarettes to their parents. Everyone in their communities is a thief. It is necessary to cut their links with the social environment, though their whole neighborhood are thieves."

In between, I mentioned the activist platform named “Shut Down Children’s Prisons Platform” and asked his opinion on alternative mechanisms. He replied firmly, “The platform members should guard their own homes. They should go to certain neighborhoods with cutters...” I replied, “in that case, the situation looks intractable, so what would be your proposal?” He continued, “The solution... if the income raises over 15,000-20,000, the first thing would be constructing apartments.”

Mentioning that people move from one tin house to another during police searches, Prosecutor Kenan said:

“...in case they move from tin houses to apartments, where would they escape? Up? ... We have 2 million Syrians, 1.5 Iranians... how am I going to register all these according to the population law? ... If the income raises above 15-20,000... Bourgeois does not only mean fancy women. Bourgeois wants theatres, roads and brings capitalism, as they go around, the number of slob decreases. Nobody aspires to be a slob.”

Apparently, Prosecutor Kenan hoped that with the rise of income level, gentrification would take place that could make control and arrest easier, while at the same time the marginalized population would aspire to bourgeois values of urban life, which would decrease juvenile offending and thus make prisons redundant. In this notion, young people in conflict with the law are individually responsible to make themselves upwardly mobile and refrain from illegal behaviour. The “pedagogical approach to youth welfare justice that has a greater likelihood of ‘success’ with clients who are closer to ‘respectable’ as opposed to ‘rough’ values” (Ilan 2007: 219), which could be found in social services in the Western context, similarly manifested itself in prosecutors’ accounts in Turkey, which has relatively little social service praxis. Here, the values of the ‘respectable’ class would be attained through the use of space—gentrification rather than interaction with social work officials.

Prosecutor Hasan added that requesting remand imprisonment had become more difficult. He asserted that only 10% of prosecutors' remand requests were accepted by the criminal peace judges. He continued, “To me it is wrong, the child has 30 cases [an example of ‘case-explosion’], there has been deferment of the announcement of the verdict and also offences that were not recorded... What to do with this child [other than detaining him on remand]?” Prosecutor Hasan’s view about the work culture in the courthouse and remand imprisonment provides insights about both how remand imprisonment reaches absurd percentages and how these skyrocketing ratios remain unproblematic, as remand imprisonment is viewed as a first-resort control and deterrence mechanism and the probable commencement of a prison sentence.

Prosecutor Hasan made no clear distinction between remand imprisonment and prison sentencing, and viewed remand imprisonment as the first stage of punishment or a harsh warning to deter young people from getting into more conflict with the law, especially recidivists who talked about their ‘case explosions’. So for him, remand imprisonment ratios are not even considered an issue. These perceptions of law implementation do not appear in the template that Prosecutor Hasan referred to as fixed. Clearly, there is a distinction between the law in the books and law in perception and action in the practice of remand imprisonment, according to prosecutors like Hasan.

Case explosions: Remand imprisonment as deterrence and control

“Case explosions” as introduced in Chapter V, which were problematized by many young detainees, refer to the accumulation of criminal cases of young defendants that have not been prosecuted or sentenced before due to two reasons. First, prosecutors and judges tend to refrain from criminalization and tend to use imprisonment as a last resort. Judges refer to deferment of the announcement of the verdict, or do not convict, or the prosecutors do not prosecute. Second, the police sometimes cannot catch the suspected young person, and thus he or she cannot be prosecuted. As a result, cases of young individuals explode, reaching up to 70, at which point prosecutors decide to prosecute and request remand imprisonment, and the deferment of the pronouncement of the verdict is cancelled due to reoffending within a certain time frame. More significantly, these “case explosions” first hit young people in conflict with the law during remand imprisonment, when they finally reflect back and think: *so in the end, after all the cases that I was not convicted for, I am now incarcerated.*

Considering the emphasis given to “case explosions” by the young remand prisoners, I asked some of the prosecutors about the legal factors leading to this phenomenon. **Prosecutor Basri’s** comments on “case explosions” and their relation to remand imprisonment demonstrates how remand imprisonment can be used as a deterrence or the first stage of a continuous punishment through imprisonment. He had thorough explanations for “case explosions”, which has significant implications for remand imprisonment. He stated:

“Before 15, the child cannot be easily detained on remand [due to special restriction in the law], if there is no mugging or murder... once you detain the child, you start getting all the testimonies of the previous crimes. There is lots of offending, and they turn into prison sentences [because] the child does not refrain from reoffending. Offences requiring over one year of prison sentencing cannot be turned into fines, and those over two years are not eligible for deferment of the pronouncement of the verdict. That is case explosion... children forget to appeal... due to too many cases... There was a child who was detained

on remand as soon as he turned 18. He said, 'I wish you had detained me for my first theft, as I viewed it as a game.' It dawns upon them when they are detained on remand. Otherwise they assume there is no penalty... Always the same people, around 30-40 children... it's about theft and drugs. They are mostly from the slums—we do not have customers from more well-off neighborhoods."

Later I asked Prosecutor Basri for the justifications of remand imprisonment. He explained, "Theft from a building, mugging, stabbing, risk of absconding, repetitive offending...". He also added that prosecutors do not favour alternative control mechanisms and that judges decide on remand imprisonment for certain young people—those who come to the court a lot, not the ones who go to school or work. He added, "Sometimes, you cannot deliver any message by telling them, but once the gate of the prison slams shut, they understand." After a while, he concluded, "In fact, at some points, remand imprisonment is used as deterrence." In this framework, again, there is no reference to legal rationalization and justifications of remand imprisonment as given in the law. Remand imprisonment is seen as both the last resort and also as the first resort to be applied to divert away from being in conflict with the law. Moreover, prosecutors embrace normative class assumptions that these young people are from the underclass and lack work discipline to be integrated into a docile workforce.

After giving similar explanations about 'case explosions' to Prosecutor Basri, **Prosecutor Bulut** said children are mostly detained on remand due to recidivism for offences like theft or detained given the seriousness of their offences such as sexual offences. Although **Prosecutor Bulut** left this rationalization thoroughly unexplained, it is possible to state that young people in conflict with the law are detained on remand to be stopped and taken under control. According to the second reasoning, those who are suspected of committing serious offences are detained based on the rationalization that their chance of getting a prison sentence, and thus absconding, is higher. When asked how the prosecutors rationalize practicing alternative control mechanisms rather than remand imprisonment, the response implies the punitive aspect of remand imprisonment: "We apply alternative control mechanisms to those who are difficult to find, that we do not trust, and those who are difficult to detain on remand, so that they could be detained on remand the next time. For instance, if the child does not comply with the alternative control mechanism, the next time he is under investigation he can be detained on remand."

Prosecutor Bulut also responded on solely the rationalization of remand imprisonment, which could be: "(a) absconding on serious offences, which are categorical offences in the law such as sexual offences and murder, or (b) protecting the victim." I asked his opinion about the 'Shut Down Children's Prisons Platform' and his proposal for alternative methods to imprisonment. The main idea behind his response was control and effective intervention. He said, "The category of

child is very wide... You cannot evaluate a 12-year-old and a 19-year-old in the same way. You have to differentiate between simple theft and sexual offences. I mean we need categorization... You should not keep a drug dealer and drug user under the same conditions/same place... If you put them in the same place, the user becomes a dealer before release. You can use measures, like education. Otherwise the child becomes a commodity of the criminal world. It has to be categorical and functional to prepare the child for life... we need a new system..."

In all these responses, the rationalization of remand imprisonment could be taken as control and a commencement of the prison sentence. Moreover, the possible solutions offered to youth offending is control through better categorization and intervention to the subject after the proof of the offence, and not intervention on societal conditions. **Prosecutor Kenan's** interpretation of the system is illuminating in this sense. Referring to all state institutions involved in youth work, he said,

"these institutions are now being differentiated and professionalized according to 'mad-prone to criminal activity' or those who are 'orphans'. They separate the drug-user crazy ones from the obedient students. In the new system, there is separation and professional categorization according to physical feasibility, just like the level distribution in the school system. Segregation is important..."

In his comments on the justification of remand imprisonment, **Prosecutor Adnan** criticized those who complained about the fixed templates of justifications and said,

"They criticize but the justifications cannot be different, anyway... [they are] first, the severity of the offence, offences of the special category in the law, second, the risk of absconding or not showing up in the trials, and third, the probability of causing trouble in collecting the evidence, such that those who commit mugging threaten the victims and witnesses. They offend through threatening anyway. But there needs to be suspicion, enough suspicion, if you are not fairly sure, you cannot [prosecute or detain on remand]."

Among all other comments on the rationalization of remand imprisonment, these three justifications are the closest to the law in the books.

When I asked Prosecutor Adnan's thoughts about the "Shut Down Children's Prisons Platform" and alternative mechanisms, he also referred to certain categorization based on age, dividing between those aged 12-15 and those aged between 16-18. He stated:

“I support everything for those 15 or under. There should be no prison, but we cannot leave them outside, we need education houses and reformatories... Those between 16-18 are physically developed and pose a threat to their own families. The father complains that the son threatens him to get money for the drugs. We assume those between 16-18 are guilty, but that could also be researched. I support everything for those under 15.”

Here, commenting on alternatives to incarceration, the prosecutor did not draw a distinction between remand imprisonment and prison sentencing, which implies that although he has a clear idea about justification of remand imprisonment from the books, he does not see any difference. Instead, he views remand imprisonment as the first stage of an inevitable incarceration. His emphasis on classification according to certain features such as criminality vs. innocence or age categories indicates a will to manage and keep the target population under control.

Considering the comments of the prosecutors on ‘case explosions’, alternative control mechanisms to remand imprisonment, remand imprisonment itself and finally on the “Shut Down Children’s Prisons Platform” and alternatives to imprisonment, it is possible to arrive at the following conclusions on prosecutors’ perceptions of the role and use of remand imprisonment in the Turkish youth justice system.

Use of remand imprisonment as a first-resort deterrence and control through classification in a managerialist manner comes to the forefront as the prominent aspect of the justice system. First of all, the law in books formulating the rationality behind remand imprisonment partially applies or does not apply at all in law in practice. So there is no clear distinction between remand imprisonment and prison sentencing. As remand imprisonment is seen as form of penalty, the methods to refrain from being detained on remand is seen as part of the individual responsibility of young people in conflict with the law. The responsibility of preventing oneself from acting illegally and being imprisoned is individualized in a context in which care-control mechanisms of the executive power remains underdeveloped. In the realm of the developmentalist discourse that prioritizes system efficiency and technology in a benchmarking approach, individualizing criminal responsibility and commencing the penalty by technologically well-established, high-security prisons is coherent and sensible.

Overall, prosecutors’ concern is concentrated on the control of recidivist youth while establishing system efficiency. The agency of youth justice professionals is significant in maintaining system efficiency, as they are concerned either willingly or as ‘cog in the machine’. As a matter of course, remand imprisonment emerges as a spatial control unit, a warehouse that is designed to work as a first-resort deterrence mechanism to divert youth into gaining work discipline. Consequently, the

criticisms in the framework on the rule of law and prisoner rights based on the bureaucratic paperwork are irrelevant to the employment of remand imprisonment in everyday practice.

The Defence Lawyer's Anti-Thesis

The role of lawyers in the dialectic

In the dialectic of the adjudication process, defence lawyers' role is to develop an anti-thesis and a strategy of defence. In the Turkish youth justice system, the defence lawyers are appointed to protect the rights of young people in conflict with the law and are perhaps the only actors in the courtroom that the young people are familiar with and know what to expect from. The role, the position and approaches of the defence lawyers are significant for the problematic of this thesis as they are the official authority to object to pre-trial detention. As already appraised in Chapter III, the absolute right to a defence attorney was given to children in conflict with the law in 1992. So, unless the young defendant already has a private lawyer, which is rarely the case, the bar sends a lawyer from the pool of 'lawyers of the criminal procedural law', who is paid a certain amount of money by the state. Lawyers' narratives and critiques propelled me to consider defence attorneys in two categories, as the 'idealist lawyers' and the 'daily Criminal Procedural Law lawyers'. This categorization emerged naturally as lawyers themselves clearly stressed this distinction.

The limited expectations from the lawyers in the courtroom, degraded to mere physical presence, led to their dispensability, which had implications for remand prisoners. The remoteness of prisons from city centres and the difficulty in accessing defendants contributed to the seclusion of the defence from the adjudication process. Consequently, the anti-thesis of the dialectic proposed by the lawyers is not as strong as the thesis brought forward by the prosecutor. Last but not least, although lawyers carry out their task on the basis of rights, a rights-based approach did not shine out from the lawyers' narratives. The salient discussion coming forth in the interviews with the seven lawyers was a critique of the juvenile justice organization based on the dichotomy of protection vs. control.

Lawyers' self-perception and views about imprisonment policies

Lawyer Selin told me:

"There are lawyers who have been trying to achieve justice since the old times and the role that they describe is a role that constructs the youth justice system... They organize training sessions and groups within themselves and develop strategies to track certain cases; there is a lawyer group like this. They describe their role as not just defending the

child but constructing the youth justice system. And then there is another group that limits itself to realizing the formality of the law, who think that no matter what they do, nobody will take their words seriously... so their role is limited to accompanying the child during interrogation. Hence, one of the groups is bigger in number but small in effect and the other group is weak in number but effective. That's why it is difficult to speak about lawyers in general."

The difference in the defence becomes apparent in scrutinizing the right to object to pre-trial detention. **Lawyer Emel** identified one of the most serious problems in the juvenile cases as the denial of right to defence attorney in remand imprisonment. "One of the most serious problems... is that our colleagues do not visit young defendants in the prison... but I do!" On the contrary, **Lawyer Sinem**, whom I ran into as she was carrying out her duty as a Criminal Procedural Law lawyer in the courthouse, stated that she preferred not to go to prisons to visit the young defendants.

Lawyer Emel continued making explanations for the lack of defence mechanism in remand imprisonment,

"... the justification for not going is the remoteness of the prisons, the relatively little money paid for defence lawyers and the belief that visiting the prison would not change the overall outcome of the case. We constantly do awareness work on the issue... Off the record, this [lack of defence during pre-trial detention] is because of our colleagues' [unwillingness]."

Elaborating on the difficulty of reaching the prisons in daily life, Lawyer Emel went on,

"Pay attention! In all cities, prisons have started to be built outside the cities. These prisons are in total isolation/segregation... The meaning of building a prison campus outside the city is to segregate the workers, detainees, sentenced prisoners, their families, everyone who has a duty there—the lawyers, doctors, etc.—everyone from society. It means killing their socio-cultural lives..."

Similarly, **Lawyer Selin** expressed her disapproval of prison policy:

"They have gathered the prisons together... Turkey is a big country, there cannot be a fair trial by opening 2-3 prison campuses [with courthouses inside] nor can there be any ameliorative programmes for the sentenced prisoners. There needs to be a road that strengthens the reintegration of the child. Where will he work? Where will he reside? ...

They do not work cooperatively with the families, and then there is no-one to give the child to... These are not ameliorative institutions; in fact, these are storages/warehouses... After a while, they will comprehend their mistake and will have to rebuild them... As soon as they can put an end to lengthy pre-trial detention periods and direct the children to the Juvenile Education Houses, they will understand the importance of locality.”

So both lawyers drew attention to the remoteness of the new prison campuses that have container-like juvenile prisons inside, which are difficult to reach by anyone from outside including the defence attorneys. This emphasis on spatiality, the spatial remoteness and spatial organization indicates a managerialist mentality that aims to contain the young people in conflict with the law.

It is striking to spot the different attitudes lawyers and prosecutors adopt towards juvenile prisons. While prosecutors tend to highlight the opportunities provided by the facility in a benchmarking language, lawyers highlight the remote, centralized management of the prisons disguised from the public and unreachable for the defence. The fact that prosecutors did not mention the remoteness of the prisons is probably because they, like judges, have no obligation to visit the facilities.

Lawyers' dispensability and the defendants' isolation in the courthouse

First of all, as **Lawyer Selin** put it, “There is no defence attorney until you reach the courthouse!” **Lawyer Emel** drew attention to the courtroom setting in which the juvenile defendant is in the middle of the courtroom, in front of the judge, away from the defence lawyer. During the fieldwork, I observed the lawyers sitting on the bench behind the defendant as they waited for their turn to defend their own client. The limited expectation from the defence lawyers was crystallized in a moment when the clerk of a prosecutor approached me while I was waiting to interview a prosecutor to ask if I was available to attend the interrogation of a young suspect, as she thought I was one of the lawyers in the corridor. The clerk was looking for a lawyer, as it would be unlawful to conduct the interrogation without a lawyer's presence. Moreover, during my observation of the trials, some judges scheduled trials after the 18th birthday of the defendant so a lawyer would not be required.

Commenting on their relationships with the judges, **Lawyer Canan** stated that, “they expect lawyers to be a neutral element,” which indicates conflictual communication between different actors of the adjudication process. **Lawyer Selin's** statement on choosing her profession points out her strong stance as a defender of rights in the adjudication process. “After I graduated from law school, I deliberately chose to be a lawyer; to me, defence seemed more alluring than judgment.” In some of the lawyers' comments, a clear opposition between different professionals is apparent. As an example, **Lawyer Melis** referred to the Criminal Procedural Law seminars organized by the Bar

Association and stated, “You learn about the artfulness of the judges and prosecutors... an occupational solidarity develops between the lawyers... this kind of attitude of lawyers leads to behavioural change for the judges, too.” These comments indicate the professional hierarchy between prosecutors and judges over the lawyers, which have implications on how the young defendants experience the criminal justice system.

After I asked **Lawyer Selin** about lawyers’ collaboration with social work officials—which I will elaborate upon in the section about social work official—she wanted to highlight the collaboration between youth justice practitioners:

“It is necessary to look at the collaboration between the judges, prosecutors and lawyers as it is necessary to look at social work officials. They should not be working as separated/detached units in the youth justice system... In fact they do not have to be each other’s enemies in the adult criminal justice system, either. Not only lawyers, but also judges and prosecutors are detached from each other. There needs to be more dialogue...”

Not all participants of the research were overtly critical about this lack of collaboration even though at times they criticize the lack of dialogue. At the end of the day, the lawyers are expected to be physically present in the adjudication process and they are, as is reported on the formal papers of the bureaucratic procedure.

Defendants’ Complaints about the Lack of a Coherent Anti-Thesis Strategy

The questions on defence lawyers were the easiest for the young defendants to comment on. When asked about their relationship with their lawyers or the moment of hearing, the frequent answer was along the lines of, ‘they say a few words: I request release or I request prosecution without detention, and nothing more.’ Young defendants complained about the limited defence assistance they received, and more precisely, the lawyers’ lack of will to defend them against the charges.

Despite the binding law on the obligatory presence of lawyers, in some cases, trials took place without lawyers, like **Makbule**’s case on mugging. In our second interview, I asked Makbule about the trial. She described it as “very bad, very very bad”, and continued:

“I did not give any testimony this time, but next time, I will... I did not speak because my lawyer was not there. There was no-one to defend me there... the trial could have been postponed until two days later or we could have waited for the lawyer for a couple of hours more... And I cannot ask my mum to hire a private lawyer for me, as she sends me money

every week. How could she keep up with all this? I used to not ask my mum for any money.”

Makbule needed a defence attorney’s assistance to formulate her defence strategy. She thought out loud, “I could tell this to the head officer or to the manager, but would the lawyer who does not show up in the trial, dare to come here to the prison?”

For **Kenan**, being represented by a defence lawyer was essential. Kenan started his narrative from his experience in the police station where he signed the police report of accusation. He said, “they took the first statements at the police station without the lawyer... there was no lawyer, I did not understand, you cannot take the testimony of a minor without a lawyer”.

During Kenan's first trial, the lawyer asked for the alternative control mechanisms to be implemented instead of remand imprisonment, “but it was too late. If he had come to the police station the police would have acted differently and maybe I would not have been here for the last five months,” he mourned. Later Kenan’s father hired a private lawyer who turned out to be too busy to travel from another city to Ankara to visit Kenan. So they communicated via letters. “Sending letters in the 21st century,” Kenan shrugged his shoulders, “10 days pass until the letter finds its way. In 10 days, the correspondent responds, 10 days after that, a letter arrives; one letter in 30 days...” Despite all the technical hardships, he was pleased with his lawyer’s strategy and preferred the same private lawyer to represent him until the end of his case.

Surprisingly, young defendants who were deeply unsatisfied with their lawyers’ way of defending them preferred to continue with the same lawyer until the end of their trial to avoid rupture. Kenan explained, “Who knows if the next one is worse than the first? At least this one knows the case. I just want the lawyer to speak more than a few words.”

Moreover, providing security through the guards was prioritized over ensuring the interaction between the defendant and the lawyer. **Ziya**, charged with mugging in his 147th case, was annoyed because the lawyer appointed by the state would not come to the prison. I asked him about the meeting circumstances and environment with the lawyer, and he responded, “The soldiers do not leave us alone with the lawyer.” So the meetings last about 5 minutes. This picture of defence element in the youth justice system was limited; an aspect of remand imprisonment that young defendants are highly aware and critical of.

Before going on with lawyers’ perception and interpretation of remand imprisonment, I would like to give some space to lawyers’ perception of the governmentality of the judicial bureaucracy, as

they all preferred to situate their critiques about remand imprisonment within the picture they viewed.

Lawyers' concern over governmentality of the judicial bureaucracy

Lawyer Emel wanted to share her concern by formulating a question that she was looking for the answer for.

“Let me tell you something from my own observations. Social work officials, judges, prosecutors, police officers and lawyers are probably the groups that receive the most training... but still this is the sphere that makes the highest number of practical mistakes. Why?... most probably due to professionals’, how to say that word, practicalness is not the right word, it’s not professional deformation, how to say it? ... I mean they just do their work routinely and just that. When the case comes to him, the prosecutor knows that he has to ask for a social inquiry report for that case, but says, ‘I know this case, no need’ and that’s it. Then the lawyer catches this and says to himself, this child needs a social inquiry report and then says, ‘the judge will return a verdict of not guilty, so why bother’. The judge looks... that’s why I cannot find the right word. Everyone sees the mistake there but everybody is somehow concerned with terminating the procedure as if these times will pass.”

Similarly, **Lawyer Melis** concluded, “...Everyone is spoilt by the other and this is not just in the youth justice system.” In their comments, both lawyers referred to the iron cage of the bureaucratic structure, surrounding not just the target population of the youth justice system. They narrate the normalization of dealing with young people's criminal cases as routine paperwork, which suggests they see the root of the problems as the court system.

Questioning the domination of managerialism in the bureaucratic criminal justice systems, Cheliotis, drawing from Blau and Scott (1962/2003), reposes the question of whether the hierarchy of authority in bureaucratic organizations, while promoting discipline and enabling the coordination of activities, also discourages the criminal justice practitioners from accepting responsibility (Cheliotis, 2006a: 401). The accounts of lawyers point to the managerialist governmentality that youth justice professionals find themselves contributing to through their agencies.

Upon my question about evidence-based policy making in the sphere of youth justice, **Lawyer Selin** responded sarcastically:

“We do not do such things. We do not feel the necessity of such a thing as a society.

We do whatever comes to our mind and we believe that it works very well and we pursue this, thus we search for no evidence. In fact, various institutions have been introduced into the system such as probation, deferment of the announcement of the verdict or mediation. 10 years have passed, and there has to be a revision after some time. If this occurs to some people, then it can be revised—this is how it goes on. That’s why there is no search for evidence... unfortunately.”

I asked her whether this approach is intrinsic to the current Justice and Development Party, and she replied:

“No, it has always been like this... The opposition party does not have it on the agenda either.... Political parties do not say ‘what is the problem with the prisons?’ ... I suggest that there has to be a policy so there is efficiency... For example, the enactment of the Child Protection Law in 2005 was an important step but due to a lack of policy, its effect has been minimal...the policy making has to be multi-disciplinary... For instance, social work officials have to be convinced; the laws do not convince them. That is why there needs to be a policy. This has to be conveyed to the public and to get support.”

Lawyer Sevgi preferred to comment on the ‘mentality’, too. “Juvenile Heavy Penal Court screams its objective by its name...these courts are just a copy of the adult criminal courts...The real objective is to punish and that sometimes blurts out.”

Like her colleagues, **Lawyer Tijen** preferred to explain the mentality of the system with examples from her own experience. She believed that children are pushed to crime and the judiciary should work only with what she termed hopeless cases such as murderers. Lawyer Tijen referred to the courts as signboards that do not represent the reality inside the courtrooms. She advocated the view that the primary objective should be reintegrating the young people without any concern for just deserts. She stated that the ingredients are there but nobody wants to cook, and went on to plea:

“Judiciary is power! The power of adjudication can be used but he wants to use this power to punish in the youth justice system, to destroy! ... We have a fortune of 30 million youth but we waste them. We either detain them, exploit them, humiliate them, not give them their right to education, discriminate them as Kurds or Armenians.”

All in all, the majority of the lawyers’ narratives are framed in a critical stance to the *mentality* of the youth justice system as a bureaucratic organization. These are in contrast to the prosecutors’ interpretations. Additionally, all of the lawyer participants had sensitivity for the youth remand

imprisonment. Most importantly, they situated remand imprisonment in their accounts of governmentality and its relation to the approach towards social work. In other words, the accounts underline the habitus of young defendants for being engaged in illegal behaviour rather than the individual responsibility or discretion; the criminal responsibility.

Critiques directed to the Executive Power as the essential element of the system and concerns about remand imprisonment at different levels

The most striking aspect of interviewing lawyers was listening to the grounded critiques about the executive power and the ministries as an essential part of the system. I should acknowledge that the willingness to suggest solutions through a system approach stems from the fact that the majority of lawyers interviewed have been actively involved in developing the defence aspect of the youth justice system for many years.

Lawyer Selin noted the lower position of the young defendants' lawyers in the dialectic in relation to the connection to protective measures carried out by social work officials:

“Courts have still not gained the quality of juvenile courts; they still view themselves as punitive/criminal courts. Making a defence is an act to be made fun of because in the defence, you should claim measures of protection. They say, ‘lawyer, pass these...’ I mean it is really depletory... In fact this is the strain of the whole justice system because your demands do not have correspondence in the community... He [the child in conflict with the law] has to endure the consequences [of the criminal justice system]. When do we protect him? Only if he is an imbecile, meaning with no will/self control.... There is no correspondence in terms of approach or services.... Distinct institutions of the youth justice system like social inquiry reports or protection measures are not realized. What remains is the adult criminal justice system: collecting the evidence, interrogation, trial...”

Complementary to these comments, **Lawyer Emel** claimed that the biggest hole in the youth justice system is the invisibility of the Ministry of Family and Public Policy. "If we look at the practices, we can say that the Ministry is more active for the victims. Why? Because the prosecutors are legally entitled to claim protective measures." Here, both lawyers drew attention to the emphasis put on the individual responsibility of young people in conflict with the law as opposed to young people as victims.

Overall, the lawyers drew attention to the weakness of the social security and social assistance mechanisms carried out by the executive power, as elaborated upon in Chapter III. In the current system, the responsibility to refrain from illegal behaviour is seen as the responsibility of the young

individual, as the ‘habitus’ of the individual is not taken into consideration. Thus, while commenting on the issue of remand imprisonment, the majority of the defence lawyers situated remand imprisonment in the system and searched for explanations and proposed solutions by referring to institutions and actors in the executive power such as different ministries, probation and social work officials. Both **Emel** and **Melis**, one identifying herself as idealist, and the other as an eager-learning Criminal Procedural Law lawyer, noted the lack of will for social inquiry reports and its consequence of ‘case explosions’ due to prior non-intervention.

Lawyer Melis gave a concrete example of a case that I had attended as a participant observer, in which she was the defence of a child in conflict with the law:

“I visited the child in prison. There was no referral to a social inquiry report while giving the remand decision, and it was claimed that alternative control mechanisms are insufficient. How could you claim insufficiency without a social inquiry report? More lawyers should object.”

So she proposed abolishing the criminal courts of peace and replacing them with youth judges to decide upon remand imprisonment. She also wanted to make social inquiry reports mandatory, so the insufficiency of alternative control mechanisms could be justified. **Lawyer Tijen**, identifying herself as an idealist, highlighted the primacy of the need to fight against the continual justification of remand.

Conversely, some lawyers searched in the law for the reason for the high proportion of remand imprisonment, and saw it as an unintended consequence that could be solved through legal-administrative means, without questioning the mentality behind remand decision-making. In other words, somewhat surprisingly, some lawyers who regard themselves as part of the idealist lawyers’ group did not necessarily question the roles of remand imprisonment in a high-security prison. Instead, they problematized the 70 % and looked to resolve it through legal-administrative means. For instance, **Lawyer Sevgi** explained the issue of the high proportion of remand imprisonment only within the legal framework. Accordingly, the young people who finally get sentences are over 18 and transferred to adult prisons, or they never get sentenced, and are thus released, or their detention counts as the sentence. All of this is considered in the introductory chapter.

On the other hand, there are lawyers like **Selin** who approach the issue of remand imprisonment from two different angles, first as a legal-administrative-bureaucratic issue and secondly as an issue of welfare institutions and social work. When I asked Selin about the possible reasons for the high remand proportion, she linked it to lengthy periods of prosecution that itself is a bureaucratic-administration problem of collecting the evidence and communication on paper. Criticizing the

warehouse-like remand centres, she proposed speeding up the administrative process of collecting evidence, limiting the maximum length of remand imprisonment and sending young people directly to Juvenile Education Houses if sentenced. According to Selin, the justifications of remand imprisonment should change and applying alternative control mechanisms to remand should be mandatory. When asked about possible alternatives to youth imprisonment, she stated:

“Proposing alternatives to remand imprisonment is difficult because since there is no administrative-bureaucratic control system, especially if children are used in offences and if they are from broken families, it is hard to make them accessible... what is needed to be done is to give a guarantee to the judge that the child can be accessible. Like in Germany... Social work officials in this kind of system are not experts in the courts, but they represent the child separately from the attorney... They say to the judge, ‘I take this kid to the institution and you will find him whenever you like. You do not need to detain...’”

Thus, while touching upon the administrative-bureaucratic implementation issues in the courthouse, **Lawyer Selin** put forth the responsibility of another profession—social work officials—outside the courtroom to assure judges of alternative control mechanisms that are not proposed in the Child Protection Law.

In short, unlike the other professional groups in the youth justice system, the majority of participant lawyers put forward a more critical stance, with a bird's-eye view of the system. However, despite the fact that they were against remand imprisonment, they did not reveal any specific opinions on the rationalities of the issue. Most significantly, the majority of the lawyers emphasized the necessity of working collaboratively with social work officials (both in and outside of the courtroom) to give weight to alternative control mechanisms to combat remand imprisonment. Lawyers' critiques about the governmentality in the youth justice system revealed the role of remand imprisonment as a first-resort crime control facility. The lawyers' stress on the lack of social inquiry reports and the weakness of social security institutions to realize protective measures demonstrate their concern over the 'habitus' of young defendants rather than their criminal responsibility or their negative rights constrained in the judicial bureaucracy. While remand imprisonment came into existence as spatial control through high-security prisons, the prisons' spatial distance constrained the lawyers' already dispensable agency in the adjudication process. For some lawyers, the use of these prisons could be challenged by the focus on 'habitus' of the crime, while for others their existence of these high security remand prisons can only be reduced through legal intervention or system efficiency.

Social work officials' ambiguous role in the adjudication process

Social work officials in the courthouse is the actor group that is later introduced to the adjudication process and is principally not located in the idea of the dialectic. In 'law in action', the picture of juvenile justice courts get complicated with the introduction of social work officials, who do not find a place in the dialectical schema and can fall into the category of 'undefined others'. It is normal to expect that actors like social work officials that do not find themselves a sustainable, secure position in the system resist the hierarchical relationships. However, in the Turkish youth justice system, the signs of resistance from social work officials are very weak, which may indicate hegemonic relationships in the Gramscian sense of the term. It is difficult to break the cycle of hierarchical relations between youth justice professionals. Hence, Uluğtekin draws attention to the solid, non-flexible, hierarchical atmosphere in which judges and prosecutors have power over social work officials (Uluğtekin 2014). Moreover, social work officials asked to fit into an adversarial role – one that they are not prepared for through their training. In other words, it's a very different social world to the one that they are expected to fulfil professionally. As they write the reports without fieldwork and mostly without interviewing the families, Uluğtekin calls them 'Meeting the Child Forms' (Uluğtekin 2011: 225).

Unlike the other youth justice professionals that are institutionally organized either under the High Committee of Judges and Prosecutors or the Bar Association, social work officials are neither bound by nor united by a higher organization. The Ministry of Justice appoints them individually. Only the graduates of social service experts can unite within the Social Service Experts Association.

Social work officials are responsible for assisting the child in need of protection through the court process, conducting social inquiry of the child in conflict with the law, and preparing social inquiry reports for two reasons:

- a. To determine the imputability of the child, meaning whether the child is mentally capable of understanding the crime, to assist the judge to decide whether the responsibility for the crime can be attributed to the child;
- b. To determine the needs of the child to be met by the social assistance delivered by the executive power.

Essentially, regarding the child in conflict with the law, the social work official should be able to provide a picture of their mental, social and environmental conditions and propose a roadmap to

the judge so he/she can impose protective measures around the issues of health, education, family counselling and housing. Most significantly, if thoroughly informed by the social work officials about the health, education, family affairs and housing conditions of the young defendant, a judge prefers judicial control mechanisms within the community to pre-trial detention. However, the conditions for social work officials to fulfil these tasks are not met in the judicial bureaucratic structure.

Today, social work officials are appointed by the Ministry of Justice to their positions in the family courts, juvenile courts and juvenile heavy penalty courts, or to the prisons, according to their preferences and scores in the public personnel selection examination. According to the accounts of social work officials, they receive standard civil service training after they start their jobs, and attend common training sessions organized for all youth justice workers.

Four factors or situations make the position of social work ambiguous and undermine its value, which ultimately has implications on the praxis of remand imprisonment. The **first indicator** of the ‘othering’ is the ambiguity of the definition of a ‘social work official’. The definition is wide. Social work officials are graduates of courses on social services, psychological counselling and guidance, psychology, sociology, child development, education, family and consumption sciences. So, under the umbrella title, everyone is expected to complete the same tasks, and distinctions according to educational background are not made. To give an example, a social services graduate who has been trained to do field research in a young defendant’s social environment and school, and a psychologist who is trained to focus on the mental state of a young defendant can substitute each other on daily basis.

This ambiguity has a historical background as laid out in Chapter III. As one of the social work officials narrates, after the introduction of the Child Protection Law in 2005, the government went through a huge recruitment process, hiring hundreds of social work officials to work in the juvenile courts. Many of them were graduates of education faculties, so maths and physics teachers who scored highly in public exams became social work officials, and they are still in that role today.

Strikingly, one of the pedagogists, **Fikret**, who graduated from the physics department of the education faculty, addressed the question ‘who is a pedagogist?’ He answered his own question as: “someone who assists a kid to draw a roadmap and guidelines for education and career building.” Fikret generally criticized the youth justice system for doing things for the sake of doing them. **Social work official Melek** stated that there should be three people in court—a pedagogist, a psychologist and a social services graduate—and added that the hiring process depends on the demand of the judge and the approach of the Ministry of Economy. She said: “After I graduated, I

learned that a psychological counselling graduate, a psychologist and a social services graduate do the same job. But we should not do the same task.”

Another **social work official Seyma**, differentiated between the duties of professionals.

“Psychological counsel should assist a child to determine targets and help personal development, a psychologist should give psychological help, and social work officials should do field research.”

Social work official Cemile said: “There shall be no place for sociologists or experts on family consumption [the professions that were once included in the umbrella title ‘social work official’]”. Accounts of these social work officials and courtroom observations indicate that ambiguity over the profession of social work remains today as social work officials who are graduates of different disciplines are expected to fulfil the same tasks. The same ambiguity is experienced by their colleagues in the prisons, as was shown in Chapter V. The ambiguity remains unproblematized in the eclectic, informal and residual social security governance in Turkey.

Understanding the **second indicator** of ‘othering’ requires viewing social work officials in the ‘judicial bureaucracy’ with its extensive vertical, hierarchical and complex structure. Let’s go back to the schema of dialectics in the Juvenile Court. The judge who holds the power to adjudicate bases their decision on two fundamental opposites: the thesis brought by the prosecutor, backed up by evidence; and the anti-thesis proposed by the defence lawyer, also backed up by evidence. The judge formulates a synthesis, the verdict, by considering the evidence. The judge, the prosecutor and the lawyer here form the key elements of the prosecution process. Furthermore, the judge preserves his “independence” in the adjudication process. Accordingly, the social work official’s position is defined legally as the ‘expert’ hired by the Ministry of Justice as part of its ‘executive power’ to work within the ‘judicial power’. The judge is not obliged to take the views of the social work official into account, but may consider them as additional information. So, there is a limitation of the role of social work officials, as they are not a core legal element of the court. This superior-inferior relation between social work officials and ‘their’ judges is another factor/indicator leading to social work officials’ ‘othering’.

Social work officials consider and view their expertise-inferior position differently from each other. My ad hoc focus group of **Fikret** and his colleague **Ali** had a critical stance on their relationship with the judges. Ali had been interrogated for not obeying the judge he was appointed to when he requested not to attend a trial in order to complete a social inquiry report. They argued:

“It is impossible to go out and conduct field research because then you have to get permission [from the judge]. If the state does not trust me when I say I go out to do field research, then the state should not trust the report that I prepare... In Turkey, everything is for show.”

So, some social work officials like these two revealed their dissatisfaction with their positioning in relation to the judges. On the other hand, social work officials like **Akın, Ekin** and **Oytun** normalized the hierarchical relationship with the judges as they prioritized the independence of the judges over their expertise. They claimed that the judges awarded their individual aspirations and ambitions in conducting their profession in return for maintaining good relations.

The **third indicator** of othering is that the moment when social work officials enter the interrogation-prosecution process has been fixed in law but not fixed in practice. Though social work officials are appointed to certain courts and work under the supervision of the judges, the prosecutors can request them during interrogation according to the Child Protection Law (Law no.5395). There has been an ongoing debate whether social work officials should be appointed under the juvenile prosecution bureau, as **Mine** and **Beril** proposed.

The above three factors perpetuating the ambiguity of social work lead to the **fourth indicator**, which is that the status of social work in courtrooms remains undefined. Reading and interpreting the Child Protection Law itself and its Regulation together, the ambiguity in the fundamental task of a social work official comes to surface. Although the social work official is charged with identifying the needs of the young defendant and proposing a roadmap to the judge, the only time the judge is actually legally obliged to consult the social work official is when the young defendant is under 15, to determine the imputability of the child, meaning his ability to differentiate between right and wrong and to take the responsibility of the crime.

For instance, **Fikret**'s judge prefers not to take the social inquiry reports into consideration. According to the accounts of **Melek**, who regularly attended trials taking place with victims under 18, the head judge in the Juvenile Heavy Penal Court prefers to refer to the social inquiry reports only to determine the criminal responsibility.

Moreover, the expectations from social work officials towards victimized children and children in conflict with the law differ. In practice, social work officials take the child victim to their room to give guidance on the courtroom, to prepare the child for the trial and prepare a social inquiry report. By contrast, children in conflict with the law appear in the court without being assisted or prepared. As social work officials sit near the child victim, children in conflict with the law sometimes ask the social work officials about this relationship, and whether they are related to the alleged victim.

This restriction in the role of the social work official by itself indicates that the juvenile justice system is interested in the decision of individual criminal responsibility of the young defendant

rather than his or her habitus and social security. Moreover, based on interviews with professionals in the courts, İrtiş states that the reports are hardly ever prepared, often do not fulfil the criteria if they are prepared and even if they do, judges do not read them due to lack of time (İrtiş 2010: 237).

In short, the following four factors undermine the value of social work:

- i. The ambiguity of the eligibility criteria to do social work, as a psychologist, a social services graduate and a maths teacher can basically carry out the same task;
- ii. The legal position of social work officials as experts rather than core elements of the court;
- iii. The ambiguity in the timing of the use of social work officials, who are torn between the prosecution bureau and courts;
- iv. The ambiguity in the job definition of the social work official, caught between determining the imputability of the child and determining his/her needs for social security.

Moreover, İrtiş reveals judges' complaints about the low number of social work officials, which undermines the quality, quantity and role of social inquiry in the courts (İrtiş 2012).

Selin is an exceptional lawyer who works closely with psychologists and social work officials due to her advocacy and policy-making objectives. However, as she stated, working closely and collaboratively does not exist in the Turkish youth justice system. She underlined how social work departments have not grown stronger in the youth justice system and how their predecessors should have raised social work officials' profile. Selin draws attention to the fact that:

“These social work officials do not have a job definition, no ethical rules, no written rules. In the beginning, they did not even have a physical space to work. When graduates from different programmes were introduced to the system as second-class people, they had problems in motivation and loyalty... They, just like lawyers, appear in the system physically... However, they have grown in number and are now looking for an occupational collectivity. The Ministry of Justice has started to think what to do with them but the problem is that they come from a variety of fields.”

Consequently, the Ministry of Justice does not look for professionalism, and so social work officials are hired from a variety of disciplines. They do not receive specific training, their roles are not specified nor described, and lastly they lack the infrastructure to fulfil their duties. These are the structural conundrums of the social work officials' status. **Lawyer Selin** concluded that the

youth justice system has been introduced without any infrastructure for the protection mechanisms to be fulfilled by the executive power. Thus, any kind of diversion mechanism has been insufficient from the beginning.

This consequence can be interpreted more holistically given the governmentality of the country, tied to its welfare capitalism. The eclectic and informal welfare capitalism of Turkey, which attributes the role of support to the (extended) family, informal social ties and the voluntary sector, did not invest in the institutionalization of the social work sector. Hence, social work has been given a minimal role in which the officials only intervene when the family of an individual fails to support him or her.

Different reactions to social positioning and hegemony

These ‘othering’ factors situate the social work officials at a lower level than other professionals that form the dialectics of the adjudicating process. Surprisingly, these latter professionals face almost no resistance from social work officials. Looking closely at how social work officials view themselves in the courthouse, it is possible to talk about three main categories (see below) based on the social work officials’ relationships with ‘their’ judges.

Some judges expect ‘their’ social work officials to work in a more limited framework than the wider scope of responsibilities they could take on according to the law. These social work officials are expected to use their expertise and give consultancy through their social inquiry reports only when it is necessary to determine imputability; in other words, the power of discernment, or the individual criminal responsibility of the child. In this case, the task of the social work official is limited by the judge to its minimum, which prevents any consultancy on child welfare in terms of education, health, family consultancy and housing.

The first group of social work officials had no resentment about this kind of limitation. **Pedagogist Fikret** who graduated as a physics teacher is an example of this category. Fikret showed resentment at being subject to the judge’s work culture and also the system itself, as he found it inefficient. However, he preferred to keep silent and continue working more as a civil servant rather than a professional with expert knowledge.

Then there is the **second group** of social work officials who claim to have ‘*very good*’ relationships with ‘*their*’ judges and work hard to prepare thorough social inquiry reports as consultants. They did not question the fact that their expert knowledge might not be used in adjudication. This group, comprised of **social work officials Melek, Akın, Ekin, Şeyma, Oytun, Mine and Beril** formed the majority of the participants of this research. Some social work officials

within this second group paid attention to the inefficiency problems within the system and underlined problems they faced in terms of working space, salary level, lack of technological equipment and alike. However, they did not express any criticism about the ambiguity of their position and their subjugation by the judges, and so failed to relate to the structural factors leading to their ‘othering’. On the contrary, they believed in the independence of the judges from their expert knowledge during the adjudication period.

Moreover, some social work officials attributed the cause of inefficient work or unsatisfactory relationships with the judges to individual will and individual success (or otherwise) of social work officials. **Social work official Akın** was one of those. “Why don’t I have any problems in my own court?” he asked me sarcastically. Later I asked Akın his opinion about the fact that the reports are not binding for the judge. He replied:

“This is about the legal system. The law determines the position of the judge in the legal system. This is important. The judge has to be independent. There is no doubt that an expert can be a good expert in his field, totally competent, conduct good interviews and write good reports... If the judge is willing, he can read the whole report and have a say, but if not willing, he only reads the analysis and the conclusion. And if it fits into the diagram in his mind, then he can get this assistance. And if not, he can ignore it. Now, it is not right to dictate the necessity of the reports to the judge. But it is equally not right for the judge to ignore the reports...”

Oytun, like Akın, emphasised the individual merits of each social work official in their performance and relations with the judges. He stated:

“Almost the same work is expected from all the social work officials, but there are no doubt individual differences. Not everyone is treated the same way. I have been able to get everything [requesting protective/security measures from the judge] whenever I like in the last seven years. Relationships vary from person to person. This is the same with the judges. That is the essence of the relations between superiors and inferiors.”

When I asked **Melek** if there are any daily obstacles preventing her from doing her job, she answered:

“We cannot reach the family, as the child does not give us a phone number. Visiting the child requires us to use our own money. It is also a waste of time because you cannot go to the field during work hours. These are problems occurring from being the only one in a

court. They could provide vehicles for the social work officials, or they could organize special field days, with one day being the field day.”

I asked **Mine** and **Beril** why they could not do field research in schools and at homes. They replied: “They do not provide vehicles. There is the security problem and need for money. But sometimes, field research is not necessary cause everything is very obvious anyway.”

All in all, when referring to daily problems, social work officials in this second group either reflected upon technical or financial problems in the justice system or tended to explain the limits of social work through individual abilities rather than structural positioning. Establishing a professional position in the adjudication depended on their individual success. Professional knowledge on establishing social security did not acquire its form through collective professional negotiation.

Finally there is the **third group** of social work officials, who were seldom encountered in this research. They criticized their ‘otherness’ and situated themselves in the system compared to other state officials. Besides touching upon technical and financial problems, this group drew attention to the formal and legal recognition of social work officials as experts, the value of their expertise and their unification as a professional group. However, they are smaller in number.

I asked **Cemile** and **Göktan** if there had been any changes in their working environment. **Cemile** replied:

“I wish there had been.... Because we are not under one roof, we work according to the expectations of the judge. The judge might not like your report... their explanations on the TV and other channels are nonsense. There needs to be a change from within. [The judge] has to comprehend my report.”

As a response to my question about making the system work better, **Deniz** proposed three methods, which would not relate to any structural changes.

“First, the number of social work officials should increase. Second, vehicles should be provided and security should be ensured [during field research]. Third, [**Füsün** completes by referring to distinction between different professionals], social service experts should do the research, not psychologists.”

However, as we went on, the elaboration of **Deniz** and **Füsün** evolved structurally. About the position of social work officials as expert civil servants whose consultancy could be disregarded, **Füsün** said that to break the social work officials' expertise-judges' independence dichotomy:

“The expertise of social work officials should be recognized formally. There is no differentiation between different professionals [e.g. social service experts, psychologists, sociologists and pedagogists]. Law no. 657 binds us but we should be recognized as top-level civil servants. We are even below the court clerks.”

I asked them how to make the system work. Füsün asserted that: “They are focused on the duty of the judge.” So she criticized the fact that the work of social work officials is not recognized as work that requires special training, and is thus not valued accordingly.

Overall, looking at the reactions of the three different groups of social work officials, it is almost impossible to see any trace of resistance to their positioning in the Palace of Courts, which indicates a hegemonic system of relationship, as stated in Chapter V. “In the concrete relations between the rules and the ruled, ‘the supremacy of a dominant group manifests itself in two ways, as “domination” and as “intellectual and moral leadership” ’ ” (Vacca 1982: 45). Accordingly, hegemony recalls the analytical centrality of the intellectual and moral leadership. Following this, Gramsci sees the active and conscious participation of people with intellectual and moral leadership as the key to social transformation (Hobsbawm, 1982). As Buci-Glucksmann underlines, the question of consent is an important aspect of hegemony. In fact, hegemony is not reducible to ideology. “It is *a political principle and a form of strategic leadership*, that is a guide to political action, enabling the reformulation of the question of socialist transformation in the West” (Buci-Glucksmann 1982: 117-118, emphasis original). It is this active and conscious participation of social work officials that is acutely missing in the youth justice system.

In the case of the Turkish youth justice system, despite the fact that social work officials are recruited by the Ministry of Justice as part of a formal bureaucratic process on the basis of their specialized training and merits, their position in the prosecution process is devalued. The lack of resistance to this positioning could be explained by the hegemonic relationship social work officials hold with the other three professionals of law, in particular the judges. I argue that, as the term hegemony implies, social work officials embrace this secondary or “other” position as part of a wider understanding of governmentality and citizenship in Turkey. In general, youth justice professionals, including social work officials, embrace the dominant discourse of a residual welfare state that puts the burden of the criminal act of the young defendant on his or her shoulders as his or her own individual responsibility. As stated in Chapter III, social security of the individual remains at the intersection of the informal extended family ties, namely, the social capital through

networks, the private, the voluntary sectors and the state. Recognition of social work officials who shape the flesh and bones of social security remains weak. In the hegemonic relations of neoliberalizing governmentality, social work officials' collective professional consciousness remains in the shade of the individual professional success. Individual success of social work officials and individual responsibility of rational choice-maker young defendants constitute the two sides of the coin of hegemonic relations in the already stratified and neoliberalizing governmentality.

Social work officials' responsibilities given by the law are highly related to the implementation of remand imprisonment decisions, as demonstrated in the previous discussions. Thus social work officials' own perceptions and opinion of the praxis of remand imprisonment are significant. Accordingly, all the participant social work officials were of the same opinion on the inadequacies of the implementation of the law and inefficiencies in the system. Related to this concurrence, the majority of the participants problematized the issue of pre-trial detention, elaborated on its reasons and tried to offer alternatives.

Themes arising from social work officials' accounts and practical implications of the ambiguous positioning of the social work officials for the young defendants on remand

To start with, social inquiry interviews conducted with the remand prisoners easily become insignificant in the prosecution process. **Melek** refers to the law's shortfalls and the emphasis on physical security rather than verbal interaction:

“It is a good law in terms of protective care measures but the implementation is problematic. In the simplest sense, there should be no handcuffs. There is a conflict with the gendarmes [army officers appointed for security]. I mean, the social work officials are in conflict with the gendarmes...”

Similarly, while complaining about the varying treatment of different state officials—bailiffs and social work officials—**Füsün** said:

“Here progression is realized by putting a tick next to European Union criteria... For instance, there is no room for social work officials to conduct interviews in this courthouse.... There should be enough rooms... I talk in the pre-trial detention waiting rooms... think about it, I try to talk to the child surrounded by that many men [the gendarmes].”

The accounts of **Melek** and **Füsün** indicate the security-welfare dichotomy that is intrinsic to the mentality of the Child Protection Law and the subculture of the courthouse. Preventing young defendants on remand from absconding during the trial process takes precedence over the defendant's contact with a social work official, who could inform the judge about his/her social, physical and mental circumstances, and his/her habitus, which would have an effect on both remand imprisonment and the penalty. Moreover, Füsün's accounts on the progression mentality should not go unnoticed, as it constitutes another sign of the dominance of the developmentalist discourse in the Turkish youth justice system.

The work of social work officials in the courthouses is caught in the limbo of the disconnection between the judicial power and the executive power. Social work officials seemingly do not have the means to track the praxis of protective/security measures on counselling, education, health, housing and care. **Ekin**, for instance, spoke of her astonishment at the fact that she has no means to monitor whether the protective/security measure she proposes in her social inquiry reports are fulfilled to a satisfactory level or if they are even carried out at all. **Mine** and **Beril** remarked that the protective/security measure decisions are not monitored by social work officials as they do not have the time.

I asked **Göktan** and **Cemile** whether they monitor their requests of protective/security measures through the executive power. **Cemile** stated that she does not keep track as the measures are so little and added: "there is an incentive for punishment from above, a pressure depending on the public consciousness." On the other hand, she referred to a case of a child in conflict with the law for whom she asked for limitations to stop him doing illegal acts, but received no special measures. I asked her how the praxis of measures could be developed, and she stated:

"The Ministry of Family and Social Politics is a complete disaster. They look for ways to send the child from the institution back to the family. If this was Europe, they would not give the child back to the family."

During the research, young participants did not refer to any interaction the social work officials in their prosecution period. This does not mean that there is no interaction taking place, but simply that the interaction does not have enough of an impact on the lives of young defendants to divert them from re-offending. So the majority of the defendants end up with an explosion of cases before reaching the age of 18. And in the youth justice system, these young defendants are turned into a case or folder to be dealt with. Speaking of the accumulation of cases or case explosions, I asked **Oytun** how they took place. He told me that:

“The judges and prosecutors are not well informed [about the praxis of the protective/security measures] and sometimes they do not care at all. Children do not have the phone numbers of their lawyers. They develop an understanding of ‘I do not get any punishment.’ This is until the cases are approved by the High Court of Appeal and accumulate—109 cases accumulate. The first case comes back from the High Court of Appeal, then the second case. The penalty is just multiplied where it stands: this is ‘case explosion’ in its truest sense. The first year, there is a theft, and they defer the pronouncement of the verdict; the 2nd year, there is a theft, and they cannot defer the pronouncement of the verdict, but give fines. In the 4th year, there is another theft, so they give a prison sentence. This is taken to the High Court of Appeal. All the cases are brought together: one year, one year, one year.....it adds up to 30 years...”

He went on:

“The problem is the High Court of Appeal. They wait for the child to go to prison... Today’s Child Protection Law is the best law in the world but its implementation is very limited. For instance, we can claim five measures. We can claim counselling from the school, or from the Ministry of Family and Social Policy if they drop out of school and the report is sent to the Court, but the psychological counsels and guidance teachers do not know how to do it and see it as donkey work.”

Similarly, **Deniz** and **Füsün** stated:

“Whatever the measure is, there needs to be a colleague to implement it. Can the guidance teachers do anger management? Can they do it well? Psychotherapy... We cannot find any expert on health even though we are in Ankara. The reformatories have to be renewed. How many of them have training on family counselling? The numbers are low—we cannot find them in Ankara.”

When I asked them about rising crimes in Ankara, **Deniz** and **Füsün** said that it is about “violence and drugs, but there is no statistical data.” Regarding the competence of the institutions to implement protective/security measures, they said: “As the accumulation explodes, therapy is difficult. Training psychotherapists in this area will take years.”

Questioning the quality of the reforms, **Füsün** said: “Where do they use the scientific data? Which scales?” **Deniz** supported this, asserting that: “the report is all about interrogation... the praxis is to catalyse the work of the adjudication. The words of the social work official are deemed trivial.”

The disconnection between the judicial and executive powers, or in other words, this separation, is not intrinsic or limited to the implementation of the security/protective measures by the Ministries of Health, Education, Family or Social Policy, but is also the case within the prison system and within the same ministry, namely the Ministry of Justice. Despite the introduction of the National Judiciary Informatics System (UYAP) that enables social work officials in the prisons to keep track of the information of the judicial system, there is no systematic flow of information to assess any individual information of the pre-trial detainees. Basically, young defendants are re-introduced to the judicial system as they enter the prison, although they leave behind an army of youth justice professionals through their prosecution process.

Social work officials' interpretation of this disconnection deserves more elaboration as it has wide implications on the boosting of the pre-trial detention phenomenon. In this regard, I asked **Şeyma** her opinion on the alternatives to pre-trial detention. She proposed that: "In order for the judge to track the child, we need counselling. The Ministry of Justice should appoint someone. The measures in written format do not necessarily make the child obey."

Melek underlined the significance of social work as a method to combat pre-trial detention:

"Theft and robbery have increased, there are the issues of family structure, drug addiction, and poverty. Family leisure time has to be included in the solution. If it is sexual abuse, there needs to be a health measure, real intervention. There is the negative peer effect. Our reports are very important. There is nothing created to fill up their leisure time, and there is no follow-up of vocational courses."

For the alternative to remand imprisonment, **Melek** concluded that there needs to be rehabilitation centres like reformatories to prevent recidivism.

Upon my question on alternatives to imprisonment, **Göktañ** corrected the terminology from 'alternatives to imprisonment' to 'reintegration into the society' and drew attention to the significance of measures on sporting activities, education and care. **Cemile** stated that judges hold children in remand according to the fixed category of offences. As I pushed her for a suggestion to improve the system, she gave an example of a small city in which the school children debited to the school's psychological counselling and guidance teacher one by one, and stated, "We should give a thought to the reasons for accumulation in so many cases."

So, remand imprisonment did not constitute an issue of itself in the youth justice system in social work officials' accounts. As recidivism was problematized, remand imprisonment's rationality

emerged as an inevitable form of crime control measure ensuring the security of those in criminal habitus.

Judges' synthesis

After considering the prosecutors' thesis and defence lawyers' anti-thesis and social work officials' ambiguous role as others, it is time to scrutinize judges, who are the bureaucratic actors that formulate the synthesis—*independently* holding the power to adjudicate the verdict, as well as the power to commence and terminate remand imprisonment. There are different types of judges in the system: criminal peace judges, juvenile judges in the juvenile courts, head juvenile judges and member juvenile judges in the juvenile heavy penal courts (1 head, 2 member judges per juvenile heavy penal court). They are all appointed by the High Committee of Judges and Prosecutors.

As mentioned previously, although not proven with numbers, it is a commonly shared view among the professionals that the majority of young defendants are incarcerated as remand prisoners because criminal peace judges ratify prosecutors' detention requests. Criminal peace judges are the primary authority to detain defendants on pre-trial detention at the interrogation stage. They are referred to as 'temporary'²⁷ judges who give instant decisions until the juvenile or the juvenile penal court, or any adult court substituting the juvenile courts, take over the case—within approximately a month in the case of remand imprisonment.

As noted in Chapter IV, the system of criminal peace judges has undergone a systematic change during the course of this research due to a political incident involving the interrogation of ministries in 2013-2014. Criminal courts of peace, which were responsible for deciding upon pre-trial detention, alternative control mechanisms and adjudicating certain types of petty crimes, were abolished in 2014 and replaced by criminal peace judges who are appointed to decide only on pre-trial detention and alternative control mechanisms.²⁸ This sudden change affected the interview process. The majority of the criminal peace judges had very recently started their new duty and had little to tell, and so refused to be interviewed on these grounds or were reluctant to talk due to the political tension. This abolishment and judges' reluctance to be interviewed by me is one aspect of the power mechanism inherent to the adjudication process.

The narratives below are extracted from interviews with 11 judges in the youth justice system: 6 juvenile judges, 2 head judges of the juvenile heavy penal courts, 1 retired member judge of the juvenile heavy penal court and 2 criminal peace judges.

²⁷ nöbetçi

²⁸ Some judges like **Judges Yasin** and **Defne** believed that this structural change would lead to professionalization on giving remand decisions, and thus an overall reduction in remand imprisonment.

From holding the power of adjudication to banishment

The appointment of judges to their positions reveals significant information on how they view their occupation, their relationships with other youth justice professionals and how they perform their duty in everyday court life. Some judges openly stated that there is no special criteria or consideration of the willingness of judges to take part in the youth justice system just like for the prosecutors. Moreover, as also stated by İrtiş (2009), their appointment to juvenile courts could actually be their banishment since the youth justice system is interpreted as a trivial sphere (İrtiş, 2014) where judges cannot practice their profession on lively political matters or so-called important cases. Judges who are given absolute independence from the legislative and executive powers and the absolute power to adjudicate cases on rational-bureaucratic means can be removed from their position due to the diplomatic concerns of the executive power, and be appointed to a position in the youth justice system that they find irrelevant. Thus, although being non-elected bureaucratic professionals, their judgment could be politically affected.

From this angle, the judges are not merely simple rational-bureaucratic law implementers but are actors with political diplomatic power to adjudicate, which ultimately contradicts with the principle of separation of powers. In the subculture of the judges and prosecutors, prosecution and adjudication processes are viewed as legitimate mechanisms to use power within judicial bureaucratic authority.

So, judges can suddenly find themselves becoming juvenile judges as ‘punishment’ after making the ‘wrong’ political decision in a politicized criminal case. Or, they could become juvenile judges as a result of political changes in the structure of the judicial bureaucracy, such as the closing down of the state security courts or their follow-up ‘specially appointed courts’ assigned to prosecute terror and organized crimes.

According to **Judge Melih**:

“These are usually the unwanted courts for the judges. The head of the juvenile courts of heavy penalties are usually transferred from the dismantled State Security Courts... There is nothing [no criteria]. Usually, the ones that do not want it get this position. The ones who lack a backer in the Ministry or who cannot get into other courts end up here.”

Similarly, **Judge Can**, who was transferred to a juvenile court while he was conducting the hearing of some ministers, stated: “In this country, fair trial works for children who are shoe shiners and

bagel sellers, which is why they have banished me here.” He referred to white collar, organized crimes and corruption that would not be criminalized.

These same judges reflect upon their positions as doing donkey work or being simple law-implementers just like the prosecutors. Accordingly, **Judge Şeref** stated: “I would not recommend being a judge or a prosecutor. It is nothing more than [doing] the donkey work.” He added that he makes decisions on over 2000 cases per year, not including the substitution of other judges’ work when required. His use of the term donkey work not only implied the large caseloads—courts deal with 40-45 cases a day (İrtiş, 2010)—but also represented some of other judges and prosecutors’ concerns about their work being reduced merely to basic law implementation without considers or questions about the philosophy of law. For instance, **Judge Melih**’s comments on the legislation process revealed the invisible hierarchical relationship between the lawmakers and law implementers. He referred to his discussions with one of the lawmaker judges within the academic sphere,

“... the guy [law maker] did not get the notion of law, but worked a little bit on it. If we utter this, you know what they would call us? Implementers! ... They are disconnected from the implementation.”

These judges as law implementers viewed themselves under the control and hierarchy of the High Committee of Judges and Prosecutors that appoint them and also the High Court of Appeal that examines them at times of appeal. This hierarchical positioning results in the implementer-judges feeling a loss of autonomy. Judges complained that *other* judges see the work of juvenile judges as ‘child’s play’, implying the devaluation of youth justice work in the judicial sphere. There is a constant question in the air regarding the value of youth justice work in relation to the concept of power attached to adjudication, which stands as an invisible obstacle to the individual and collective will to establish long-term policy making.

Judging young people

Based on her research with the judges in the juvenile justice system in Turkey, İrtiş proposes two categories for judges: those who use their power and skill with ‘a lot of humanism’; and those who are ‘without a soul and who ‘work with a bureaucratic mentality’ and often lack competence and knowledge’ (İrtiş, 2010: 236, footnote). The categorization of judges as those who support protective measures and those who resist them (İrtiş, 2012a) or judges who consider the social dimension and those who disregard it by implementing the juridical rules (İrtiş, 2014) follows the same line of reasoning. In this current research, besides those judges with strong tendencies to consult social work officials and request protective measures and others who merely make

decisions on punishment, the main category is comprised of judges revealing a set of contradictions revolving around the individual responsibility of young people as liberal, rational choice-makers.

This contradiction indicates an everlasting tension between the substantive rationality/natural-substantive law and formal rationality/law that is tackled extensively by Weber and later scrutinized by Sahni (2009), who focuses on the judges as *mediators*. Similarly, İrtiş also draws attention to the identity of the judge. Accordingly, the identity of the judge is not constituted as a ‘being’ but as a ‘work’ that allows shedding light on the relativity of the subjectiveness that individuals have with the system (İrtiş, 2014:233). In contrast to the substantive rationality of law that specifies extra-legal norms with a general scope of human dignity, formal rational-law refers to abstraction of legal facts that generate legal principles to be applied to all (Weber 1978, Vol. 2). Sahni draws attention to the unique burden shouldered by the judges in their vital position balancing between being personally detached and strictly objective experts on the one hand and establishing fairness in particular cases on the other. Although Sahni warns that Weber exclusively studies and implicitly favours the English judge in forging the link between law and morality in the common law conception, I argue that the tension arising from rendering just verdicts should not be disregarded in continental law such as in Turkey.

According to the data extracted from the interviews with the judges, their self-perception of their roles flux and reflux between determining individual criminal responsibility and considering the ‘habitus’ through experts’ consultancy. The prevalence of the language of human rights and children’s rights in the recent laws such as the Child Protection Law, does not emancipate the judges from the dilemma and contradiction. The imagination of the legal subject as a liberal, invulnerable, decontextualized, rational, legal, choice maker does not constitute a factor to guide the judges to ‘contextualize’ the young offenders in structural patterns of being in conflict with the law.

Their attitude towards the praxis of social assistance by the executive power has an impact on their decision to not to seek for a social inquiry into *habitus*. Moreover, their self-perceived low-ranking position as ‘law-finders’ (judiciary) (Weber 1978, Vol. 2: 653), compared to ‘law-maker’ judges (legislation), as well as their subjected position to the High Court of Appeal, has a constraining effect on their legal praxis. Judges perceive themselves to be constrained by their position in the judiciary and the feasibility of the application of their decisions by the executive power.

Eventually, these constraints add up to their interpretation of pre-trial detention as a control system for individual deterrence for repeat offenders, and commencement of the punishment of doing time for serious crimes involving bodily injury and adopt incapacitating measures for those who are in conflict with the sovereign power of the state.

What is worth scrutinizing more is a series of contradictory statements within different aspects of the system in the judges' accounts. These statements revolve around individual responsabilization of the crime and ensure the ambiguity of social work in the legislation.

The explanation of the contradictions can be made through discussing the concepts of childhood, citizenship, welfare state and social work that are interconnected around the concept of individual criminal responsibility of the liberal rational choice maker. Law makers and law implementers are trapped in a dichotomy, a binary opposition between the idea of rendering young people in conflict with the law responsible for their acts on the one hand and the idea of the Turkish state implementing protective measures²⁹ that would be provided to the citizens of a universal welfare state on the other hand. The lack of a coherent conceptualization of childhood contributes to this dichotomy. For some judges, childhood *actually* terminates at the age of 15, like in the former penal law. At the expense of repeating judges' narratives on certain issues, I would like to introduce their overall narration to have a solid ground to comprehend the contradictions.

Judge Melih is one of the judges whose accounts reveal different levels of contradictions. As mentioned above, he is totally dissatisfied with the way Child Protection Law is prepared and with the fact that it is hard to implement especially the sections on the protective/security measures. He stated that judges should embrace and internalize the implementation of the law to protect the child. However, when I asked him how often he demands social inquiry reports from the social work officials in the court, he answered that he requests reporting as frequently as the law dictates, which means only for those aged 12-15, to determine the power of discernment for being criminally responsible, but not for determining protective/security measures. Glorifying the idea of a child protection law but consulting or referring to social work officials only to determine the imputability rather than understanding their 'habitus' or the necessity of protective measures is the first set of contradictions revealed in Judge Melih's accounts.

Judge Melih's view of the duties of social work officials of the court remains ambiguous, although he has devoted a vast amount of time studying and producing work on the subject. Basically, he adopts the dichotomy in the law of whether the social work officials' role is to determine the imputability of the child, or to determine the needs to request protective/security measures, or both. Thus, he stated:

“Over time, I observe judges changing. Perception changes. You say, this is a child, a child, a child! They learn what is meant by a child abroad. The judge learns first that a child is important. He learns that a child might not be aware of his/her own actions... or

²⁹ For example, family counseling, education, health, housing and care.

you know that a child knows what he/she does is in conflict with the law but he/she has no willpower to stop him/herself... However, the social work official, even though it is not his/her job to state this, states that the child is non-imputable... The social work official does not pay attention to the willpower to stop oneself from criminal action. The judge could say that the child is imputable. But you are afraid that by relying on the social work officials' report the High Court of Appeal will reject it."

Considering Judge Melih's accounts, it is possible to say that his idea of protecting the child is limited to the option of considering the child as imputable (unable to understand the consequences of the action) and totally diverting out of the system. On the other hand, the social work officials' social inquiry reports provide data on the 'habitus' of the young defendant, which contextualizes the social actions of individuals.

Similar to Judge Melih's contradictory accounts, **Judge Osman** mostly contradicted himself about social work officials' role and reports. After commenting extensively on the necessity of a strong infrastructure from the executive power to implement judicial decisions on the protective/security measures, and criticizing the lack of a separate youth justice system with laws of its own, Judge Osman contradicted himself by commenting on the use of social inquiry reports when I asked him *how often* he refers to social inquiry reports. He stated:

"You know, reports are necessary for those between the ages of 12-15, we definitely get reports for them. However, we only get reports for those between 15-18 if we find it necessary. For instance, if we detect a mental retardation, a health problem, a mental deficiency, we first ask our expert [social work official] to have a meeting with the child. If we are still in doubt, we send the child to a hospital to the mental section, to receive a report on the criminal responsibility. We get this report for all of those related to drugs, regardless of the age."

Here, consideration of an analysis of 'habitus' as proposed by Ümit (2006) could work as an emancipatory form of knowledge to break the dichotomous decision-making process on whether the young legal subject is individually responsible of the criminal act.

Critiques of the legislation and the insufficiency of the services of the executive power

Judges' critiques of the legislation and the insufficiency of the services of the executive power have direct implications on their decision-making processes, and hence their social actions. Judges' accounts revealed the disconnection between the legislative and the executive power in law-making within developmentalist, rights-based language. The lack of long-term vision that could be

supported by ‘the production of statistical data to measure success’ (Judge Osman), and the ‘poorness of academic research’ (Judge Melih), affected the legislation process.

The legislation's disconnection with the judicial and executive powers clearly disturbed every single judge who participated in this research. Judges revealed their dissatisfaction with the legislation from different angles. **Judge Osman** stated that the biggest gap in the system is that Turkey does not have a criminal law system intrinsic to children and the system is limited to age-related reductions in sentences. He supported his idea with an example of children prosecuted due to mugging although they did not understand the meaning and consequences of their conduct.

Judge Melih stated that he worked hard to implement the Child Protection Law (2005) but could not succeed due to hardships in enforcement mechanisms. He explained:

“The 2005 law came out bad. Nobody could interpret it. The judges at administrative courts created a child protection law. X person changed the law overnight and was not even aware of his own lack of knowledge. That’s the way laws are enacted. The judge does not get it, the citizen does not either... so how could the police comprehend it?... You waited for 80 years [to change the Turkish Penal Law], and then say you are in a hurry to pass a new penal law [touching upon the similarity in the speediness of the enactment of the child protection law]”

While commenting on the lack of scientific research to do policy making and the importance of family counselling, **Judge Osman** touched upon the legislations’ relation with the executive power and its implementation:

“Unfortunately, we did not use the family counselling measurement effectively; our experts are insufficient. We could not make efficient use of social work officials in courts and social service experts in the education system... social work officials are insufficient both in quality and quantity.”

After reminding that Turkey has accepted supremacy of international laws on children’s rights over its national laws and prepared the Child Protection Law taking the international standards into account, he said,

“What is waiting? Implementation! ... I believe social services has an important task here... we told them, here comes a comprehensive law and its regulation. So we need very strong social services but that did not happen at that time... We had difficulty implementing the hundreds and thousands of protection measures emerging all of a sudden.

So did the Probation Office... This process took place to the detriment of children...

We gave imprisonment sentencing but deferred the pronouncement of the verdict and gave educational measures, vocational training, family counselling, health measures, etc. So after this problem occurred, the courts decided to defer the pronouncement of the verdict without any measures to support the child, so he only faces the threat of imprisonment if he commits another crime during the three years' waiting period. Problems occurred in the administrative, so we pretended to implement the law..."

As observed in trials, it is possible to talk about an undetermined, what I would like to name "self-induced diversion system" through the deferment of the pronouncement of the verdict. However, the message of diversion is not delivered to the young defendants, nor even to the defence attorneys. How does this happen? When young defendants' verdicts are conditionally deferred for three years, judges prefer not to give any protective/security measures, assuming that the ministries and institutions of the executive power or the Probation Office would not be able to implement them. Thus, young defendants assume that there is no official intervention of any form. But over the next three years they can easily get involved in illegal activities, eventually leading to 'case explosions'.

Young defendants are caught unaware in the system when the cases explode through the deferment of the pronouncement of the verdict. This self-induced diversion process takes place in a hurry, as judges in the juvenile courts look over 20 cases from morning till afternoon on an ordinary working day. Cases on sexual assault, murder or injury take longer. This peculiar diversion does not emerge as a reaction to the critiques of research on early intervention (Goldson 2000, 2001, 2006) that would stress the criminalizing and labelling effects of 'early and disproportionate intervention'. The self-induced diversion is touched upon by İrtiş and referred to as 'impunity' in the form of paternalistic benevolence (İrtiş, 2010). Eventually, she concludes that the Turkish juvenile justice system: "oscillates between an attitude that is both repressive and lax and a protectionist will that is not detached from neoliberal tendencies" (İrtiş 2010: 251).

This narrative was performed in trials that I attended in a Juvenile Court. At the end of a trial about the illegal sales of cigarettes, the Juvenile Judge announced the verdict thus [my emphasis]:

"Now we have given you a punishment of 1 year, 1 month and 10 days for selling cigarettes illegally. We have deferred it for 3 years. You should not find yourself in any illegal activities for 3 years. Mr. attorney, please explain the situation to the child, so *the child can protect himself, try to protect himself...*"

This was one of the numerous trials that took place within a few hours on a regular working day. The judge deferred the pronouncement of the verdict for the majority of children accused of selling cigarettes or alcohol illegally, but without implementing any protective/security measures to help the child abstain from illegal activities. So the child was seen as individually responsible for making a decision to act legally or illegally.

Acknowledging the importance of the child's individual responsibility to be registered in legal behaviour, the **lawyer** defended her defendant with the following statements: "The child works in a job with insurance and is registered on a distant learning course. He is from a good environment." The **judge** replied, "But he has another case—what are the chances of that?" The **lawyer** answered: "Yes, from the same cigarette stand [which the defence attorney stated as someone else's stand]". The **judge** closed the trial: "1 year, 1 month and 10 days but deferred. Normally, when you have the second case, the first one gets a punishment. You need to be entering prison right now, but you are too young."

The **young defendant** answered: "Thank you."

Here, the child in conflict with the law is responsible for keeping himself away from illegal activities without any assistance. This is in contravention of the Child Protection Law. Strikingly, attendance in school is accorded secondary importance; entering the sphere of legal employment is the primary indicator of protection from punishment. Hence, based on her interviews with judges, İrtiş concludes that judges identify 'family' as the leading factor in criminal tendencies and states that the number of judges who draw a link between crime and socio-economic and political inequalities is very low. Environment is mentioned in terms of the neighbourhood but without its socio-economic capital and migration is mentioned without its ties to socio-economic burdens (İrtiş 2012). Thus, the child as the individual and the family as a unit are viewed as detached from their habitus and given the responsibility to avoid illegal activities.

Juvenile judges' ambiguous position between holding the power of adjudication based on evidence and intervening with the child in conflict with the law based on the opportunities provided by the executive power was very evident in courtroom observations. Judges' role of chasing evidence and receiving testimonies was visible in many trials on motorcycle theft, theft from cars, theft from apartments, bodily injury, organizing fake documents to escape from school, being in conflict with the law on meetings and demonstrations, drug use, drug dealing, getting into fights, sexual abuse, mugging and murder. In many of the trials, I as a layperson observing the trials could comprehend whether a conflict with the law really occurred or not, and without much effort. However, I also observed that judges could be unwilling to prove conflict with the law in line with their objective not to punish and imprison the young defendants as much as possible; in other words, using the penalty of prison as a last resort. The unwillingness to chase after the evidence and testimonies

were very clear in trials concerning drug selling, drug using, sexual abuse (in which both parties gave consent) and selling cigarettes. The judges found themselves stuck between responsabilizing the perpetrator of a criminal act and refraining from responsabilizing. The prevailing discourse of children's rights with origins in the liberal rational-decision maker individual in the legal texts did not emancipate the judges from revolving around the decision over the power of discernment.

The following dialogue between a young defendant and the judge is an example of judges' unwillingness to seek evidence for illegal activities. The **judge** said: "They found drugs in your pockets. Do you consume them, do you smoke?" The **young defendant** replied: "I do not smoke." Then right away, he corrected his testimony, thinking that if he stated he did not smoke, it would mean he was a dealer. So he said, "I neither smoke nor sell." The **judge** sarcastically retorted: "These police always appear at the wrong time, so the child's money goes to waste." The **young defendant** responded: "I do not want to waste my life....". The judge did not take the trial seriously and the young defendant went out of the courtroom with the defence attorney.

What was striking in courtroom observations was the fact that the judge was not the only party to refrain from deciding upon imprisonment sentencing. Victims also refrained from requesting punishment for the young defendant by withdrawing their complaint and leaving the decision to the judge. Apparently, the victims wanted their victimhood to be recognized in the eyes of the authorities and cared more about receiving compensation for their loss than vengeance. Thus, whilst judges adopted an approach to refrain from punitiveness in the form of imprisonment, victims also did not demand punishment for just deserts. Compensation for the losses and deterring the young defendant from further illegal activities prevailed in the adjudication mentality in property-related offences or offences where victims were not seriously harmed.

Remand imprisonment interpreted in contradictions

Some judges had contradictory views about imprisonment. As demonstrated above, some fell into deep contradictions within their perception that affected their view of remand imprisonment, while others presented coherent viewpoints of the youth justice system but shared views of pre-trial detention that contradicted with the law articles on pre-trial detention.

Above, I have presented the contradictory views of judges about the role of social work and the meaning of social inquiry reports. **Judge Osman** was one of the judges who revealed ambiguous views about the duty of social work officials. In this framework, the ambiguity was reflected in the views of youth imprisonment.

Firstly, regarding remand imprisonment, Judge Osman emphasized receiving the testimony of the child. Accordingly, he released defendants after the evidence had been collected. He subjected the defendants to alternative control mechanisms, mostly requiring them to sign at a police station under the control of the Probation Office. He told me:

“...giving signature once a week is enough. Ha, why? The child can feel some authority over him, making him refrain from considering committing another crime... This line of thinking does not exist in the legislation. Neither pre-trial detention nor alternative control mechanisms aim at building authority to stop people from committing further criminal activities.”

Eventually, after criticizing the lack of social assistance mechanisms such as family counselling, Judge Osman emphasized the control aspect of alternative control mechanisms through establishing authority. Thus, he stressed the control and deterrence aspects of remand imprisonment or their alternatives. As a proposal to alternatives to youth imprisonment, he stated:

“If we like, we could turn prisons into rehabilitation centres. There we should... categorize children into different groups and put similar children on the same wings.... For instance if you have visited and seen the xx [a Children’s Closed Institution for Execution of Punishment], there they put the children in different rooms according to their ages and physical conditions. Why? Because if one wants to harm the other, he takes the other to the room and there are no cameras in the rooms. That is the first thing. Second, there needs to be constant surveillance ... to provide for the security of the child...”

He added that prisons needed more social work experts in addition to the guards, to talk to the children and not to leave them alone, and to keep them occupied with education. But after criticizing the lack of resources of the executive power to implement protective/security measures and the lack of academic research to realize long-term policy making, Judge Osman drew no connection between the legislation and the prisons, did not elaborate on the difference between various kinds of prisons for pre-trial detainees and sentenced prisoners, and suggested control through authority through the use of space and surveillance.

Although **Judge Melih** declared that he had spent a great deal of time interpreting the Child Protection Law, just like the participant prosecutors or some of the participant lawyers, he did not possess knowledge of the different types of juvenile prisons. Moreover, he had no knowledge of the ratios of pre-trial detention and remand imprisonment in the youth justice system. I asked him if there was any connection between recidivism and pre-trial detention. He responded:

“Certainly, there is a link between the two. If a child is coming to the court for a second time, the judge thinks that the child has not been reformed, and he has to be detained.”

On the other hand, he stated that young people should be kept away from prisons as much as possible due to their negative effect on reintegration. At a later time, I asked Judge Melih if there is an increase in the criminal rates of children. He said:

“I could say something general about this that would comprise the children. In Turkey, sentences are not deterrents. One of the objectives of sentencing is to deter...”

Judge Melih’s accounts contributed to the ambiguity of criminal responsibility. He also stated that he is surprised how people do not commit theft in poor neighbourhoods, thus relying on the assumption that people’s actions are determined by their neighbourhoods.

I asked **Judge Asım** his opinion of the Shut Down Children’s Prisons Platform. He had not heard about it before. Without differentiating between pre-trial detention and sentencing, he had a fixed response, saying:

“This is impossible, as you would encourage children to commit crimes. The deterrence effect is gained only through imprisonment. Otherwise, they would go on offending... We cannot detain those below 15 for pre-trial. That child jauntily continues offending. If you cannot control the child through measures, he will end up in prison, for 3 months, 5 months, a year and come to his senses.”

Lastly, he proposed a secure institution as an alternative to imprisonment without referring to any distinction between remand imprisonment and prison sentence.

Judge Şeref explained the reasoning of pre-trial detention thus:

“According to Children’s Rights, pre-trial detention should be the last resort. However, sometimes, in order to protect the child, to prevent him committing further crimes, there can be pre-trial detention.”

Later, unlike this first reasoning that represents law in action as opposed to law in the books, he listed the justifications of pretrial detention indicated in the law:

“Suspicion over absconding, obscuring the evidence, blackmailing the witnesses... et cetera ...If the testimony is taken and evidence is collected, you reduce the prison sentence from the pre-trial detention and release...”

Judge Şeref was one of the judges who did not know about the Juvenile Education Houses and the Children’s Closed Institutions for Execution of Punishment.

Judge Selim, the most controversial judge among all participants, as he is criticized by his colleagues for his punitive and harsh comments about youth imprisonment, told me:

“The best alternative control mechanism for me is pre-trial detention... Putting children to labour is not a bad thing...Prison sentencing is the most effective deterrent sentencing for children... I speak like this. Other juvenile judges do not like me, the High Court of Appeal openly says that I cannot be a juvenile judge but the High Committee of Judges and Prosecutors do not dismiss me from here either...”

What is ironic in this statement is that he supported his claim by referring to prison sentence just after I asked him about his thoughts on alternative control mechanisms to pre-trial detention. The sequence of Judge Selim's comments alone indicates how he views pre-trial detention as part of prison sentencing with no need to differentiate. Statements about pre-trial detention by these aforementioned judges demonstrate the disconnectedness of youth justice professionals from the legal meaning of pre-trial detention in the books, and thus the consequence of separation of powers, especially the executive power that holds prisons from the judicial power that makes the decisions.

I asked Judge Selim to describe the perfect social inquiry report and he said, “For the report to be beneficial, the state has to take responsibility to implement the objectives of the report. Social work officials’ well-intentioned work goes down the drain.”

Only one participant judge, **Judge Yasin**, who focused on the insufficiency of the infrastructure of the executive power, had a different approach to alternatives to incarceration, but then only for those between the ages of 12-15. He proposed:

“Instead of measuring the imputability (the ability of distinguishing right from wrong) of those between the ages of 12-15, this category should be excluded from the criminal justice system. Social work officials and prosecutors should work together. Under probation, they should go through an efficient education system and receive punishment only if they do not comply. Probation should not focus on the case files but on the protective/security measures...”

However, his proposal left out those between 15-18, which implicitly means he considered those above 15 as suitable for criminal prosecution with full individual responsibility. This suggestion, which is similar to proposals from some juvenile prosecutors, tends to manage youth in conflict with the law by categorizing, and eventually excluding a certain group (those aged 15-18) from all the controversial discussion topics on the youth justice system. Looking carefully, it is also possible to observe their exclusion in daily judicial procedure.

I asked the judges for the most-used justifications of remand imprisonment. **Criminal peace judge Defne** answered:

“The length of the sentence! That’s the most effective justification. For instance, in the case of murder, we pay less attention to age and if there is recidivism for the same crime...Or if it is a crime from the catalogue, like with a gun. If someone is caught in the act, if there is admission and there are 10 witnesses, then we have no doubt...But if the child is around 12-13 without previous cases, even though the offence is certain, we try not to detain, assuming that he would get deferment of the pronouncement of the verdict...if the sentence is not a lot, we try not to detain those between 13-15. If there is lawful residence and it is the first offence, if the child is young, then he is less likely to be detained.”

I further questioned her to make sure, and she underlined the ‘catalogue offence’. In short, Judge Defne’s accounts indicate how pretrial detention starts as the commencement of the prison sentence.

Criminal peace Judge Savaş gave a similar response, stating that the characteristic of the crime, the probability of obscuring the evidence and the probability of absconding are the primary justifications. However, he went on beyond my questions when I asked about his preferences in deciding upon alternative control mechanisms. He switched the question and directly started as follows:

“Reintegration and rehabilitation studies in Turkey are unfortunately insufficient. Drug treatment does not work properly. They take blood tests once a month, saying if he is smoking or he is not. That’s all. They are working neither with the family nor within the social environment. There is no infrastructure. Accordingly, signing in the police station is the preferred alternative control mechanism for those prosecuted for drugs. Probation and the juvenile court are responsible for following the cases but they do not. They say that we notified him by paper, but he did not show up, so let him get a prison sentence.”

Judge Savaş then went on to say: “‘I want my neighbourhood back!’ That should be our motto. Community pressure is a positive thing... we should pay mothers who look after their children instead of mothers who work outside... we should pay the families themselves instead of the probation officers.... Probation does not work. They work by notification...”

Basically, Judge Savaş favoured informal community control over control and management through formal institutionalization. Most significantly, he underlined that the *modus operandi* of probation is through notification. So, the lack of infrastructure to refer to alternative control mechanisms in the community was revealed as the thesis statement of Judge Savaş. In fact, remand imprisonment fulfilling the role of crime control in the absence of welfare assistance emerged as the main theme referred to by the majority of the judges in this research.

Overall, the insufficiency of social service delivery by the executive power and the ambiguity of the task of social work officials in working with the judges have an impact on the adjudication process. As put forth by Sahni (2009), judges as mediators are appointed to manage the everlasting tension between the substantive rationality of law that specifies extra-legal norms with a general scope of human dignity and formal rational law, referring to abstraction of legal facts that generate legal principles to be applied to all. Hence, when interviewed, judges make ambiguous and contradictory statements about crime control. In the context of an ambiguous understanding of social work, constrained by Turkey’s residual welfare capitalism and informal social security system, the adjudication process produces limited knowledge on the ‘habitus’ of the young defendant. Consequently, youth justice management revolves around determining the individual responsabilization for crime that is stripped of the context. Imprisonment eventually forms a deterrent mechanism.

As prison sentences and remand imprisonment are not distinguished in the accounts of youth justice professionals, pre-trial detention is interpreted as the commencement of the prison sentence with the aim of individual deterrence for recidivists, and in the case of non-recidivist serious crimes including physical harm, is seen as the defendant paying for the crime by doing time. High-security prisons successfully categorize youth and manage them securely.

Discussion

The disconnection between the operations of legislative, judiciary and executive powers emerges as a primary finding and aspect to analyze the roles of remand imprisonment in the youth justice system. Moreover, the exclusive structure of fields in the adjudication process—the exclusiveness of the fields of prosecutors, lawyers, judges and social work officials from each other—has

implications for remand imprisonment, especially as social work officials remain somewhat outside the adjudication process.

In this extensive and complicated bureaucratic organization, Uluğtekin draws attention to the loneliness of the child in conflict with the law among the many laws, regulations, institutions, professionals and procedures in a system considering itself above blame (Uluğtekin, 2014:220). Regarding the social work officials' peripheral positioning in the youth justice system, she mentions the *managerial mentality/ managerialism* that frames the characteristics of social work as well as the view towards social work officials (Uluğtekin 2014: 200). Adams points out social work officials' difficulty in enjoying total professional autonomy in relation to their managers in England and Wales. He defines 'managerialism' as the term describing "styles of management which put managers in the central role in the organization" (Adams 2002: 176) and introduces the term 'New managerialism' to describe the management approaches in the public services with decisions based on economy, efficiency and effectiveness that can be calculated. Castel highlights the departure from the traditions of psychiatric medicine and social work in France and the US to innovate preventive strategies of social administration that dissolve the concrete individual and replace him or her with risk factors (Castel 1991). This transformation is a shift from identification of dangerousness to risk management. According to Adams, "'new managerialism' undermines the already fragile professionalism of social work" (Adams 2002: 176). Uluğtekin remarks on the secondary positioning of social work officials as well as doctors in the health system of Turkey in this regard (Uluğtekin 2014: 201).

This 'new managerialism' of social work refers to the downgrading of the profession and bringing the knowledge of social work to a standstill in order to acquire a quantifiable 'efficiency'. Social services are provided to target groups outside court. The subject matter of this thesis includes only the social work officials in the court and prison as participants. As demonstrated in Chapter V, psychosocial staff members in the prison undertake work under the control of the managers and conduct an ambiguous role of mostly psychological relief. In the court, on the other hand, social work officials undertake social inquiries, completing their reporting and assistance tasks under the rule of the judges. The legal knowledge and power of adjudication held by the judges overrules the knowledge produced by social inquiries. The manner in which the prosecution process is completed indicates a managerialist mentality that governs prosecutors, lawyers and judges as the elements of the dialectic together with the social work officials as the others, and finds its roots in the law-making ethos. The quick patterns of law-introducing periods in Turkish history in the Eurocentric and developmentalist ethos lays the groundwork for dilettantish conduct of youth in conflict with the law as the institutions of the executive power remain inadequate in quality and quantity. Anthony Bottoms' differentiation between types of managerialism provides a neat framework to define the manner in which young people in conflict with the law are governed.

Bottoms differentiates between systematic, consumerist and actuarial managerialism (Bottoms, 1995). In systematic managerialism, there is an emphasis on inter-agency co-operation between the different branches such as the police, the court, the probation service and the prison service to fulfil the goals of the system, as well as an emphasis on creating a strategic plan, creating key-performance indicators and active monitoring of aggregate information—basically all kinds of systematic control of information that can be observed in corporations' annual reports. In the Turkish youth/criminal justice system, it is not possible to refer to a systematic managerialism. The disconnection between the different branches of the system—legislative, executive and judiciary powers—and also the lack of dialogue between actors within the same branches indicates extremely weak inter-agency co-operation. The lack of strategic planning becomes obvious in the ethos of law-making, which rather requires the name law- adapting. A lack of long-term graphical data collected to present trends in the system means the researcher assumes there is a lack of key-performance indicators and no monitoring of aggregate information. Ultimately, there is no systematic managerialism doing evidence-based policymaking, data collection, criminological research or taking consultation services from professionals.

In consumerist managerialism, there is a bottom-up approach, where criminal justice employees' opinions as consumers are valued to effect the higher organization of the system. There is no trace of consumerist managerialism in the Turkish youth justice system. Administrators take decisions in top-down processes, as detected especially in legislative power. Responses or feedback from the clients of the criminal justice system or the professionals (law experts/ social work officials) are not taken into consideration.

Finally, there is the actuarial aspect of managerialism that Bottoms finds closest to the 'New Penology' defined by Feeley and Simon (1992) and referred to in the previous chapters. The actuarial managerialism that the latter authors name as the New Penology in the American context refers to the "replacement of a moral or clinical description of the individual with an actuarial language of probabilistic calculations and statistical distributions applied to populations...the new penology is neither about punishing nor rehabilitating individuals, it is about identifying and managing unruly groups" (Feeley and Simon 1992: 452, 455). Through employing these distinctive typologies as ideal types, researchers can recognize the overlaps between the characteristics of these typologies, as Bottoms acknowledges. Feeley and Simon draw attention to the will to reach systematic and formal rationality in classifying groups according to dangerousness for better management. Thus active monitoring of aggregate information in systematic managerialism can be identified in actuarial management without systems management to achieve long-term policies or an agenda on reduction of crime or recidivism.

Writing in a period when they observe the emergence of this actuarial managerialism—the ‘New Penology’ is in relation to the old penology that targeted the ‘normalization’ and re-integration of the individual into community—Feeley and Simon underline that the target shifts from intervening and transforming individuals to making rational classifications according to the dangerousness of the unruly groups for better management. Among youth justice professionals, prosecutors’ accounts of the emphasis given to system efficiency, fast-tracking and newly introduced technologies to manage data and to provide security indicates a mentality where the target is system management rather than individual offenders. However, the developmentalist and Eurocentric ethos of law-making and lack of quantifiable data to track efficiency that constitute long-term policies, the heaviness of caseloads that prosecutors and judges complain about, the wide exclusion of social work officials from the adjudication process, and finally the lack of inter-agency cooperation in the bureaucratic organization, indicates an actuarial management rather than a systematic one. In this framework, “if prison can do nothing else, incapacitation theory holds, it can detain offenders for a time and thus delay their resumption of criminal activity” within the utilitarian model of punishment (Feeley and Simon, 1992: 458). As the neoliberal governmentality that focuses on risk-management is embraced, preventive and security-oriented practices of remand imprisonment increase (Özkazanç 2011; Doğuç 2014: 60). In a later article, the authors elaborate more on actuarial managerialism and state incapacitation, preventive detention and drug courier profiles exemplify its qualities (Feeley and Simon, 1994).

Consequently, the actuarial aspect of managerialism manifests itself in the Turkish youth criminal justice system. Management of the young defendants on remand constitutes a pillar that prioritizes the security of the public as well as the inmates above anything else. In the court, the defendants on remand are stripped of their distinctiveness and are turned into a ‘case’ or a ‘folder’ piled into the remand centres to wait in the intermediate stage of the justice system. Based on their evaluation of studies in Europe, Canada and Turkey, Cartuyvels and Bailleau state that a managerialist turn within neoliberal influence is an aspect in the youth justice systems’ reforms and they note four findings that seem to represent a general evolution. First, there is the marketization of the judicial institutions and the practices of social work alike, together with the privatisation of professional services. Second, there is an emphasis in the discourse on ‘rationality and effectiveness’, ‘risk needs’ and ‘what works’ language with a search for efficiency. Third, there is a stress on ‘risk management’, and fourth, there is a change in the image of the young deviant under the influence of cognitive behaviour ideology that constructs young people as rational and responsible individuals (Cartuyvels and Bailleau 2010: 281-283).

Despite the strong centralized state governing the criminal justice system in Turkey and the lack of evidence of privatization in criminal justice services as discussed in Chapter III, the blurring of the boundaries between the state, civil society and the private sector as the new governance in the

Turkish social service sector is worth considering within managerialist governmentality. An emphasis on system efficiency but not ‘risk management’ is important in most prosecutors’ accounts. A language and investigation of risk have been introduced into the Turkish youth justice system by Ögel, but have not predominated the system (Ögel and Karadayı 2011). So the managerialist conduct of social work and youth justice in Turkey does not adopt knowledge production techniques on risk calculation as it does in the English speaking Western countries (Parton 1998; Haines and Case 2008). Lastly, as demonstrated in various domains, a deadlock has traditionally occurred around the concepts of rationality and responsibility, as these features are attributed to young individuals without an intervention of ‘cognitive behaviourist ideology’.

In Turkey, the youth justice system is an intricate net of hierarchical relations, aimed at hurdling the piles of cases of young people in conflict with the law. Social work officials who are entitled to conduct social inquiry and present their findings are in hierarchical hegemonic relations with ‘their’ judges in the courthouse. The majority of lawyers fulfil the expected role of being present in the courthouses rather than preparing a strategy to present an anti-thesis, which is supposed to be as strong as the case for the prosecution. Finally, the judges of the court who individually hold the power of adjudication can view themselves left out by their colleagues in the legislation process and claim to do the ‘donkey work’ by completing cases without time for interpretation. Moreover, decisions of the High Court of Appeal can be a source of pressure on judges' decision-making. Thus, there is the clash of disciplines of jurisprudence and social work. Besides, there is an actuarial manner of managing the prosecution process that is not conducted top-down but realized in a dispersed manner within a hierarchical net of relations. Thus, government of young people in conflict with the law does not take an actuarial managerialist form with a deliberate objective, but rather transforms in a way that is hard for the actors to reverse in everyday conduct.

In this context, remand imprisonment in high-security facilities contains young defendants as disposable aggregates with no emphasis on individual transformation. Prosecutors and judges’ suggestions to categorize young prisoners according to age and even body size and strength to maintaining security, as well as segregation of defendants accused of sexual crime from other prisoners and the emphasis on the distinction between young people aged 15 and over and those under 15 indicates a managerialist mentality.

Feeley and Simon state that New Penology: “does not speak of impaired individuals in need of treatment or of morally irresponsible persons to be held accountable for their actions” (Feeley and Simon 1992: 452). However, I argue that an elaboration of this aspect of individualism is necessary to comprehend the interpretation of actions of Turkey's youth justice professionals. In managerialism analysed by Feeley and Simon, the target is groups and populations rather than the individual, as it was in old penology. Thus, the aim is neither reaching a just deserts justice, nor a

transformation. However, I claim that in the Turkish youth justice system, within which target groups are managed, the individual responsibility of the person in conflict with the law as a rational and liberal choice-maker is central to the prosecution process. The ambiguity of the role attributed to social work officials and social inquiry reports along with the stress on grouping youth according to age are features of this. Young defendants are seen as disposable groups of offenders who are individually responsible for their rational decision to commit illegal activities. Thus they can be labelled as dangerous, based on either the quantity or the severity of their criminal activities, which lead them to remand imprisonment. Containing and managing young defendants who can have over 100 cases indicates the responsiveness of the penal system to some groups living in communities with low economic and cultural capital and has commonalities with New Penology's response to the underclass in the US (Feeley and Simon 1992: 467) which is also underlined by Özkazanç (2011). However, as shown in Chapter V, seeing all young defendants as an underclass leads to an over-simplistic analysis of the roles of remand imprisonment.

Hence, a critical approach to New Penology reveals some aspects to be revisited. First, as stated above, approaching the target group of New Penology as an underclass mystifies those in conflict with the law and received by prison system as a unified underclass. Cheliotis, who takes a critical stance against New Penology, argues that this theory firstly downplays the role of human agency of professionals of the criminal justice system, secondly ignores the potential positive aspects of managerialism, and thirdly misses the continuity between past and contemporary penal features (Cheliotis 2006b). Likewise, I argue that although managerialism as undertaken by Feeley and Simon is stated to be less concerned with responsibility, fault and moral sensibility, intervention and treatment of the individual offender, and instead concerned with techniques to identify and classify groups according to dangerousness (Feeley and Simon 1992: 452)—in other words to manage institutions better—actors in the adjudication process still have justification for their decisions and interpretations of their actions. So, an interpretive understanding of the actors' agency constitutes the essential data of this thesis.

Thus, juridical rationality does not diminish in managerialist governmentality. Consequently, individual responsibility of the rational young person in conflict with the law to deter him/her from illegal activity constitutes the key aspect in prosecution. But once the judiciary notices an individual's failure to keep away from illegal activities on repeated occasions, or involvement in serious crimes involving victims, individuals form the disposable aggregates in the prison system. As Feeley and Simon later admit themselves, New Penology fails to comprise the fundamental expressive function of government as it fails to link past and contemporary penal rationalities (Cheliotis 2006b). Hence, defendants can be remanded in custody based on an uncalculated but assumed risk of fleeing from a potential prison sentencing that would be given as just deserts. Still, once defendants are incapacitated, they are managed as aggregates.

In line with Cheliotis's stress on the role of human agency of the deliverers of the criminal justice system, accounts of deliverers of youth justice reveal how remand imprisonment is rationalized and interpreted in law in action. Thus, remand imprisonment most saliently works as a first-resort deterrence and crime-control incapacitating mechanism. Secondly, as it is not distinguished from a prison sentence, it can be rationalized as just deserts, and thirdly, it fills the gap of administrative control to ensure evidence collection, especially testimonies. Considering these rationalities, it is impossible not to recognize the stark variations of the rationalities of remand imprisonment in praxis from the rationalities laid out in the law books. Remand imprisonment constitutes an important aspect of the penal politics and crime control in Turkey.

Specifically in prosecutors' accounts, remand imprisonment most saliently takes the form of an individual deterrence as a first-resort crime control mechanism. As a central pillar of the modern youth/criminal justice system, high-security imprisonment that incapacitates, contains and manages young defendants as aggregates fulfils various tasks, or rather is justified in various forms. One of these forms is 'individual deterrence' that is utilitarian/reductive. This is one of the dominating interpretations of high security and mainly incapacitating prisons, especially for judges and prosecutors for re-offenders. Walker states that utilitarians believe the penalties reduce the frequency of offences generally and individually by deterring the offender, deterring potential imitators, reforming the offender as a lesson-taker, educating the public and protecting the public by incapacitating the offender (Walker 1994: 212). Remand imprisonment in the youth justice system in Turkey is observed to act as an individual deterrent in this thesis with its salient feature of giving in Hudson's words a 'taste of custody' (Hudson 2002: 24) to discourage young people from re-offending.

Judges, like prosecutors, refer to remand imprisonment as a first-resort deterrence given a lack of other social control mechanisms that could be provided by social work officials in executive power. On the other hand, in the case of a serious offence comprising reckless or wilful bodily injury, reckless or wilful murder, sexual assault or attending an organized crime, prosecutors by referring to the 'nature of crime' as provided by the law may ask for, and judges may sanction, remand imprisonment for the risk of absconding from a future prison sentence that could be rationalized as just deserts. The lack of distinction between prison sentence and remand imprisonment therefore needs to be acknowledged.

Lawyers, on the other hand, tend to interpret remand imprisonment as an unintended consequence of an administrative-legal bureaucratic issue, arising from the lack of social security mechanisms and lack of control mechanisms to ensure a child's presence in the court. Thus, remand imprisonment fills the gap of administrative control to ensure evidence collection, especially

testimony. Similar to lawyers, social work officials emphasize the absence of protective/security measures from the Ministry of Health, Education, Family and Social Policy as well as the Probation Office in the Ministry of Justice that is in executive power. They refer to remand imprisonment as a last-resort control mechanism to fill the gap of administrative control for evidence collection as well as to incapacitate young people and so stop them reoffending.

Ultimately, the roles of remand imprisonment sit at the centre of a net of intricate and hierarchical relations among the practitioners of the system. Observations in the courtrooms and trials along with interviews with youth justice professionals reveal how the conduct of remand imprisonment is formed in the interpretations of the system's practitioners and their normalization of remand imprisonment for different patterns of young people's illegal activities. Hence, law in action does not necessarily match law in books as remand imprisonment as a bureaucratic inter-phase of the justice system is shaped in correspondence to the governing of youth in conflict with the law, and in the broader framework, in the Biopolitics of the population.

In this regard, remand imprisonment responds to various aspects in governing the young population. Comprehending the system requires a framework of the politics of the population that is sustained by security power, which does not allow the researcher to disregard the everlasting power of the sovereign in etatist Turkey. Class that is studied around the concepts of habitus, field and capital in this research and ethnicity in the prosecution of crimes against the integrity of the sovereign state are significant elements of governmentality. Remand imprisonment emerges as a repercussion of Turkey's politics of workfare, family, welfare, and life—in short, its population's lifestyle. Thus, remand imprisonment in a justice system reveals its penal politics, which not only correspond to its productive relationships but also its sovereign power's will to include and exclude certain populations in its governance.

So, what are the roles of remand imprisonment in the Turkish youth justice system? Most crucially, **first**, remand imprisonment works as a first-resort deterrence and control mechanism of security. **Secondly**, it is rationalized and neutralized as the sovereign power's expression of just deserts, as remand imprisonment is not distinguished from prison sentences. **Finally**, it fulfills an administrative control mechanism of evidence collection.

Incapacitation of defendants through spatial control ensures these three most vital roles of remand imprisonment, in which young defendants are managed as aggregates and experience various pains of imprisonment, as laid out in Chapter V. Hence in Turkey, management of the population in conflict with the law in spatial control mechanisms, segregated in high-security remand imprisonment, manifests its Biopolitics of life and welfare.

First, remand imprisonment works as a first-resort deterrence and control mechanism of security, mainly for defendants accused of drug dealing and property offences, and hence repeat offenders. Within the aforementioned self-induced diversion mechanism that emerges as a collective managerialism of the youth justice system, refraining from illegal acts is the individual responsibility of the rational decision-maker who is stripped of his/her habitus. As laid out in Chapter III, Turkey's welfare system can be described as liberal residualism, flavoured with social conservative values, underpinned by family and communal solidarity as an informal regime that is formalized as an immature and eclectic establishment. In this regime, which reasserts accumulated stratification, liberal and rational choice-making individuals are expected to materialize their capital to formulate living strategies. The (extended) family and informal social ties with the support of the voluntary sector allow survival. Hence, as stated in Chapter III, support in the new governance lies at the intersection of the state, private and the voluntary sectors.

Second, remand imprisonment is rationalized and neutralized as a sovereign power's expression of just deserts, as it is not distinguished from prison sentences. It secures evidence collection and prevents absconding in prosecution of crimes against the integrity of the body, such as injury, murder and sexual offences, as well as offences against the integrity of the state and organized crimes. The clash of the state's sovereign power and the defendant is most evident in prosecution of crimes against the integrity of the state, in other words, prosecution of young Kurdish defendants with 'terrorism'. The lives of those charged with terrorism are suspended in remand imprisonment by the sovereign in a state of necessity that emerges in modern politics.

Finally, in coherence with the rationality of remand imprisonment in law books, remand imprisonment is rationalized as a mechanism of evidence collection.

The introduction—or rather sequestration—of the rights language into this framework has some unintended consequences by impeding critiques to see the structural patterns in crime and crime control. First, children's rights discourse flourishes in a developmentalist, Eurocentric, civilizing language set. Second, the origin of human rights lies in the birth of natural rights in the Western enlightenment era, embracing liberal individualism that disembodies and de-contextualizes the subject from the structural setting; strips the individual defendant of his/her habitus in the criminal justice platform. Ultimately, the positive/social rights introduced in Turkey in 1976 that form the basis of social policy literature today remain secondary. The right to liberty, the right to security, the right to a fair trial and the right to presumption of innocence remain abstract claims targeting the *individual* in the criminal justice system.

The neoliberalization of a corporatist-capitalist welfare regime of Turkey that has attached substantial value to the family and informal social ties and control mechanisms corresponds to

what Bauman calls ‘the individualization of the perception of injustice’ (Bauman 2001: 86). Eventually, the insecurity of individuals protected by negative rights grows, leading to more demand for security through spatial control as well as a professional intervention of psychological relief that targets the individual. In the bureaucracy of the youth justice system, remand imprisonment disposes young defendants through spatial control both as the first and the last resort.

Remand imprisonment, or what I call ‘bureaucratic disposal resort’, works as a spatial resort to the demand for spatial control. The indistinction between a prison sentence and remand imprisonment indicates the lax mentality in managerialism, which I claim has its basis in individual responsabilization. This responds with a concern to collect, contain and keep the target population under control. The element of space is vital in this form of imprisonment.

Accordingly, the constant search for security creates a contradiction with the state’s rule of law principle, by being insecure about certain populations of the society and searching for scapegoats for the security rhetoric. This is the problematic of governmentality posed by Rose (1996); the critical analysis of practice of freedom and individuality.

In his understanding of governmentality, Castel draws attention to the contradiction embedded in neoliberal governmentality and states that the modern individual cannot sustain him/herself in society without social security provided by the state (Castel 2004: 76-77). Castel’s argument is not to celebrate the unity of the collectivities and communities but rather to advocate for the individualism of the individual (İrtiş and Özatalay 2014: 8). Individualization of an individual necessitates social supports—a sum of resources that Bourdieu would call ‘capital’. Accordingly, Castel tends to highlight the protection and rights of the social state (Corcuff and Bou 2014: 186).

Castel distinguishes between civil securities that guarantee the security of individuals and properties, and social securities that guarantee protection against all kinds of risks throughout one's lifetime such as sickness, accidents, getting old without financial means and all other risks. Elaborating on the civil securities of the rule of law, Castel starts with the emergence of the ‘society of individuals’ depicted by Thomas Hobbes and states that a ‘society of individuals’ naturally becomes a security society as security constitutes the primary condition to sustain this society. Hobbes calls for the absolute state to protect the security of individuals.

Insecurity is a pre-modern phenomenon as security in pre-modern times depended on the individual’s hierarchical status within the community, as part of family and relatives. In Europe in the Middle Ages, parallel to the village communities, guilds and occupational groups provided security to their members in strong structures. In modern societies, in which individual liberty is celebrated and in which ties to family, community or occupational groups are of secondary importance, the security society emerges in which the state holds the monopoly of power to

provide an individual's civil security. Accordingly, 'being secure' is not a natural situation but an emerging one because insecurity does not find individuals unexpectedly, but rather is a dimension of the life of individuals in modern society (Castel 2004: 19). Thus, prevention of crime, and increasing the number of judges and police remain short-cut and short-term solutions to the constant and ontological presence of insecurity.

In this framework, intervention to remand imprisonment through the discourse on human rights that takes the unit of analysis as the individual obscures a view on the indirect violence that has been structurally accumulating around the issues of class and race, which are embedded in governmentality of the population. Hence, the language of human rights in Turkey's juvenile justice system leaves no space for field or habitus, perplexes the practitioners of juvenile justice and unintentionally contributes to what Bauman calls the 'individualization of the perception of injustice' (Bauman, 2001: 86).

Chapter VII: Conclusion

Introduction

The point of departure for this research was the lack of attention for the emergence of high security prisons exclusively for young defendants on remand and the high proportion of remand prisoners (held in high-security Children's Closed Institution of Execution of Punishment) to sentenced prisoners (held in open-type Juvenile Education Houses), which has been more than 70% for over a decade. Having captured this period in the youth justice system, I departed with the presumption that youth remand imprisonment has acquired roles within crime control and social control that needed to be explored which required a scrutiny into Turkey's legal culture through a study of governmentality. Embracing Michael Ignatieff's (1981) approach of not seeking functionalist explanations but rather thinking of society in dynamic and historical terms, I tried to refrain from mystifying the state as an omnipresent and omnipotent structure in a state-society dichotomy (Abrams 1988) and aimed at analyzing the roles of remand imprisonment by contextualizing it in Turkey's governmentality (Foucault, 1991, 1997, 2007, 2008; Dean, 2010; Rose, 1996). So I situated remand imprisonment in Turkey's penal culture as a mechanism of crime control and focused on the roles that it acquires in the justice system by studying Turkey's legal culture of imprisonment in relation to its political economy, sovereign power's relations with its citizens and its mode of knowledge production.

In line with the global trends, knowledge production in Turkey's youth justice system has been embracing the rights language. Besides addressing the questions concerning the roles of remand imprisonment, I aimed at disclosing how certain prevalent discursive tools that are used to approach the issue may be perplexing and misleading to comprehend its complexity. Thus, in contrast to problematizing remand imprisonment in the human rights' discourse and discussing the right to liberty, presumption of innocence and fair trial, I adopted an interpretive approach (Weber 1978, Vol. 1) to make sense of law as interpreted by the young defendants and deliverers of justice in the bureaucratic youth justice system. Informed by the sociology of human rights' scholars, I also suggested taking a social constructionist approach to human rights and see how its socially constructed language, embedded in the liberalism movement of Enlightenment, unfolds in non-Western contexts. Moreover, informed by Marxist critique of rights discourse, suggesting that without considering the social and economic structures, rights hide or mask structural inequalities, I aimed to demonstrate that the image of traditional liberal, rational, legal subject who is a decontextualized individual, responsible of his/her choices, becomes an obstacle to trace the accumulation of the justice system's long-term structural deficits. I also highlighted that formulating remand imprisonment in human rights discourse prevents the researchers to approach it as part of crime and social control.

Contextualizing remand imprisonment at the intersection of legislative, judicial and executive powers

Understanding the roles of remand imprisonment first required contextualizing its praxis at the intersection of legislative, judicial and executive powers of the justice system. I aimed at understanding the roles of remand imprisonment by situating it in the political economy—in the management of the population as well as the relation of citizens with the state's sovereign power. So, I scrutinized the historical transformation of the prison regime, the juvenile court system and legislations in relation to the transformations in the political economy and in relation to the transformations of power relations between the sovereign state and political prisoners, addressing class and ethnicity issues.

The literature on imprisonment in Turkey has been shaped around political prisoners until today (Eren 2014). The fact that the bulk of literature is composed of books and documents authored by former political prisoners or researchers writing about political prisoners explains the focus on the political prisoners and the lack of attention for other forms of imprisonment. I took this as an important input that shows how the sovereign state's governance of citizens who challenge ethnicity politics or class politics can shape the rationality of imprisonment, not disregarding the fact that the literature demonstrates the correspondence of penal politics to the political economy of the country (Rusche and Kirchheimer 2003; Melossi and Pavarini 1981; Foucault 1985). So, this research aimed at building upon the existing literature on political imprisonment in Turkey by contextualizing youth imprisonment in the country's political economy.

In short, motivated by the lacuna of scrutinizing remand imprisonment in the literature of revisionist history of imprisonment, that studies imprisonment in relation to political economical transformations, I first tried to bring remand imprisonment into the literature, and second aimed at expanding the revisionist approach by analyzing remand imprisonment in Turkey's governmentality, comprising not just its political economy but also the relations of its sovereign power. Decomposing the transformation in the Turkish youth imprisonment by elements of 'time', 'space' and 'labour' (Matthews 2009) informed my analysis.

In youth imprisonment, as in the prison regime as a whole, there has been a transformation from labour-based relatively low-security imprisonment to a high-security, centralized prison regime. A literature review of the prison system, the development of the juvenile court system along with social work has shown that the high security prison has acquired a secure position in the welfare governance of Turkey, as its corporatist-informal welfare regime relying on the centrality of the family and communal solidarity (Buğra 2007; Buğra and Keyder 2003, 2007; Buğra and Adar

2008, Buğra and Candaş 2011; Eder 2010; Pamuk 2013; Öniş 2012; Parla and Davidson 2004) has neoliberalized in the last decades, demonstrating a ‘new governance’ where the state has become a partner with civil society and the private sector (Kartal 2008). Existing literature also demonstrates that transformations in the prison regime, introduction of legislations addressing the youth in conflict with the law and court system and social work have been realized in a modernist/developmentalist/civilizing ethos (Göbelez 2003; Tarimeri 2007, 2008; Kurtege 2009), which I consider as a manifestation of Eurocentrism (Kolluoğlu 1994). A closer look at the transformations of the legislations, notwithstanding youth justice professionals’ accounts, indicates that human rights’ discourse prevails in the recent legislations as well as the similar Eurocentric, civilizing ethos, which can easily be overlooked. I argued that, in line with Turkey’s residual, informal welfare regime, that attributes success and failure to the ability of the decontextualized individual, within the imagination of the traditional, decontextualized, liberal, rational, legal subject, a deadlock emerges around the concept of ‘individual responsibility’ in the legislations that reaches an unresolvable level in the judiciary.

An effort to see the governance in statistical trends plays a vital role in seeing a clearer picture of the justice system. The Ministry of Justice and the existing literature provide an unbelievably small amount of data to interpret the trends in the justice system. Unanalyzed sets of data rather than graphics has constituted the bulk of information about the criminal justice system until now, which means there is a real need for researchers to enter the field. The lack of will to know and to understand the trends in the justice system, in fact, points to a peculiar form of power/knowledge relation, or governmentality, in Turkey that has been importing and adapting legal norms and cultures within a civilizing ethos.

Viewing the trends in adjudication decisions shows the relatively low rates of prison sentencing and remand imprisonment, which would mean prison is being used as a ‘last resort’, as required by international human rights’ norms and standards. However, accounts of prisoners and youth justice professionals indicate that it has also been used as ‘first resort’ control mechanism. Eventually, elaboration of further accounts has led me to label remand imprisonment the ‘bureaucratic disposal resort’; a spatial field that disposes youth in conflict with the law both as first and last resort control mechanism.

Summary of empirical findings

Being imprisoned

The majority of the young prisoners’ accounts were collected from newly emerging high-security ‘Children’s Closed Institutions of Execution of Punishment’ that are reserved for young pre-trial

detainees as well as sentenced prisoners who have received disciplinary punishment in Juvenile Education Houses. Although half of the young remand prisoners are incarcerated in adult prisons' juvenile wings, the high-security Children's Closed Institutions of Execution of Punishment were given extra attention in this research as they are anticipated to constitute future prisons. So this prison is taken as an 'ideal type' in the research in the Weberian sense.

Diversity among defendant-prisoners

Research in the prisons revealed the diversity among young defendants in experiencing the same prisons. Firstly, it goes without saying that diversity in experience stems from the varieties in offences that the defendants are charged with and the degree of their experiences in the youth (criminal) justice system. Elaboration of the diversity in offences, experiencing the imprisonment using Bourdieu's concepts of economic, social and cultural capital as a basis, led me to handle diversity in four categories. The intricate relationship between drug use, drug dealing and property-related offences, which has not been explicitly stated in prior research, formed a category by itself. This categorization does not mean that all defendants charged with drugs had other property-related offences, but conversely, the majority of participants charged with property offences had a considerable amount of experience with drug use and drug dealing that could remain unnoticed by the justice system. So this categorization does not suggest concluding that drug use, drug dealing and property-related offences take place together, but rather underlines the most significant aspect of distinguishing those charged with drug and property-related offences, which is the reliance on social and cultural capital and the emphasis on the *present* in their accounts.

Those charged with drug and property-related offences principally hold low cultural capital, related to problems in schools, school dropouts and illiteracy. Thus, they tend to rely on social capital they hold through their networks in their fields. In the accounts of those charged with drug and property-related offences, there is an emphasis on *now*, the present, on the deprivation of liberty here and now. This emphasis on the present calls for a comparison with those defendants that speak about their concern over the *future*, in relation to the deprivation of producing cultural capital. So, for some prisoners, the prison as a total institution does not reproduce the existing cultural capital they already hold, but destroy their existing cultural capital, causing them anxiety about pursuing non-criminal careers. Comparing the accounts of the first group, those charged with property and drug-related offences, with those charged with sexual offences reveals this stark contrast in terms of the emphasis on the present or future. The low quality of accounts received from those charged with offences related to bodily integrity such as assault and murder that forms the third category of defendants in this research is presumably related to the difficulty the defendants had in revealing information to the researcher about their ongoing trial for severe offences. Overall, this diversity,

which is best revealed in comparing the first two groups' emphasis on their cultural capital and their emphasis on the present and future, has not been seen in prior research in Turkey.

Finally, there is the fourth category of defendants charged with offences against the integrity of the state, which can be referred as 'terrorism' and 'political offences' by the judiciary and the prison administration based on acts in relation to Kurdish ethnicity. Political prisoners have tended to differentiate themselves from other prisoners through their relation with the state and through the collectivity of illegality. The emphasis on the cultural capital and the vision of a collective *future* also differentiates political prisoners from other prisoners, who had no collective emphasis. These diversities led to differences in experiencing pains of imprisonment.

Pains of remand imprisonment

The concept of "pains of imprisonment" has been employed and considered as a productive tool by various writers, including Sykes, Crewe, MacGuinnes, Liebling and Cox. In this research, the pain of sharing a collective life in a total institution, and the solid, inherent pain caused by the loss of liberty occupied a great deal of accounts. Some burdens/pains of confinement were revealed that are most intrinsic to youth imprisonment. Accordingly, the pain of blocked contact with the outside world but mostly with the family and the pain of blocked access to education emerged as significant burdens of youth remand imprisonment in high security facilities. Not surprisingly, the pain of blocked access to education was endured more severely and prioritized by those with higher cultural capital who cared about *future* more than the *present*. Consequently, the diversity of the prisoners that I tried to unpack indicates the diversity in experiencing the pains of imprisonment. Finally, there is the 'collective experience of enduring pain' for political prisoners.

Management of the bureaucratic disposal resort

In contrast to the diversity depicted in Chapter V, all young defendants are managed under the same regime of high-security remand imprisonment where security overrules all other aspects of imprisonment such as discipline, education, labour or psychological intervention. The hierarchical bureaucratic organization of the prison that situates the primary manager above the secondary managers, and the managers over the psycho-social service members, the teachers and the security officers, eventually appoints a role of remedy to psycho-social service members to individualize the accumulated structural issues of the defendants. The use of space is highlighted inside the bureaucratic disposal resort through shrinkage and expansion for better control over disputes. Sending sentenced youth with disciplinary problems from the Juvenile Education Houses to the high-security remand prisons stands out as another example of using the element of space as a tool for segregation, categorization and control of prisoners.

Delivering adjudication

Understanding the roles of high-security remand imprisonment required me to situate it at the intersection of legislative, judiciary and executive powers. So, after scrutinizing the legislative transformations and their implications and conducting research in the prisons, I sought to elaborate upon the roles of remand imprisonment through an interpretive understanding of the accounts of youth justice professionals in the bureaucratic organization. Ultimately, law in action did not always comprise the law on the books; in fact, interpretation of legal decision-making varied to a great extent in the case of remand imprisonment. Seeking an interpretive understanding of the law in praxis revealed the governmentality of the bureaucratic organization that bears a complex set of hierarchical relations, not inherent in bureaucracy but more intrinsic to Turkish governmentality.

I directed the dialogues and focus groups around the topics of conducting justice in the adjudication process, participants' self-perception about their occupations, recent developments in legislation and system efficiency, and the praxis of protective/security measures and imprisonment, though never explicitly remand imprisonment. I adopted this approach on purpose for two basic reasons: first, to understand how much space remand imprisonment occupied in the agenda; and secondly to be able to interpret the rationality behind remand imprisonment by detecting word use.

Elaborating on the operation of the adjudication process in dialectics and viewing the prosecutors, lawyers, judges and social work officials consecutively, as delivers of the thesis, anti-thesis, 'synthesis' and 'the others', was helpful in analyzing the accounts within their own professional fields, thus identifying patterns of interpretation of the service they deliver. Analysis of these patterns produced insights about the interpretations of remand imprisonment.

Prosecutors' accounts as delivers of the thesis and the first actors to request remand imprisonment from the judges were shaped within a Eurocentric, developmentalist-modernist ethos that revolved around benchmarking by prioritizing system efficiency and technology, and better management of the target population through classification. Though criticizing the lack of protective/security mechanisms in the executive power, prosecutors were themselves disconnected from one important aspect of the executive power, which is imprisonment. Ultimately, remand imprisonment emerged as a first resort control and deterrence mechanism for repeat offenders with 'case explosions', who according to some prosecutors could not adopt the dominant acceptable values of society. Thus, the responsabilization of illegal behavior was individualized. The lack of distinction between prison sentence and remand imprisonment is worth noting to understand the rationality of incarceration.

In contrast to the strong and solid thesis of the prosecutors and despite the prevailing language of rights, idealist or non-idealist lawyers, as deliverers of the anti-thesis, constituted a dispensable element of the adjudication process. All lawyers criticized the insufficiency of the executive powers in delivering protective/security measures. However, this critique did not have a connection to remand imprisonment. Remand imprisonment was seen as an inevitable part of the justice system and the lawyers believed that their clients had to be saved individually.

In the case of judges as the head of the adjudication process, forming the thesis, their self-positioning mattered considerably in the delivery of justice. A considerable number of juvenile judges referred to their specific profession as a reduction in status, as their power of adjudication was distorted in the new field concerning minors. Besides, judges revealed contempt about not being able to have a say over the legislations as mere implementers.

Like all the other professionals, judges referred to the insufficiency in the praxis of protective/security measures, which did not fully connect to the praxis of remand imprisonment. Most significantly, judges' own perception of the bureaucracy, having to accept a lower status in the adjudication culture by being concerned with the minors, their inferiority in relation to the High Court of Appeal, their closer status to the prosecutors and disconnection with the lawyers, and their managerial position over social work officials all add up to a series of contradictions revealed in their accounts about their work which have implications for remand imprisonment. Ultimately, judges' interpretations form a deadlock around the individual responsabilization of illegal acts. Thus, rather than travelling on the axis of penal welfarism and punitiveness, judges' accounts revolve around individual responsabilization of crime, which the ethos of children's rights prevailing in the legislations did not disentangle.

In the dialectic of the adjudication process, social work officials have acquired an ambiguous position that is not an essential element of the process but an additional expertise that remains undefined. The ambiguity of the eligibility criteria to do social work, the legal position of social work officials as merely experts rather than core elements of the adjudication process, the ambiguity in the timing of the operation of social work, and the ambiguity in job definition caught between determining the imputability and determining the needs of the child together perpetuate the low status of social work in the judicial bureaucracy.

Most significantly, social work officials' interpretation of their social position and their reactions varied at different levels, but did not form a collective resistance. Considering the political economy of Turkey, its governing of the population and the position of social work as laid out in Chapter III, social work officials' self-positioning compared to other elements in the judicial bureaucracy calls for a revisiting of the hegemonic relations (Gramsci, 1971) in cultural, political

and economic aspects. Remand imprisonment does not occupy a space in the agenda of social work officials, as it is viewed as an inevitable control mechanism of the justice system.

Implications for remand imprisonment

Consequently, I completed the analysis of the data --relative legislations, statistics and data gathered from 'law in action' research which I approached in an interpretative understanding by focusing on the participants' interpretation of their actions in the legal field-- by contextualizing it in relation to Turkey's welfare and social security regime, the language of knowledge production and sovereign power's relations with the citizens. Findings present a detailed account of the legal culture in the youth justice system that contextualizes the roles remand imprisonment fulfils as a spatial crime control and social control mechanism.

Accordingly, given its residual and informal social security regime in relation to its political economy, youth justice system in Turkey has evolved into a managerialist conduct. Managerialism of the Turkish youth justice system has been brought up in the literature (Uluğtekin 2014). A review of the Anglo-Saxon literature shows that managerialism or New Penology, concerned with risk management, has informed the majority of work on remand imprisonment. Unpacked and revisited, the concept of managerialism has informed me to comprehend the roles of remand imprisonment in the Turkish youth justice system. First of all, Bottoms' (1995) differentiation of managerialism as systematic, consumerist and actuarial, which refers to the New Penology (Feeley and Simon 1992, 1994), provides a clearer platform for discussion. The New Penology is neither about punishing nor rehabilitating individuals, but about classifying and managing unruly groups according to the perceived level of dangerousness. System management is prioritized over intervention to individuals.

I identify Turkish youth justice system more with the actuarial managerialism for reasons laid out in Chapter VI. However, a critical approach to New Penology necessitates revisiting some aspects. First, with its target group as the underclass, New Penology conceals the diversity of prisons that I have tried to show. Second, as highlighted previously (Cheliotis 2006b), New Penology downplays the role of human agency in the deliverers of the justice system.

Hence, I aimed at revealing the roles of remand imprisonment by gathering qualitative data from youth justice professionals and employing an interpretative understanding of law in action. Third, New Penology misses the continuity between the past and contemporary penal features (Cheliotis 2006b). Accordingly, by addressing the bureaucratic youth justice system within governmentality, the Biopolitics of the population, I have studied remand imprisonment both as a manifestation of the sovereign power of the state as well as situating it in the political economy and analysing the

security power. Thus, the lives of those charged with terrorism are suspended in remand imprisonment by the sovereign in a state of necessity that emerges in modern politics.

Analysis of the data in governmentality demonstrates that remand imprisonment has evolved into a spatial crime control mechanism in this managerialist conduct. In this managerialist governmentality where professionalism over social security remains immature in relation to the country's political economy, the imagined self-sufficient, self-contained, invulnerable and decontextualized liberal, rational young defendant in the liberal rights discourse, is managed *securely* in the youth justice system through spatial control. Findings of the thesis show that the right to presumption of innocence remains irrelevant for both the youth in conflict with the law and for the legal practitioners. Moreover, the distinction between sentenced and remand imprisonment remains weak. These two indicate that remand imprisonment is a significant crime control mechanism.

Consequently, remand imprisonment **first** works as a first-resort deterrence and control mechanism of security. **Secondly**, it is rationalized and neutralized as a sovereign power's expression of just deserts, as remand imprisonment is not distinguished from prison sentences. **Finally**, it fulfills an administrative control mechanism for evidence collection. The incarceration of defendants and managing them as aggregates in high security prisons addresses all three of these roles of remand imprisonment. Thus it successfully fulfills the roles as the element of 'space' dispenses with 'time' and 'labour'.

Consequently, remand imprisonment is sustained as a 'bureaucratic disposal resort' partaking in the structural accumulation of indirect violence in the youth/welfare/criminal justice system that is embedded in the governmentality of Turkey. As already stated, disclosing the accumulated indirect violence is difficult using human rights' language that today is limited to detecting direct forms of violence. Drawing from the works of Bauman and Smith, who stress the individualization of injustice (Bauman 2001) and sequestration of morality by the human rights language (Smith 2002), I claim that the human rights language does not challenge the institution of remand imprisonment facilitated by high security prisons. Making reference to the authoritarian language of human rights that takes individual as the unit of analysis in the criminal justice conceals the social aspect of 'crime' and disregards the structural patterns of being in conflict with the law. High security prisons that provide security of the defendants within the facility and security of the public outside the prison do not by nature challenge the authority of human rights discourse as the language itself cannot critically analyse the roles of remand imprisonment. Hence, deciphering youth remand imprisonment necessitates contextualizing the young defendants in the relations of production as well as the direct relations with state sovereignty. The significance of data that would be gathered in studies focusing on different offence types should not be underestimated. Further research

focusing on remand imprisonment for different offence types will contribute significantly to the existing literature. Moreover, criminological knowledge in Turkey would benefit from further studies on the interpretation of statistical trends in the criminal justice system.

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Appendix A: Judicial Control
Criminal Procedural Law, art.109

Judicial control includes one or more obligations inflicted on the suspect as stated below:

- a) To not to be permitted to travel outside of the country,
- b) To regularly apply to places that will be specified by the judge within the specified time periods,
- c) To obey the calls of authorities or persons specified by the judge and, when necessary, fulfilling the measures of control with respect to the professional
- d) activities or issues of continuing education.
- e) Not being able to drive any or some of the vehicles and, when necessary, leaving his driving license to the office of registry in return for a receipt,
- f) To obey and accept the measures of medical diligence, treatment or examination, especially being hospitalized for purification from dependency on narcotics, stimulating or evaporating substances and alcohol,
- g) To deposit an amount of the money as a safeguard, which shall be determined by the judge upon the motion of the public prosecutor, after taking into account the financial conditions of the suspect, and whether it shall be paid by more than one installments and the period of payment,
- h) No to be permitted to have or to carry weapons and, if necessary, to leave the guns to the judicial depositary in return for a receipt,
- i) To provide real or personal guarantee for the money to assure rights of the injured party; the judge upon the motion of the public prosecutor shall specify
- j) the amount and the payment period of the money,
- k) To provide assurance that he shall fulfill the obligations towards his family, and that he shall pay alimony regularly, pursuant to the judicial decisions.

Child Protection Law Article 20- (1) At the investigation or prosecution stages related to juveniles pushed to crime, the court may, as judicial control measures, decide for the one or several of the measures listed below, or for the measures specified under Article 109 of the Criminal Procedures Law:

- a) No moving outside specified peripheral boundaries.
- b) No access to certain places or access to certain places only.
- c) No contact with specified persons and organizations.

Appendix B: Criminal Procedural Law, no. 5271, article 100: reasons to be detained on remand

- a) If the suspect or accused had fled, eluded or if there are specific facts which justify the suspicion that he is going to flee.
- b) If the conduct of the suspect or the accused tend to show the existence of a strong suspicion that he is going to attempt;
 - 1. To destroy, hide or change the evidence,
 - 2. To put an unlawful pressure on witnesses, the victims or other individuals.
- (3) If strong grounds for suspicion are present, that the below mentioned crimes have been committed, then “the ground for arrest with a warrant” may be deemed as existing:
 - a) Following crimes as defined in the Turkish Penal Code dated 26.9.2004 and No. 5237:
 - 1. Genocide and crimes against humanity (Arts. 76, 77, 78),
 - 2. Killing with intent (Arts. 81, 82, 83),
 - 3. Intended wounding committed by a gun (Art. 86/3-a) and intended wounding which has been aggravated by its result (Art. 87)
 - 4. Torture (Arts. 94, 95),
 - 5. Sexual assault (Art. 102, except for subparagraph 1),
 - 6. Sexual abuse of children (Art. 103),
 - 7. Theft (Arts. 141, 142), and aggravated theft (Arts. 148, 149)
 - 8. Producing and trading with narcotic or stimulating substances (Art. 188),
 - 9. Forming an organization in order to commit crimes (Art. 220, except for subparagraphs 2, 7 and 8),
 - 10. Crimes against the security of the state (Arts. 302, 303, 304, 307, 308),
 - 11. Crimes against the Constitutional order and crimes against the functioning of this system (Arts. 309, 310, 311, 312, 313, 314, 315),
 - b) Smuggling with guns, as defined in Act on Guns and Knives and other Tools, dated 10.7.1953, No. 6136, (Art. 12),
 - c) The crime of embezzlement as defined in Act on Banks, dated 18.6.1999, No. 4389, Art. 22, subparagraphs (3) and (4),
 - d) Crimes defined in Combating Smuggling Act, dated 10.7.2003, No. 4926, and carry imprisonment as punishment,
 - e) Crimes defined in Act on Protection of Cultural and Natural Substances, dated 21.7.1983, No. 2863, Arts. 68 and 74,
 - f) Crime of intentionally start a fire in forests, as defined in Act on Forests, dated 31.8.1956, No. 6831, Art. 110, subsections 4 and 5.
- (4) In cases where the committed crime is punishable with judicial fine, or with imprisonment not more than one year at the upper level, no arrest warrant shall be issued.

According to the 21st article in the Child Protection Law (2005), children below 15 cannot be detained for crimes, which have the upper limit of punishment requiring incarceration more than 5 years.

Appendix C: The era of rights and rights of children

The international standards and norms on the welfare of children have been introduced since the beginning of the 20th century. Just to see the manifestation of claims in the form of numerous rights, standards and guidelines and to briefly remember what we refer when speak about the ethos of children's rights, I present a simple list of them.

1. The League of Nations that adopted the Geneva Declaration of the Rights of the Child (1924). These were just guidelines and were not enforceable.
2. The Declaration of the Rights of the Child was adopted by the General Assembly in 1959.
3. The Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24) was enacted in 1966.
4. The International Covenant on Economic, Social and Cultural Rights (in particular in article 10) was also passed in 1966.
5. The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) was introduced in 1985.
6. The United Nations' Convention on the Rights of the Child (CRC) (1989) is the first legally binding international instrument for children's rights. This UN CRC became a binding international law in 1990.

It is the 1990s, that rights language becomes prevalent in the youth justice system and child welfare. Committee on the Rights of the Child monitors the implementation of the UN CRC since 1991. Turkey ratified the UN CRC in 1995.³⁰

7. The UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) was adopted in 1990. Note that, among all the rights, rules, standards, conventions and guidelines, Riyadh guidelines constitute the package that Turkey is most far away from implementation. However, discovering that a certain country does not comply with these guidelines is not surprising as these focus on recommendations on the prevention of crime through various welfare institutions, rather than reminding that defendants deserve a fair trial after being suspects.
8. The UN Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules) was also adopted in 1990.
9. The European Convention on the Exercise of Children's Rights was put forth in 1996. In this European version, rationality, right to be heard, right to participate in decision-making about themselves and right to be represented are stressed. Note that, this Convention does not provide any specific articles for children in conflict with law.
10. The UN Economic and Social Council brought forward the Vienna Guidelines on the 'elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice' in 1997. According to the Vienna Guidelines, UN CRC, The Beijing Rules, The Riyadh Guidelines and The Havana Rules constitute the UN standards and norms in juvenile justice. Optional protocols on the Involvement of Children in Armed Conflict and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography were later added by the United Nations in 2000.

³⁰ Apart from the UN CRC, it is not possible to find information on the dates which Turkey ratified the other international rules and guidelines. However, Turkey has been adopting these international principles, in theory, especially via its Child Protection Law (2005). On 1 June 2012, the Committee on the Rights of the Child (the Committee) examined the combined second and third periodic report of Turkey. It was last examined on 23 May 2001.

11. The Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules were adopted in 2006.
12. A General Comment No.10 was prepared by the UN, in 2007, “to encourage States to develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in competence with, the CRC, providing guidance and recommendations for the framework of this comprehensive juvenile justice policy.” Basically, the General Comment reviews the articles of UN CRC, according to the comments of the Children’s Rights Committee that has been reviewing State members’ reports since 1991. This General Comment No: 10, states that State Parties (to CRC) “still have a long way to go in achieving full compliance in the areas of procedural rights, the development and implementation of measures for dealing with children in conflict with law without restoring to judicial proceedings and use of deprivation of liberty only as a measure of last resort.” According to this General Comment No:10, there is lack of information on the prevention from coming into conflict with law. And lastly, alternative measures such as diversion and restorative justice should be promoted well in the juvenile justice. The General Comment No:10, also provides the leading principles of a comprehensive policy, which are, non-discrimination, best interest of the child, the right to life, survival and development, the right to be heard and lastly, dignity. In line with the chronology of children’s rights³¹ and child-centered justice, the last international reference related to child-centered justice was introduced in 2010. This is
13. The ‘Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice’³² and their explanatory memorandum. It was edited in 2011. The main aim to adopt these guidelines is to achieve a greater unity between member states in the implementation of universal and European standards in protecting and promoting children’s rights. In other words, the guidelines are supplementary to the existing ‘children’s’ rights’ and principles of child-centred justice. They are not binding. The scope of the guidelines “deal with the issue of the place and role, and the views, rights and needs of the child in judicial proceedings and in alternatives to such proceedings.”

³¹ States guarantee children’s rights via certain institutions such as courts and social work institutions. International organizations as bearer of children’s rights are United Nations and its agencies and organs (UNICEF, UNESCO, ILO), Regional Organization (Council of Europe, EU, Africa Union (AU), NGOS (eg, child rights connect) and National Human Rights Institutions (NHRIs) such as the ombudsman.

³² The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, take the following recommendations into consideration:

- Recommendation Rec(2003)5 on measures of detention of asylum seekers,
- Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice,
- Recommendation Rec(2005)5 on the rights of children living in residential institutions, Recommendation Rec(2006)2 on the European Prison Rules, Recommendation CM/Rec(2008)11 on the European Rules for Juvenile Offenders subject to sanctions or measures and
- Recommendation CM/Rec(2009)10 on Policy Guidelines on integrated national strategies for the protection of children from violence;
- the United Nations Guidelines on Justice in matters involving Child Victims and Witnesses of Crime (ECOSOC Res 2005/20, 2005);
- the Guidance note of the United Nations Secretary-General: United Nations Approach to Justice for Children (2008);
- the United Nations Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009);
- the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (“The Paris Principles”)

Appendix D: Sampling according to offence types and definitions

The ratio of the types of offences that are tried *only* in Juvenile Courts and Juvenile Court of Serious Crimes in Turkey 2011.

<i>Mal varlığına karşı işlenen suçlar</i>	Offences against property	38,6%
<i>Vücut dokunulmazlığına karşı suçlar</i>	Offences against the integrity of human body	18,4%
<i>Hürriyete karşı suçlar</i>	Offences against freedom	12,8%
<i>Kamunun sağlığına karşı suçlar</i>	Offences against the public health	8,6%
<i>Şerefeye karşı suçlar</i>	Offences against honour	4,0%
<i>Ateşli silah ve bıçak ile diğer alet hk. Kanuna Muhalefet</i>	Being in conflict with the law with fire guns, knives and other means	2,0%
<i>cinsel dokunulmazlığa karşı suçlar</i>	Offences against sexual immunity	1,8%
<i>Kamu idare güv. Ve iş. Karşı suçlar</i>	Offences against the security of the public management	1,7%
<i>Adliyeye karşı suçlar</i>	Offences against the court of law	1,7%
<i>Diğer Suçlar</i>	Other offences	10,3%

Source: http://www.adlisicil.adalet.gov.tr/istatistik_2011/127.pdf [accessed on 7 July 2013]

There are three main categories of offences in the Turkish Penal Code. These are, ‘crimes against persons’, ‘crimes against the public/society’ and ‘crimes against the nation and the state’. All offence types are listed in one of these three categories. So offences against property, offences against the integrity of the human body, offences against freedom, offences against honor, being in conflict with the law with fire guns, knives and other means, offences against sexual immunity are categorized under ‘crimes against persons’. Offences against public health and offences against the security of the public management are categorized under ‘crimes against public/society’. Offences against the court of law are categorized under ‘crimes against the nation and the state’.

Offences against property are defined as offences such as, theft, qualified theft, robbery, qualified robbery, giving harm to property, giving harm to property in a qualified way, giving harm to places of worship and cemeteries, occupying a private property, misuse of trust while taking care of a private property, fraud qualified fraud, owning a property lost by someone else, fraudulent bankruptcy, misuse of vending machines, presenting wrong information about a corporation or cooperation, buying a property that is acquired through an offence, not sharing information with the law officers about properties that are acquired this way.

Offences against the integrity of the human body are defined as, injuring, deliberately injuring, making experiments on the human body without informed consent, trading of organs and tissues.

Offences against freedom are defined as, threat, blackmail, physical coercion, preventing a person to go or stay somewhere, preventing someone from receiving education, preventing public officers to work, preventing someone to use his or her political rights, preventing someone from having freedom of belief, thoughts or decisions, violation of dwelling immunity, violation of right to work, violation of union rights, doing body search as a public officer with no lawful reason, making discrimination in letting a person do economic activities, distributing individuals’ peace and harmony by constantly calling or making noise, prevention of communication.

Offences against honor are defined as, insult/defamation and insult on a dead person.

Offences against sexual immunity are defined as, sexual assault, sexual abuse of children, having sexual intercourse with persons under the legal age, sexual harassment.

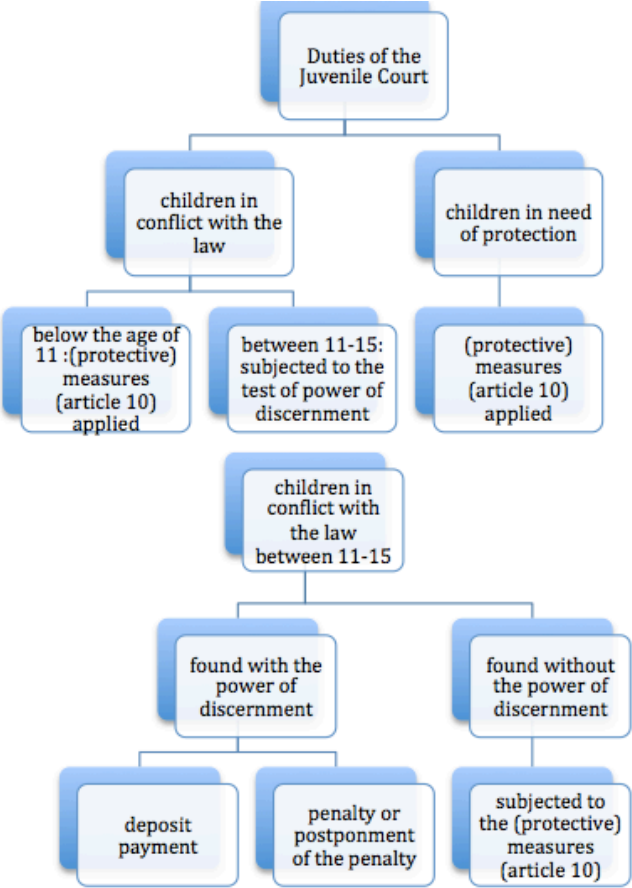
Offences against public health are defined as, putting toxic substance to water or soil, trading food or medicine that have gone bad, making and trading medicine in ways that would put public health in danger, producing and trading drugs and stimulants, easing of usage of drugs and stimulants, buying, accepting or keeping drugs or stimulants to use, producing and trading poisonous substances without necessary legal permission, providing dangerous substances to children and mentally handicapped persons or persons who use volatile substance, acting against rules for infectious disease, burying dead bodies in unhealthy methods.

Offences against the public management are defined as, debit, impropriety, disregarding the duty of inspection, bribery, Imposition of Security Precautions on Legal Entities, trading during legal service, Abandonment or non-performance of public office, Improper disposition on other's property, Prevention of performance, Use of vehicles in public service during commission of offense. The last two definitions are relevant to offences conducted by young people.

Offences against the court of law are defined as, malicious prosecution, using identity information that belongs to someone else, taking over criminal responsibility, making up criminal offences, being a false witness, trying to remove or change criminal evidence, Laundering of assets acquired as a result of offense, supporting offender, Failure to notify the accused, arrested or convicted person or the evidences of offense, recording of sound or vision during interrogation or prosecution, violation of secrecy, genital controls without the decision of the judge, attempt to influence a just trial, misconduct of custody of a property, Confiscation and destruction of an officially delivered property, Entry into a prison or penitentiary in place of another person, breach of prison, facilitating escape, misconduct in office by the guardian, revolt of offenders and convicts, Illegal transfer of property to the Execution Institution or Detention House, Restricting use of rights and supply of food.

Being in conflict with the law with fire guns, knives and other means, is defined as, holding or importing guns unlawfully.

Appendix E: Simplified schema of the former law of 1979:



Appendix F: Information Sheet for Young Defendants on Remand

Doctorate Research Project:

TRIAL AND IMPRISONMENT ON REMAND PROCESSES OF DEFENDANTS UNDER 18

Why am I here?

I am here to conduct research on the trial and imprisonment processes of defendants under 18 in the justice system. The purpose of this project is to comprehend the prosecution processes and imprisonment processes of defendants under 18 in Turkey, to create change in today's system and to come up with suggestions to create change.

During the research, I will study the laws and current practices, I will conduct interviews with young people in prosecution process in Istanbul Maltepe Children and Young People's Closed Institution for Punishment, Ankara Children and Young People's Closed Prison and Bakirkoy-Istanbul Women and Children's Closed prison, Izmir Children and Young People's Closed Prison and Konya E type Prison. Overall, I am planning to reach about 50 participants. The best way to understand the prosecution and imprisonment processes is through talking to people who actually experience it. This is why I would like to conduct these interviews. I will also interview judges, prosecutors, attorneys and social work officials.

Who am I as a researcher?

My name is Nilay Kavur. I am running this doctorate project, as a doctorate student registered at University of Kent in UK and Eötvös Loránd University for three years. I am a graduate of sociology and I am doing sociological studies. I do not hold a degree in law or psychology.

Before starting this Project, I wrote a Master's thesis on one of the Juvenile Education Houses in Izmir, Turkey and talked with 45 convicted young people and made a survey in Ankara Juvenile Education House. I also did voluntary work in handcrafts workshop held by Turkey's Youth Re-autonomy Foundation in Maltepe Children and Young People's Institution for Punishment.

What kind of a research is this?

The interviews will go on until September 2014. If you agree to voluntarily participate in the research, I would like to conduct at least 2 interviews and would like to attend your hearings as an observer if possible. I hope the court hearings end in the shortest time. The main subject of the talks will be your experiences in court hearings and your everyday experiences in this remand prison.

The findings of this research will be available by September 2015. So, I expect to see the research's impact after September 2015. Findings will not be available to made use of before this date. So, defendants on remand will not be able to benefit from the research findings prior to September 2015. I will try to help during the research only if I have the means to.

I am covering the expenses of this research from my salary that I receive as an Erasmus Mundus Fellow.

Confidentiality and Anonymity

I will not use any of the information I get from you or other participants by revealing any names or identities. Real names will not be used in the thesis. Pseudonyms will be used.

Voluntary Participation

During this research project, you might like to end the conversation for reasons that I cannot anticipate. You might skip some questions and withdraw some of your answers later. You can ask me to erase my notes and I will do so. Moreover, you can request extra interview sessions.

I would like to receive your consent to make use of these notes in the doctorate thesis that I am preparing. I will also use these in articles and conference papers and in further studies. Your name will definitely not appear with your comments and responses.

This form is a proof that you participate in the study voluntarily. You will keep one copy of this form while I, as the researcher, keep the other copy.

For communication during the doctorate Project (2014-2015):

Email: nk270@kent.ac.uk

Can you please put a check to the below sentences if you agree?

1. I confirm I have read and understand the information sheet dated for the above study. I have had the opportunity to consider the information, ask questions and have had these answered satisfactorily. __
2. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason by contacting the below address. __
3. I understand that my responses will be anonymised before analysis. I give permission for the researcher to have access to my anonymised responses and make use of quotes that she has taken note of. __
4. I agree to take part in the above research project. __

Signature:

Date: __ / __ / 2014

Thank you.

Nilay Kavur

European Commission Erasmus Mundus Fellow

Doctorate in Cultural and Global Criminology, 2nd year Student

University of Kent, UK

Eötvös Loránd University, Hungary

Appendix G: Questions sent to the ministry of justice

Note: 1987 is the year that the first juvenile court is established in Turkey.

About the juvenile defendants:

1. What are the numbers of juveniles brought to the police station in between the years 1987 and 2014, each year?
2. What is the absolute number of court files for juvenile defendants in between the years 1987-2014 for every year?
3. What is the average number of court files for juvenile defendants in between the years 1987-2014 every year?
4. What are the absolute numbers of juvenile defendants (according to age) who have been subjected to social inquiry reports in between the years 1987-2014 every year?
5. How is the graphic of criminal behaviour of juveniles in Turkey according to different crime categories such as theft, murder, drug dealing, etc.) in between the years 1987-2014? Is juvenile criminality increasing or decreasing?
6. What is the absolute number of juveniles subjected to alternative control mechanisms instead of pretrial detention during court hearings in between the years 1987-2014? Which control mechanisms are used mostly?
7. What are the given reasons of putting juvenile defendants on remand according to categories in between the years 1987-2014?
8. What are the ratios of juvenile defendants on remand to all juvenile defendants in between the years 1987-2014?
9. What are the final decisions given for the files of juvenile defendants *not* on remand in between the years 1987-2014?
10. What are the final decisions given for the files of juvenile defendants on remand in between the years 1987-2014? Ex. X% of juveniles on remand were given prison sentencing/probation/etc. in 1995, 1996, etc.
11. What are the average number of years that juvenile defendants were sentenced to imprisonment in between the years 1987-2014 according to different crime categories?
12. What is the number of juvenile defendants who were given probation orders every year since the probation law has passed?

About the court

13. What are the number of juvenile courts and juvenile courts of aggravated offences that were opened and closed according to place in between the years 1987-2014?

14. What are the number of judges working for the juvenile cases in between the years 1987-2014, each year?
15. What are the number of social work officials working for juvenile suspects and defendants in between the years 1987-2014, each year?
16. What is the number of prosecutors working in juvenile bureaus since 2005?
17. What is the average number of cases of juveniles, a judge works on every year in between the years 1987-2014?
18. What is the average amount of time a juvenile case takes in between the years 1987-2014?
19. What is the number of juveniles judged in juvenile courts and juvenile courts of aggravated offences in between the years 1987-2014?
20. What is the number of juveniles judged *not* in juvenile courts and juvenile courts of aggravated offences in between the years 1987-2014?

About the prisons

21. What is the ratio of juvenile prisoners in the 100.000 population of children in Turkey in between the years 1987-2014 (from the age of criminal responsibility of 11 until 2004 and 12 from 2005 and onwards)?
22. What are the numbers of psychologists working in juvenile prisons, juvenile education houses and in the juvenile wings of adult facilities for each prison in between the years 1987-2014, each year?
23. What are the numbers of social work officials working in juvenile prisons, juvenile education houses and in the juvenile wings of adult facilities for each prison in between the years 1987-2014, each year?
24. What are the numbers of guardians working in juvenile prisons, juvenile education houses and in the juvenile wings of adult facilities for each prison in between the years 1987-2014, each year?
25. In which prisons the female and male juvenile prisoners are kept in 2014? (given by numbers)
26. What are the names of the prisons that were opened and/or closed that were only for juvenile prisoners throughout the years?
27. What are the absolute numbers of juvenile defendants on remand, entering and leaving prisons in between the years 1987-2014?
28. What are the absolute numbers of convicted juveniles entering and leaving the prison in between the years 1987-2014?

- 29.** What are the average numbers of juvenile defendants on remand, every year, in between the years 1987-2014? (can be found in the official website from 2000 onwards)
- 30.** What are the average numbers of juvenile convicts in prison, every year, in between the years 1987-2014? (can be found in the official website from 2000 onwards)
- 31.** What are the ratios of juvenile prisoners on remand to all juvenile prisoners in between the years 1987-2014? (can be found in the official website from 2000 onwards)