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THE SEGREGATION AND ITS CONDITIONS FOR TRANSGENDER INMATES IN THE TERM OF THE EIGHT AMENDMENT

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Azer SUMBAS
Research Assistant, Hacettepe Universitesi, Faculty of Law, Department of Public Law
azersumbas@hacettepe.edu.tr

ABSTRACT

Incarceration places people in potentially dangerous and inadequate conditions. These conditions get worse for transgenders because they face discrimination and humiliation. One of the reasons causing the victimhood is placing them according to their perceived genital instead of their self-expressed gender identity. In conformity with this placement transwomen and transmen are frequently put in opposite sex's facilities and they mostly experience maltreating. Therefore the prison officials sometimes put them in segregation on the grounds of 'security', 'protective custody' or 'punishment' as a solution. However the segregation effectively causes transgenders to treat as a problem and prevents them from accessing basic human needs such as health care and recreational activities.

In this framework, the question of whether or not the segregation of transgender inmates from the general population is the best solution and it violates the Eighth Amendment shall be considered in this research paper. In Part I, the Eighth Amendment and the definition of the cruel and unusual punishment shall be explained. In Part II, the inadequacy of the basic human needs in segregation shall be discussed by giving court decisions and various experiences from inmates. Consequently, it shall be underlined that the situation of transgender inmates in the segregation and the inadequacy of the basic needs may be a violation of the Eighth Amendment in Part III.

Keywords: human rights, prison, transgenders, incarceration.

Introduction

Most people assume that transgenders are voluntarily placed in solitary confinement or administrative segregation based on the dangers of general population. However the number of transgenders who are in the form of segregation against their will and look for help to avoid it is significant. Although in some cases placement in segregation or change the settlement of a transgender to a cell where the abusive prison staffs don't work or detrimental prisoners do not stay reduces certain forms of violence, that might be even worse rather than staying with general population[1] because the rights of recreational and educational activities, healthcare and diet are generally restricted as will be explained in further pages. Although several courts have recognized the vulnerability of people in prison who do not conform to traditional gender norms[2], transgenders are often placed in segregation and transgender inmates mostly

[1]Gabriel Arkles, *Safety and Solidarity Across Gender Lines: Rethinking Segregation of Transgender People in Detention,* Vol 18:2 Temp. Pol. & Civ. Rts. L.Rev., 515, 537 (2009).
[2]See e.g., U.S. v. Gonzalez, 945 F.2d 525, 526-27 (1991), Young v. Quinlan, 960 F.2d. 351, 362 (1992).

face and experience maltreating including sexual assaults. In this sense, the Department of Justice announced rules issuing national standards to assist the termination of sexual abuse in all correctional facilities including prisons, youth detention centers, jails and penitentiaries. According to those standards, when segregation is prolonged, this isolation can amount to torture in some circumstances for the transgender inmates.[3] The national standards limit the uses of "protective custody" by stating that all other alternatives must be considered before placing a prisoner in segregation against his/her will.[4] Moreover the standards add that prisoners in segregated units might also have a limited access to education, recreational programs and jobs and opportunities even though some of them choose to be placed in segregation.[5] According to the various sources, the number of prisoners who reported being physically assaulted is %16 and sexually assaulted is %15.[6] Besides, the studies regarding transgenders demonstrate that trans-women have experienced sexual assault in prison thirteen times more likely than general population.[7] Therefore as a solution for mistreatment and discrimination against transgender people, the prison officials choose putting them in segregation which also causes psychological stress on the transgender inmates. This practice is causing transgenders to regard as a problem, yet instead of treating them so, to reconsider the current placement and policies and to take measurement preventing transphobia in prison might be a more favorable solution.

Although the data regarding the experiences of transgenders in prison is restricted, Testimony of Organizations Supporting LGBT Equality [8] reached a data that non-transgenders are less often imprisoned than transgenders[9] and a study by the Injustice at Every Turn shows that the rate of transgenders who had attempted suicide is 41% as a tremendous rate comparing the rate of 1.6% in general population. It is also staggering that suicide attempts get higher at transgender people of color, as the rates at 56% for American Indians and 54% of multiracial people.[10] Furthermore, a qualitative study of psychology underlines the ill effect of solitary confinement in the case of committing suicide since the rate at 70% of the inmates who committed suicide in California prison were placed in solitary confinement[11] and therefore solitary confinement as a grand effect in suicidal ideation and suicide attempts was documented.[12]

In this framework, the question of whether the segregation of transgender prisoners from the general population is the best and proper resolution is raised in this research due to the fact that while they face the lack of basic human needs, they also suffer humiliation and discrimination. In addition, physical health problems and increased psychological stress often occur as a result of isolation.

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[3]National Center for Transgender Equality*, LGBT People and the Prison Rape Elimination Act* , July 2012, 1, http://transequality.org/Resources/PREA_July2012.pdf (last visited June. 30, 2016).

[4]*Id* at 2.

[5]*Id*.

[6]Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011, at 6, available at http://transequality.org/PDFs/NTDS_Report.pdf

[7]Shaun Knittel, *DOJ Standards Protect Transgender Inmates from Rape and Abuse*, available at http://www.edgeboston.com/news/national/features//135458/doj_standards_protect_transgender_inmates_from_rape_and_abuse (last visited July 14, 2016).

[8]Testimony of Organizations Supporting LGBT Equality, Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights , June 19, 2012 , available at http://www.lambdalegal.org/sites/default/files/ltr_sjsccrhr_20120619_solitary-confinement.pdf (last visited July, 14, 2016).

[9]*Id.*

[10]*Id.* at 5.

[11]John J. Gibbons, Nicholas deBelleville Katzenbach, *Confronting Confinement: A Report of The Commission on Safety and Abuse in American's Prisons,* Wahington University Journal Law & Policy, 22 Wash. U. J. L. & Pol'y 385, 471 (2006). (quoting Don Thompson, *Convict Suicides in State Prison Hit Record High*, Associated Press, January 3, 2006).

[12]Ildiko Suto, *Inmates Who Attempted Suicide in Prison: A Qualitative Study,* (Ph.D. Diss., Pacific University, 2007), 43.

I. The Eighth Amendment

A. "Punishment" identified as "cruel and unusual".

Despite the Eighth Amendment is one of the shortest amendments, it is subject to an extensive litigation, especially on prison conditions. The Eighth Amendment does not outlaw the cruel and unusual conditions, but it outlaws cruel and unusual punishments.[13] Hence it must be initially stated that a punishment by an official's treatment is constituted so long as a duly authorized sentencing court pronounces a penalty regarding its infliction in the course of administering.[14] In this regard, prison officials treat as a pions of the State. For these reasons, the prison officials' acts and decisions whether to provide discipline or security results in a punishment and are appropriately open to Eighth Amendment scrutiny.

Secondly, instead of giving an exact definition of cruel and unusual punishment, the Court preferred to implement standards for whether the punishment can be upheld under the meaning of the Eighth Amendment In *Estelle v. Gamble*[15], the Supreme Court established that so as to consider the prison conditions as a violation of the Eighth Amendment, two doctrinal components have to be satisfied. First, the objective standard indicating that sufficiently serious deprivations have been suffered by the prisoner or that the prisoner has to be subjected to a substantial risk of serious harm while he is incarcerated[16]. These serious harms may be serious medical needs[17] and identifiable human needs as diet, recreational activities and warmth.[18] Because the said harms might be "grossly disproportionate" to the crime[19] as a punishment that "involve the unnecessary and wanton infliction of pain"[20] and that is at variance with "evolving standards of decency"[21]. The issue of wantonness is explained in *Rhodes v. Chapman* [22], as qualified according to the restrictions facing the staff.

Then, the subjective standard requires ''official acted with a sufficiently culpable state of mind''.[23] The state of mind is one of ''deliberate indifference to inmate health or safety''[24] that was mentioned in *Estelle* for the first time. The culpable state of mind requirement was also explained by retired Justice Powell that in order to apply the ''deliberate indifference'' standard, the received treatment by the prisoner has to be an inhumane condition of confinement or a failure to have to his/her medical needs or the both.[25] For instance, in *Estelle*[26] while the Supreme Court adopted the Eighth Amendment's applicability in cases of some deprivations had by the prisoner during imprisonment, it did not acknowledge that prison doctors had inflicted cruel and unusual punishment because the plaintiff could not prove that the doctors possessed a sufficiently culpable state of mind. It may be also explained that the punishment received from the prison official or doctor did not include a deliberate act intended to chastise or deter.[27]

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[13]Farmer v. Brennan , 511 U.S. 1970, 1974 (1994) (A transsexual prisoner brought Bivens suit against prison officials, claiming that officials showed "deliberate indifference" by placing prisoner in general prison population, thus failing to keep him from harm allegedly inflicted by other inmates).

[14]Sharon Dolovich*, Crulety, Prison Conditions, and the Eighth Amendment*, 87 NYU L. Rev. 881 , 898 (2009).

[15]Estelle v. Gamble, 429 U.S. 97, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) (claiming that he was subjected to cruel and unusual punishment in violation of the Eighth Amendment for inadequate treatment of a back injury assertedly sustained while he was engaged in prison work).

[16]Helling v. McKinney, 509 U.S. 25, at 35 (1993).

[17]Estelle, *supra* note 16*,* at 104.

[18]*Id*., at 304.

[19]Coker v. Georgia, 433 U.S. 584, 592 (1977).

[20]Gregg v. Georgia, 428 U.S. 153, 183 (1976).

[21]I*d.* at. 173.

[22]Rhodes v. Chapman, 452 U.S. 337 (1981).

[23]Estelle, supra note 16, at 298.

[24]Wilson v. Seiter, 501 U.S. 302-303, 300 (1991)., see also Helling, *supra* note 19, at 34-35.

[25]*Id*. at 391-392.

[26]Estelle, *supra* note 16.

[27]Wilson v. Seiter, 501 U.S. 300 (1991).

In this regard the term of deliberate indifference appears that the Supreme Court avoided articulating a definition of deliberate indifference until *Farmer v. Brennan.*[28] The Court clearly urged that prison officials are not responsible under the Eighth Amendment for denying an inmate humane conditions of confinement. However if the officials know of and disregard an excessive risk to inmate health and safety they must be aware the substantial risk of serious harm.[29]

Even though applying the objective and subjective standards in order to define cruel and unusual punishment under the Eighth Amendment seems proper, these standards may fall to satisfy in some circumstances. For instance, a prison official who does not provide adequate nutrition to a prisoner may act without deliberate indifference. It means the conditions cannot be defined as cruel when prison staffs fail to notice or discover risks. Especially, the said recklessness may be occurred in case of transgender prisoners due to the fact that the prison officials are more careless and blind to their needs.

On the other hand, the term of substantial risk of harm and serious harm is unclear. The harm depends on the person and on the conditions. Therefore establishment of an physical harm or a pain degree particularly may not be enough. It should also cover physiological harm to prisoners particularly considering the transgenders suffering from ill treatment and humiliation in the prison. Thus, cruel and unusual punishment issue and the above two standards should be interpreted in a larger concept and the matter of harm should be held a case by case.

II. Restrictive Confinement

A. Forms

From the start, prisoners are housed according to their gender.[30] Because of such placements, transgender inmates who have not undergone genital transformation are the inmates identified with the perceived genital. Transgendered inmates suddenly find themselves in a place encircled by inmates of opposite sex. At worst, they became the victims of rape by the prison staff or other prisoners since an estimated rate of 4.0% prisoners in state and federal prisons and a rate of 3.2% of jail inmates reported that they had been sexually abused at least once by another inmate or facility staff.[31]

Nevertheless the prisons follow the segregation policy in some circumstances regarding transgendered inmates. The segregation may be based on punitive or non-punitive reasons although the common sense dictates isolation of transgender prisoners from the general population. The names of the segregation forms sometimes depend on the states or the sources. To illustrate, according to the 28.C.F.R. Federal Regulation[32] the segregation is called special housing units (SHU) ruling as below;

"When placed in the SHU, you are either in administrative detention status or disciplinary segregation status.

(a) Administrative detention[33] status. Administrative detention status is an administrative status which removes you from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public. Administrative detention status is non-punitive, and can occur for a variety of reasons.
(b) Disciplinary segregation status. Disciplinary segregation status is a punitive status imposed only by a Discipline Hearing Officer (DHO) as a sanction for committing a prohibited act(s)."[34]

[28]See *supra* note 14.
[29]*Id*. at 837.
[30]Darren Rosenblum, *Trapped" in Sing Sing: Transgendered Prisoners Caught in the Gender Binarism*, 6 Mich. J. Gender & L. 499, 523-24 (2000).
[31]Allen J. Beck, Sexual Victimization in Prisons and Jails Reported by Inmate 2011-12- Update, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, NCJ 241399 (December 9, 2014), avaliable at https://www.bjs.gov/index.cfm?ty=pbdetail&iid=4654.
[32]28 CFR § 541.20- 541.33, revised as of July 1, 2016.
[33]Even though it was described as Administrative Detention, the same explanation is used for the Administrative Segregation in various resources.
[34]28 C.F.R. § 541.22, 2016.

In extreme cases, some people, particularly those vulnerable to violence or sexual assault from other inmates, may be placed in "protective custody" involuntarily in order to avoid violence from others held within the prison. Prison officials use solitary confinement, or SHU, to deprive individuals identified by staff as troublesome or violent social interaction and sensory stimulation.[35] However, lesbian, gay, bisexual, transgender, and queer individuals; and juveniles are at a heightened risk of being housed in solitary confinement around the United States due to housing policies.[36] According to a recent report regarding Correctional Systems on the Numbers of Prisoners in Restricted Housing from November 2016, in the 15 jurisdictions that had transgender prisoners in their restricted housing population, a total of 55 transgender prisoners are in restricted housing. In sum, of the 754 transgender prisoners reported by 33 jurisdictions, 55 (7.3%) were reported to be housed in restricted housing. The jurisdictions that reported transgender prisoners in restricted housing were: Arizona (5 prisoners), Colorado (1 prisoner), the District of Columbia (1 prisoner), Florida (1 prisoner), Kentucky (1 prisoner), Louisiana (2 prisoners), Maryland (1 prisoner), New Hampshire (1 prisoner), New Jersey (1 prisoner), New York (10 prisoners), Ohio (2 prisoners), Oregon (3 prisoners), Pennsylvania (5 prisoners), Texas (19 prisoners), and Washington (2 prisoners).[37]

B. Constitutionality

Transgender prisoners particularly before having sex reassignment surgery or in case of lack of receiving hormones, cannot handle limited and inadequate conditions in segregated cells and commit suicide. Second issue is that transgender inmates are not always segregated from the general population as a punishment purpose, instead they are placed in order to secure them and prevent assaults against them. In these circumstances, the prison staffs allege that this placement has a penological interest and may exceed the 30 days limitation (According to the 28 CFR § 541.26 Review of placement in the SHU, the officer shall formally review the status of the prisoner who is in administrative detention or disciplinary segregation after every 30 calendar days at a hearing in which the prisoner has the right to attend.) However, the Court in *Hutto v. Finney* (1978) decided that living more than 30 days in punitive segregation may violate the Eighth Amendment when additionally considering the conditions in the cell taken as a whole.[38] The first interpretation of the totality of the conditions by considering the Eight Amendment was *Rhodes v. Chapman*[39] (1981) in which the Supreme Court concluded that double-celling may not be an ideal environment but ''the Constitution does not mandate comfortable prisons.''[40]

The supermax prison[41], in which the visitation is rare and prisoners don't have any access to any environmental or sensory stimuli and don't usually have any human contact for an indefinite period[42], is also an Eighth Amendment issue. Because as aforementioned, a punishment must be involved to be the basis of a constitutional claim and various forms of segregation may identify as a punishment in correctional law as long as it is comprised of four elements:

[35]Chelsea van Aken, *Solitary By Any Other Name: Silence to Segregation in American Prisons, (*Master's Theses, San Jose State Unviersity, 2016), 12.
[36]*Id.*
[37]Aiming to Reduce Time-In-Cell: Reports from Correctional Systems on the Numbers of Prisoners in Restricted Housing and on the Potential of Policy Changes to Bring About Reforms, November 21, 2016, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2874492 (last visited 27.12.2016).
[38]Barbara Belbot & Craig Hemmes, *The Legal Rights of the Convicted*, 140 LFB Scholarly Publishing LLC, (2010).
[39]Rhodes v. Chapman, 452 U.S. 2392 (1981).
[40]Belbot & Hemmes, *supra* note 36, at 143.
[41]Supermax prisons are maximum-security facilities with highly restrictive conditions which are designed to segregate the most dangerous prisoners from the general prison population. See e.g. Chase Riveland, Supermax Prisons: Overview and General Conditions, U.S. Department of Justice, National Institute of Corrections, January 1999, available at https://s3.amazonaws.com/static.nicic.gov/Library/014937.pdf
[42]John W.Palmer, *The Constitutional Rights of Prisoners* 113, 9th Edition, (2012).

(i) action by an administrative body,
(ii) which constitutes the imposition of a sanction,
(iii) for the purpose of penalizing the affected person, and
(iv) as the result of the commission of an offense. [43]

These elements clearly explain that the solitary confinement or other punitive segregation forms are a punishment within the prison. After the 1960s the conditions in prison violating the Eighth Amendment while in punitive segregation were interpreted. The conditions of the solitary confinement[44] which are accompanied by a reduced diet and limited access to reading materials and other diversions are deemed to be subject to constitutional scrutiny.[45] As an evidence, the Court stated that confinement in an isolation cell constitutes a punishment, and therefore Eighth Amendment standards are applicable.[46]

By contrast, administrative segregation's[47] validity was legitimatized as depending upon the relative humaneness of the conditions of the segregated confinement and in individual cases upon the existence of a valid and subsisting reason or reasons for the segregation, such as protection of the segregated inmates from other inmates, protection of other inmates and prison personnel from the segregated inmates, prevention of escapes and similar reasons.[48] Another issue is that it does not satisfy the element of the purpose of penalizing the affected person. However transgenders name the administrative segregation as "prison," rather than a "punishment" since it is much more restricted.[49] A pre-operative transgendered woman filed a lawsuit indicating that she was rejected adequate "recreation, living space, educational and occupational rehabilitation opportunities, and associational rights for non-punitive reasons". However according to the officials the placement in administrative segregation was for protection.[50] The court urged that even though plaintiff's prolonged confinement in administrative segregation is not a violation of due process, cruel and unusual punishment as a violation of the Eighth Amendment may be subjected.[51]

On the other hand, the Courts have issued that solitary confinement isn't per se unconstitutional[52] and confinement in maximum security facilities, as such, is not cruel or unusual treatment, punishment, or practice.[53] In this framework, despite the conditions of the solitary confinement as a segregation from the general population may violate under the Eight Amendment, the proof of the inadequate conditions shall be tough due to the fact that some conditions are interpreted as comfortable by the Court. Moreover the conditions in the administrative segregation might not violate the Eighth Amendment unless it is a prolonged confinement because the administrative segregation is inherently identified protective or disciplined segregation. But administrative segregation often constitutes a permanent placement[54] that transgender inmates may claim the violation of the Eighth Amendment.

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[43] *Id.* at 102.

[44] Maria A.Lusie, *Solitary Confinement: Legal And Psychological Considerations*, 15 New Eng. J. on Crim. & Civ. Confinement 301, (1989). Solitary confinement is a disciplinary measure widely used in prison systems. Generally, this type of punitive action involves isolating the prisoner and taking away any prison privileges he may have. Such action is considered necessary in order to maintain control, protect prisoners, alter disobedience and prevent escapes.

[45] v. Finney, 437 U.S. 678, 685 (1978).

[46] *Id.*

[47] The placement of a prisoner in less amenable and more restrictive quarters than those of the general prison population for non-punitive reasons, is well within the terms of confinement ordinarily contemplated by a prison sentence.

[48] Kelly v. Brewer, 525 F.2d 394 (Eighth Cir. 1975).

[49] Emily Alpert, *Transgender Prisoners Face Discrimination, Harassment, and Abuse Above and Beyond That of Traditional Male and Female Prison Population*, In The Fray, November 20, 2015, available at http://inthefray.org/content/view/1381/39 (last visited July, 14, 2016),

[50] Meriwether v. Faulkner, 821 F.2d 408, 416 (7th Cir. 1987).

[51] *Id.* at 415.

[52] Burns v. Swenson , 430 F.2d 771 (8th Circ. 1970) .

[53] Graham v. Willingham, 384 F.2d 367 (10th Circ. 1967).

[54] http://solitarywatch.com/faq/ (last visited June 30, 2016)

III. Basic Human Needs in Segregation

Although the lack of reliable information, a census of state and federal prisoners conducted in 2005 by the Bureau of Justice Statistics –and cited by the Vera Institute of Justice– found more than 81,622 inmates placed in "restricted housing."[55] However it doesn't count prisoners who are in juvenile facilities, immigrant detention centers and/or local jails.[56] When bearing in mind this census, it is not difficult to figure out that so many transgender inmates- as vulnerable persons- are included in the said census.

In addition to being forced to live in isolation, inmates in segregation often have inadequate access to food, hygienic supplies- showers and recreational and outdoor activities as basic human needs.[57] The inability to have such human needs cause serious harms to transgender inmates especially considering the long-term segregations. Unfortunately the terms in solitary range from days to several decades;

- California Undersecretary of Operations Scott Kernan testified in August 2011 that the average term in solitary confinement in California is 6.8 years[58]
- According to the American Friends Service Committee, the average time served in the supermax units in the Arizona prison system is 5 years.[59]
- A 2003 report by the Correctional Association of New York found that the average sentence in disciplinary segregation was 5.3 months, while hundreds of inmates spent an average of three years in isolation.[60]

As a result, providing the basic human needs to inmates may often be inadequate in the conceptions of the confinement and therefore the prison officials may violate the Eighth Amendment. Hence, with the study on the solitary confinement practices' ill effects, advocacy organizations and research institutes became more outspoken with their policy recommendations to change solitary confinement practices. The VERA Institute of Justice made the following recommendations to improve the practice of solitary confinement: make segregation a last resort and a more productive form of confinement, and stop releasing people directly from segregation to the streets; end conditions of isolation to ensure that individuals in segregation still have regular and meaningful human contact; and protect mentally ill prisoners.[61]

A. Food and Diet

When the State imprisons persons, it must undertake responsibility for their well-being since incarceration in many terms prevents persons from caring themselves. Therefore the State must provide prisoners with the minimum necessities of life as the Supreme Court noted;

"When the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs- e.g. food, clothing, shelter- it transgresses… the Eighth Amendment…"[62]

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[55] *Id.*

[56] *Id.*

[57] Stories from Solitary available at http://www.aclu.org/prisoners-rights/joe-giarratano; Sidney Rittenberg Sr., Solitary Torture, available at http://www.washingtonpost.com/opinions/solitary-confinement-is-a-torture-unworthy-of-us-prisons/2012/01/25/gIQA2VX6TQ_story.html; New York Civil Liberties Union, Submission to the UN Special Rapporteur Concerning New York State Prisoners Held in Solitary Confinement and Other Forms of Extreme Isolation by available at http://www.nyclu.org/files/releases/ExtremeIsolation_UNletter_2.5.13.pdf (last visited July, 15, 2016).

[58] Solitary Watch, Solitary Confinement: FAQ, http://solitarywatch.com/wp-content/uploads/2012/01/solitary-confinement-faq-short-version.pdf (last visited 27.12.2016).

[59] *Id.*

[60] *Id*.

[61] Lesley Bob, *Complicated Confinement: Exploring Modifications to Solitary Confinement Practices in Adult Correctional Facilities,* (Master of Social Work Clinical Research Papers, St. Catherine University 2016), 16.

[62] Michael B.Mushlin, *Rights of Prisoners* 265 (4th ed West 2009/2010), (quoting Helling v. McKinney, 509 U.S. 25,31,113 S.Ct. 2475, 125 L. Ed. 2d 22 (1993)).

Nevertheless, it was held that not preparing properly and serving nutritionally adequate food to prisoners is a violation of the Eighth Amendment.[63] According to the American Correctional Association, since the prisoners' health needs should be provided by the medical standards the human needs such as clothing, shelter, diet and food should be at least in the ratio of broadly accepted standards and the needs shouldn't be let go down below those standards. Thus, the Supreme Court has made clear that the prison conditions may be "restrictive and even harsh" but they may not deprive inmates of "the minimal civilized measure of life's necessities."[64] While the transgender inmates face very restricted and harsh conditions, it may be legitimated by alleging that the officials do their best and provide a generally accepted standards for life's necessities of prisoners.

According to *Barnes v. Government of Virgin Islands*, every inmate is entitled to three wholesome and nutritious meals per day and food must be handled and prepared under conditions which meet the minimum public health standards.[65] Additionally, the Constitution required that prisoners must be provided "reasonably adequate food"[66] and "a well-balanced meal, containing sufficient nutritional value to preserve health."[67] But if the food occasionally contains foreign objects or sometimes is served cold, while unpleasant, it must not be amounted to a constitutional deprivation.[68]

A lower Court have held that the prisoners can be deprived of food for limited periods by the prison officials as a punishment. In Johnson[69], Johnathan Johnson alleged that punishing him with a restricted diet consisting of a "food loaf" for seven days violated his Eighth Amendment rights. However, the 2nd Circuit dismissed the Eighth Amendment claim on the grounds that Johnson's allegations failed to demonstrate either that the restricted diet posed a threat to Johnson's health or well-being or that the defendants acted with sufficiently culpable states of mind.[70] Additionally, the Court upheld the prison regulation that requires serving the food in the cells by getting prisoners on their knees, backing the hands behind and facing them to the wall is legitimated because it is "reasonably related to legitimate penological interests.[71] The American Correctional Association, "precludes the use of food as a disciplinary measure" in its standards.[72] However the rule in the standards regarding food is not obligatory and unfortunately New York's prisons are currently using a restricted diet. According to the Report by the New York Civil Liberties Union;

"Correction officers (COs) also use food to punish Adrian informally. His meals have arrived covered with hair or spoiled. Sometimes meals don't come at all, an occurrence that happens so often that prisoners have a name for it: a "drive-by." COs "drive-by" Adrian's cell without delivering his meal, or leave a covered tray with no food beneath the cover. Adrian has quickly learned that in the Box, little can be taken for granted."[73]

[63]Adams v. Mathis, 458 F.Supp. 302 (1978).

[64]Mushlin, *supra* note 63, at 299 (citing Rhodes v. Chapman, 452 U.S. 337, 347,101 S.Ct. 2392 69 L.Ed. 2d 59 (1981)).

[65]Barnes v. Government of the Virgin Islands, 415 F.Supp 1234. 1218 (1976).

[66]Jones, 636 F.2d at 1378; Newman, 559 F.2d at 286.

[67]Smith v. Sullivan, 553 F.2d 373, 380 (5th Cir.1977).

[68]Hoitt v. Vitek, 497 F.2d 598, 601 (1st Cir.1974); Sinclair v. Henderson, 331 F.Supp. 1123, 1126 (D.La.1971), quoted in Freeman v. Trudell, 497 F.Supp. 481, 482 (E.D.Mich.1980).

[69]Johnson v. Gummerson, 198 F.3d 233 (2d Cir. 1999).

[70]*Id*.

[71]Talib v. Gilley, 138 F.3d 211, 213 n3 (5th Cir. 1998).

[72]Matthew Purdy, *What's Worse Than Solitary Confinement? Just Taste This*, N.Y. Times, August 4, 2002, available at http://www.fedcrimlaw.com/visitors/PrisonLore/TheLoaf.html, (last visited July, 16, 2016).

[73]Box in The True Cost of Extreme Isolation in New York's Prisons, A Report by the New York Civil Liberties Union, available at http://www.nyclu.org/files/publications/nyclu_boxedin_FINAL.pdf, (last visited July, 15, 2016).

Furthermore, one of stories from solitary comes from Joe Giarratano who told to the ACLU;

"Twice a day a bag meal would be tossed into the cell through a food hatch that would slam shut behind it. The mice had a field day."[74] These samples are just the stories that we know so far. However there are probably much more when considering that transgender people are less enable to make their voice hear.

B. Shower and Hygienic Supplies

Transgender inmates may be entitled to have less shower or hygienic supplies or may particularly be denied to have adequate shower as Tates and Espinoza experienced in the Sacramento Main Jail.[75] According to the unrefuted testimony Tates, Espinoza and other transgender inmates are permitted to have shower less often than other inmates[76] and it was required transgender inmates to file a grievance each time they need a shower.[77]

In an earlier case, only one shower per week was held to violate of the Eighth Amendment since it promotes deterioration of inmates physically.[78] The exact number of showers per week has been settled, instead the Seventh Circuit denied the entitlement to three showers per week of an inmate in segregation by relying on the physical deterioration.[79] However Judge Cudahy observed in his dissent that in order to prevent ill effects on the physical and mental health of prisoners, at least three showers per week should be provided.[80]

The rationale behind the limitation of showers per week seems as because prisons are places for serving sentence and therefore they do not have to be comfortable places. This approach finds a voice in *Rhodes,* that the providing comfortability by the prisons is not a requirement in the Constitution however a violation is subjected in case of "deprive inmates of the minimal civilized measure of life's necessities".[81]

However despite the discussions before the Court, it was held in one of the case regarding transgender inmate in segregation that transgendered inmates must have adequate possibilities to access to the shower in addition to being provided cleaning supplies; otherwise it may result that the transgender inmates are subject to harsh conditions by being deprived of basic human needs and privileges available to all other inmates.[82] Therefore the Court also ordered that two transgender inmates' cells should be cleaned at least as often as those of other inmates in the same pod in the Sacramento County Jail after the Court found that the cells of transgender inmates are cleaned far less often than the cells of other inmates.[83] Besides, if other inmates are provided cleaning supplies, transgender inmates should be similarly treated.[84] The most impressive order is that if, for safety reasons, the cells of transgender inmates must be cleaned by a Jail employee or by a trustee with a guard present, then transgender inmates must see that it is done.[85] These above orders clearly show that transgender inmates must be entitled to have same opportunities and be treated with the same respect as other prisoners.

[74]http://www.aclu.org/prisoners-rights/joe-giarratano, (last visited June 30, 2016).
[75]Tates v. Blanas, 2003 WL (E.D. Cal. Mar.11, 2003).
[76]*Id.*
[77]*Id.*
[78]Mushlin*, supra* note 63, at 320 (citing Lightfoot v. Walker, 486 F. Supp. 504, 511 (S.D. I11 1980)) .
[79]Davenport v. DeRobertis, 844 F.2d 1310 (7th Cir. 1988).
[80]844 F.2d 1317 (Cudahy, C.J., dissenting).
[81]Rhodes, 452 U.S. at 347, 101 S.Ct. 2392.
[82]Tates, *supra* note 76, at 8.
[83]*Id.*
[84]*Id*.
[85]*Id.*

C. Recreational and Outdoors Activities

Clearly, the rights to outdoor exercise and recreation are also human needs since they are required for health, especially as a matter of isolated segregation. Initially, out-of-cell exercise is not required by the Constitution. Nonetheless, the failure of providing exercise opportunity as a near-total deprivation may violate the Eighth Amendment if it is not related to a legitimate penological purpose.[86] In the Platt case[87] the plaintiff alleged that he experienced and suffered depression and anxiety due to the his placement in punitive segregation and the lack of exercise. As he stated, he was allowed to exercise only twice per month for one hour. However, due to the fact that he wasn't able to demonstrate sufficiently serious harm because of the restricted exercise opportunity, and that out of wanton disregard was imposed by the prison staffs, Platt could not prove his Eighth Amendment claim.

Despite some judicial fact-specific decisions establish a five-hour minimum per week for exercise on prisoners' exercise rights[88], the federal courts didn't have any attempt in order to rule a detailed guidelines for the administration of state prisons.[89] On the other hand a restriction to one 45- minute period a week of outdoor recreation for protective custody inmates was not upheld as unconstitutional. In considering an alleged deprivation of adequate exercise, the Eighth Circuit stated that the Court must consider several factors including: ''(1) the opportunity to be out of the cell; (2) the availability of recreation within the cell; (3) the size of the cell; and (4) the duration of confinement unless lack of exercise may be a constitutional violation if one's muscles are allowed to atrophy or if an inmate's health is threatened.''[90] Prison records indicate that an inmate called *Wishon* had not used all the recreation time available to him and that he had the opportunity to exercise within his cell. In addition, *Wishon* was assigned to protective segregation for his own safety and the limitations on out-of-cell time were necessary to ensure his safety and security. Hence his claim of violation of the Eighth Amendment was rejected. One of the major justifications to reject the Eighth Amendment claim was that *Wishon* did not suffer any injury or decline in health resulting from his limited out-of-cell exercise time and having the opportunity to be out of his cell for personal telephone calls and visitation.[91] Consequently, it demonstrates the Court's consideration and belief that decision making regarding the outdoor exercise and recreation rights depends on the facts of each case and inmate. Furthermore, prisoners placed in solitary confinement in Florida state prisons experience tremendously restricted conditions such as detaining almost in a complete isolation, leaving the cell three times per week for taking a shower, and exercising an additional three hours per week after completing a thirty day period.[92]

Still, the transgender inmates carry unique concerns for prison officials that cannot mistreat them or reject them the benefits had by all other prisoners. Due to bias against them, transgender inmates suffer more when they do their outdoor exercises and recreational activities rights. As the Seventh Circuit Court of Appeals observed, "where movement is denied and muscles are allowed to atrophy, the health of the individual is threatened."[93] From the beginning of prison history, one of the aims of the establishment of prisons and correctional facilities was to rehabilitate the prisoners and to reduce the incidence of crime. Therefore, the prisoners are encouraged to participate in prison programs including jobs, education and psychological programs. The American Correctional Association has stated that "prison serves most

[86]Mitchell v. Rice, 954 F.2d 187, 191-192 (4th Cir.1992).
[87]Platt v. Brockenborough, 476 F.Supp. 2d 467 (E.D. Pa. 2007).
[88]Delaney v. DeTella, 256 F.3d 679 (2001).
[89]Davenport v. DeRobertis, 844 F. 2d 1310 (7th Cir. 1988) (citing Harris v. Fleming, 839 F.2d 1232, 1236-37 (7th Cir.1988), and Shelby County Jail Inmates v. Westlake, supra, 798 F.2d at 1089).
[90]Wishon v. Gammon, 978 F. 2d 446, (8th Cir. 1992).
[91]978 F.2d at 446.
[92]Available at http://www.aclu.org/blog/prisoners-rights-human-rights/sad-state-solitary-florida-there-hope-human-rights-violation, (last visited June 30, 2016).
[93]Mushlin, *supra* note 63, at 282, (2009) (citing French v. Owens, 777 F.2d 1250, 1255 (7th Cir. 1985)).

effectively for the protection of society against crime when its major emphasis is on rehabilitation and recreation should be recognized as a wholesome element of normal life.''[94] Hence, the lack of the outdoor exercise and recreation may cause serious psychological and physical problems. While the lack and denial of exercise in some cases are justified by a legitimate penological reasons, it is not always presented. For instance, the state defendants failed to and didn't argue any legitimate penological reason about the length of this exercise restriction and the denial of outside exercise.[95]

Instead, the placement of the transgender prisoners in segregation may prevent the aim of rehabilitation, as happened to Jackie Tates[96] who was a pre-operative transgender male to female classified as T-Sep.[97] The Court stated that transgender inmates must be allowed reasonable use of the dayroom, outdoor recreational facilities and telephones during normal hours, not just very late at night, after considering that Tate was forbidden to participate in recreational activities with other inmates or to exercise or interact with them and was repeatedly denied permission to use the dayroom with other transgender inmates.[98] In *Tates,* it was not decided whether there is a violation of the Eighth Amendment. Instead, Judge Panner directed defendants to file a proposed plan for correcting the deficiencies noted and the defendants' proposed plan[99] was adopted on May 19, 2003.[100]

Transgender inmates experience restricted conditions in solitary confinement in a grand rate since they and their identities are not widely accepted in the prisons. For instance, prison officials let them out of their cell for exercise at most an hour per day. Nevertheless, some of them have limited access to outside such as only five to ten minutes per day.[101]

As another damage causing from segregation, a transgender detainee named Mayra Soto declared in her testimony at the National Prison Rape Elimination Commission: ''Because of my gender identity, I was placed in an administrative segregation cell with 10 to 12 other transgender women. The cell was overcrowded and we were denied the basic rights that other (non-transgender) detainees exercised. We were locked up for 23 hours a day and spent much of that time shackled and humiliated.''[102] Even though long-term placement in administrative segregation can also cause psychological damage[103], the Prison Litigation Reform Act requires proof of physical harm, not just psychological harm, in order to recover the segregation damages.

However, as abovementioned, the lack and denial of outdoor and recreational exercises are discussed on the basis of physical harms before the Courts. The psychological harms experienced by prisoners are not on the table although solitary confinement develops psychopathologies in a high rate at 28% than the general population rate at 15% considering the rate of engagement in self-mutilation in solitary confinement is higher than general population. The data from Injustice at Every Turn also represents that transgender people had attempted suicide than the general population.[104]

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[94]Palmer, *supra* note 43, at 221.

[95]Delaney v. DeTella, 256 F.3d 679 (7th Circ. 2001) (Glen Delaney brought action against warden and other prison officials alleging that denial of exercise opportunities during six-month lockdown violated his Eighth Amendment rights to be free of cruel and unusual punishment).

[96]See *supra* note 76.

[97]Total Separation/Total confinement which is not a disciplinary classification and Total Separation inmates are separated from other inmates at all times and are housed in a separate unit for their own protection. See e.g. 42 Pa. Code § 9756., 2010.

[98]See *supra* note 76.

[99]Medina-Tejada v. Sacramaento County, 2006 WL 463158 (E.D. Cal. Feb. 27, 2006).

[100]*Id.*

[101]Ally Windsor Howell, *A Comparison of the Treatment of Transgender Persons in the Criminal Justice Systems of Ontario, Canada, New York, and California*, 28 Buff. Pub. Int. L.J. 133, 191-92 (2010).

[102]Available at http://www.newyorker.com/reporting/2009/03/30/090330fa_fact_gawande, (last visited July, 16, 2016).

[103]Davenport v. DeRobertis, 844 F.2d 1310, 1313 (7th Cir. 1988).

[104]See *supra* note 7.

Finally in 1889 the U.S. Supreme Court commented on the impact of isolation on prisoners:

"A considerable number of the prisoners fell, after even a short confinement, into a semi-fatuous condition, from which it was next to impossible to arouse them, and others became violently insane, others, still, committed suicide, while those who stood the ordeal better were not generally reformed, and in most cases did not recover sufficient mental activity to be of any subsequent service to the community."[105]

IV. Conclusion

As earlier mentioned, transgender people are vulnerable in society because of their gender identity and therefore face discrimination in many areas of casual life. Moreover once incarcerated, the transgender prisoners unfortunately become the targeted objects for the prison staff and other prisoners in the terms of violence and maltreatment and segregation from the general population puts them in a sort situation of 'prison within the prison'. Although the automatically classification of transgender inmates as T-Sep is an errant classification by the administration in the Jail, segregation of transgender inmates should not always be required, as a usual implementation. Because as looking at the bright side while the placement of a transgender inmate in administrative segregation provides a great protection, on the other side an exclusion from human needs in the terms of harsh conditions of segregation may be a violation of the constitutional rights.

Therefore housing the transgender prisoners with whom do not pose a violence risk, seems more proper. However according to the reports of ACLU, there still are not sufficient safeguards preventing vulnerable people from being sent to solitary.[106]

Unfortunately since recklessness of the prison officials does not satisfy the subjective component of violation of the Eighth Amendment, the cruel and unusual punishment cannot be proved before the Courts. In case of determination of minimal human necessities, it seems also important to compare the treatment to the general population because cruel and unusual punishment may be imposed simply by treating transgender inmates differently.

In addition, the perception of the prison and incarceration of people unfortunately is a very negative aspect according to the society. The reflection of this perception may be observed in some of the Court decisions as they clearly state that the prison does not have to provide comfortable conditions to the inmates. In one sense it might be true since people in incarceration is punished; however it is also possible to use this perception in order to justify the inadequate conditions in the prison. Nowadays, in order to justify the inadequate conditions of transgender inmates, transgender prisoners have filed lawsuits in Florida, Delaware, Missouri and Nebraska since August and they argue the state is exerting cruel and unusual punishment by denying transgenders prisons' needs particularly regarding medical and hygienic care. As a recent and compelling lawsuit that alleges the harming a transgender inmate by denying essential medical care and exposing her to harassment has been filed in October, 2016 by Michale Wright against the Oregan Departmen of Corrections.[107] Besides, last year in Georgia Ashley Diamond filed a lawsuit alleging that the Georgia Department of Corrections violated the Eighth Amendment by withholding treatment for Ms. Diamond's gender dysphoria against the advice and recommendations of her treating clinician.[108]

[105] Arkles, *supra* note 2, at 515 (citing In re Medley, 134 U.S. 160, 168 (1889)).

[106] Available at http://www.aclu.org/blog/prisoners-rights-human-rights/new-york-subjects-prisoners-solitary-disciplinary-tool-first, (last visited June 30, 2016).

[107] For more information, *see* the Complaint Wright v. Peters Case 6:16-cv-01998-KI Document 1 Filed 10/17/16, avaliable at http://media.oregonlive.com/pacific-northwest-news/other/Wright%20v%20Peters%20-%20Complaint.pdf (last visited 27.11.2016).

[108] See Ashley Diamond v. Brian Owens, et all Case 5:15-cv-00050-MTT Document 29 Filed 04/03/15, avaliable at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/04/03/diamond_statement_of_interest.pdf (last visited 27.12.2016).

Consequently, considering the dilemma between segregating transgender inmates from general population for security and inadequacy brings us the necessity of finding new and better policies for transgender inmates. The abovementioned filled lawsuits may make a change in regard to understand the violation of the Eighth Amendment by having more court decisions about transgender inmates. In so far as the transphobia in every stage of our lives, the training and educating the guards and officials may be an initial solution. Then, some alternatives such as changing the cell of a perpetrator of abuse, providing greater supervision or placing in a single cell so long as being in general population may be presented. Providing transgender inmates the opportunities of being transferred from a women's to a men's facility or vice versa and being placed in a special prison facility for LGBT people such as K6G at the Los Angeles County Jail[109] might be an alternative. On the other hand as a new improvement, a new detention facility in Alvarado, Texas having a unit created particularly for transgenders shall be opened in November by the U.S. immigration officials. The officials states that each detainee will have an individualized detention plan "covering items such as searches, clothing options, hygiene practices, medical care, and housing assignments."[110] It seems as a progress in the sense of the conditions provided to the transgenders, it still is discussable since the facility shall be established in a conservative place which is difficult for lawyers to gain access to the transgender inmates in such a rural area.

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CHILD PROSTITUTION AND THE ASSOCIATED SOCIODEMOGRAPHIC AND CLINIC CHARACTERISTICS IN ADANA, TURKEY

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Asst. Prof. Dr. Sunay FIRAT
Correspondence Author, Çukurova University, Faculty of Health Sciences, Department of Psychiatric Nursery, Adana/ Turkey; Phone: +90(322)3386084-4011
sunayfirat@gmail.com

Specialist Dr. Esra GÜZEL
Dr. Ekrem Tok Mental Health and Diseases Hospital, Child and Adolescent Health and Diseases Specialist

Doç. Dr. Ayşegül YOLGA TAHİROĞLU
Çukurova University, Medical School, Department of Child and Adolescent Health and Diseases

Prof. Dr. Necmi ÇEKİN
Senior Author, Çukurova University, Medical School, Department of Forensic Medicine

Introduction

Considering the prevalence of child prostitution in the world, it is impossible to deny its existence in Turkey, and the fact that it may be more widespread than is actually known. Although the number of cases being reported is limited, it can be easily asserted that the real frequency is much higher.

Raising awareness on such a drastic issue that is rapidly increasing is very important for protecting children and ensuring a healthy future. For this reason, the aim of this study is to present characteristics of child prostitution cases forwarded to the Child Psychiatry Department of the Faculty of Medicine at Çukurova University by the police department, courts or prosecutors.

Method and Results

In this study, 17 cases were selected after retrospectively investigating 850 files previously forwarded to the Child Psychiatry Department of the Faculty of Medicine at Çukurova University by the police department, courts or prosecutors, and evaluated by the committee of forensic cases.

The average age of the cases qs 14.91±1.75 (minimum age being 10, and maximum 16). Concerning the level of education, six (35.3%) of the cases had no education at all or were primary school drop outs. Eight cases out of 17 had drug abuse. Examination of the identity of the first abuser revealed that in 12 (7.6%) of the cases, it was a stranger.

Discussion and Results

What is interesting is that families, who should normally be the main providers of protection, also take part in prostitution, serving as examples, and actively selling their own children.

One solution for reintegrating the victims of child prostitution into society is forming centers and other institutions where they can be informed about their rights, in addition to receiving psychological, medical, social, legal and administrative support.

Key words: Children, Child abuse, Prostitution

INTRODUCTION

Although there has been greater social awareness over the past two decades concerning child prostitution, professionals in the field note that studies on this subject are still in their early stages (Rand, 2009; Kotrla, 2010; McMahon-Howard and Reimers, 2013). According to the 2012 data of the International Labor Organization, it is estimated that there are 20.9 million victims of human trafficking worldwide, 945,000 of which are sexually exploited children (International Labor Organization, 2012). Human trafficking for prostitution is not only "a legal issue," but also a "human and social issue" which poses a significant threat to children across the world and in Turkey (Erder and Kaşka, 2003).

Cases of prostitution are usually identified at random, with the victims not being the ones to complain or seek help in the majority of instances. It is believed that the unreported cases are due to the abuse victims' fear of revealing what the abuse experienced; the long and complicated judicial processes involved; and the greater social concern towards preserving the family rather than aiding the victim.

Due to the difficulties in identifying victims and those at risk, there is no accurate and authentic statistical data on actual incidence and prevalence (Stansky and Finkelhor, 2008).

In Turkey, the number of studies on child prostitution and its characteristics is very limited, and the aim of this study is to reveal the sociodemographic and clinical characteristics of child prostitution victims.

METHODS

The files for 850 forensic children cases who had been forwarded to the Child and Adolescent Psychiatry and Diseases Outpatient Clinic of the ……. University Faculty of Medicine by the child protection police, courts or prosecutors between 2011 and 2014 were screened retrospectively and 17 cases identified as child prostitution cases were included into the study. Necessary approval for the collection of study data was obtained from the Ethics Committee of our institution.

Data Analysis

All analyses were performed using SPSS 18.0 statistical software package (IBM SPSS Statistics). Categorical variables were expressed as numbers and percentages, whereas continuous variables were summarized as mean and standard deviation and as median and minimum-maximum where appropriate.

RESULTS

An evaluation of the data on the ways in which the cases were brought to the out patient clinic revealed that eight of them (47.1%) had been brought by the police. The mean age of the cases is 14.91 ± 1.75 (minimum: 10-years-old, maximum: 16-years-old).

Table 1. Education Level of the Victims

EDUCATION LEVEL OF THE VICTIMS	N / %
Uneducated	2 / 11.8
Primary School Drop-out	4 / 23.5
Primary School	7 / 41.2
Middle School	3 / 17.6
High School	1 / 5.9

Table 1 indicates that six (35.3%) of the cases were either uneducated or primary school drop-outs.

Eight (47.1%) of the 17 cases were substance users. An evaluation of the victims' families revealed that 10 (58.8%) of the cases had parents living together, while the parents of the seven (41.2%) other cases were either divorced or separated. With respect to the education level of the victims' mothers, eight mothers (47.1%) were simply literate or primary school drop-outs, six (35.3%) were primary school graduates, and one (5.9%) was a secondary school graduate.

With respect to the education level of the victims' fathers, 12 fathers (70.6%) were primary school graduates, while one (5.9%) was a high school graduate. Data also indicated that the fathers of nine (52.9%) of the victims worked in temporary jobs, while two (11.8%) were unemployed and one (5.9%) worked as a civil servant. It was found that 7 (41.2%) of the fathers used alcohol. Five (29.5%) of the cases had a previous history of prostitution, while two (11.8%) of the cases were sold to prostitution by their own fathers.

Table 2. Identity of the First Abuser

THE FIRST ABUSER	**N / %**
Father	1 / 5.9
Relative	1 / 5.9
Acquaintance Other Than Relative	3 / 17.6
Stranger	12 / 70.6

According to Table 2, the first abuser was a stranger in 12 (70.6%) of the cases.

Table 3. Conditions of Abuse

CONDITIONS OF ABUSE	N / %
None	2 / 11.8
Abduction	1 / 5.9
Use of Physical Force	5 / 29.4
Use of Physical Force and Abduction	7 / 41.2
Use of Physical Force and Threat	2 / 11.8

According to Table 3, which indicates the cases where sexual abuse was accompanied by the use of force, 15 (88.3%) of the victims were subject to physical force, threatened and/or abducted.

Table 4. Victim's Behavior after the Abuse

VICTIM'S BEHAVIOR	N / %
Hiding	9 / 52.9
Requesting Help from Educational Institutions	1 / 5.9
Requesting Help from Law Enforcement	6 / 35.3
No Complainant	1 / 5.9

Table 4 indicates that nine (52.9%) of the victims tended to hide the abuse they experienced, while six (35.3%) sought help from law enforcement.

Table 5. Social Consequences of the Abuse

SOCIAL CONSEQUENCES OF THE ABUSE	N/%
Discontinuation of Education	3/17.6
Leaving Family	5/29.4
Social Pressures	2/11.8
Escape from Home	2/11.8
Escape from Dormitory	4/23.5
Escape from Home and Dormitory	1/5.9

According to Table 5, 7 (41.2%) of the victims escaped from home and dormitory after the abuse, while 3 (17.6%) dropped-out from school. An evaluation of the social consequences of the abuse reveals that 7 of the cases (41.2%) escaped from home and dormitory, while 5 (29.4%) left their families, 3 (17.6) discontinued their education, and 2 cases (11.8%) faced intense pressures from their social environment and neighborhood.

Table 6. Family's Approach to the Abuse

FAMILY'S APPROACH TO THE ABUSE	N / %
Hiding	3 / 17.6
Request for Legal Assistance	6 / 35.3
Illegal Practices	3 / 17.6
Family not Informed	5 / 29.4

According to Table 6, which shows the families' attitude towards the abuse, the family of six (35.3%) of the cases sought legal assistance as soon as they learned of the situation, while in five (29.4%) of the cases the families were not informed about the abuse.

Evaluation of the families' attitude towards the victim following the abuse revealed that eight (47.1%) of the parents were supportive and protective, while eight (47.1%) were pressuring and constraining towards the child. On the other hand, one (5.9%) of the families treated the victim in an accusing manner.

Psychiatric assessments of the victims revealed post traumatic stress disorder (PTSD) in 11 (64.7%) of the cases, behavioral disorders in two (11.8%) of the cases, and mental deficiency in four (23.5%) of the cases based on intelligence tests and the DSM 4 diagnosis criteria. In addition, 14 (82.4%) of the cases were started on medication and placed under follow-up at the outpatient clinic.

Table 8. Recommendations for the Department of Forensic Sciences

RECOMMENDATIONS FOR THE DEPARTMENT OF FORENSIC SCIENCES	N / %
Placing Victim under Protection	10 / 58.8
Taking Health Measures	3 / 17.6
Placing Victim under Protection and Taking Health Measures	3 / 17.6
Drug Addiction Treatment	1 / 5.9

According to Table 8, forensic review board for child cases had proposed that 10 (58.8%) of the victims are placed under protection.

DISCUSSION

In the United Nations Convention on the Rights of the Child, ratified by Turkey in 2002, child prostitution was defined as the use of a child for sexual activity in exchange for money or anything else (UN, 2002). A study conducted in Turkey in 2013 describes that the ages at which women first engage in the prostitution market is between 13 and 15 years-old for 27.5%; 16 and 20 years old for 50%; between 21 and 25 years old for 17.5%; and 25 years-old or older for 5%. The same study emphasized the victims' lack of education, the fact that they were forced into marriage at an early age, and high rates of separated families (67.5%) (Açıkalın, 2013).

The fact that these children are young and easily deceived, as well as their feelings of helplessness and fear, the lack any places where they can seek refuge, and the lack of a supportive environment cause them to feel helpless and to be trapped in a vicious cycle (Yücel and Ögel, 2008).

The mean age of the cases in our study was determined as 14.91 ± 1.75. (minimum: 10 years, maximum: 16 years). Evaluation of the cases' level of education indicated that 6 (35.3%) of the cases were either uneducated or primary school drop-outs.

Evaluation of the family characteristics in prostitution cases have shown that poor in-family communication, lack of love, separated families, (Clawson et al., 2009) abuse and exploitation, domestic violence (emotional, physical, sexual), and parental alcohol use and/or drug addiction (Smith et al., 2009) are among the important risk factors that may lead children into prostitution, leaving them vulnerable in this sector (Küntay and Çokar, 2007). Such experiences are mostly kept confidential to protect the familial system, with no intervention taking place (Yücel et al., 2006).

In our study, 35.3% of the families (six cases) were separated. It was determined that the level of education of the victims and their families was discernably low. Taking into account the low level of education of the parents and victims, the study once again demonstrated how important it is to increase the practice and sanctions in this respect. In cooperation with the school administration, counseling services, village/neighboor headmen, the Ministry of National Education and the Ministry of Family and Social Policy, it is necessary to determine and take measures for students who do not continue their education. The social assessment should be performed, the children at risk should be identified, and precautions should be taken.

Another important finding of the study was that 64.7% of the fathers of children forced into prostitution did not have regular jobs. It is considered that the parents' involvement in regular work life and production is important for increasing the functioning of a family.

Five cases of our study has a history of prostitution in the family. And in the two of the cases, the children were forced to prostitution by their own fathers. The fact that the family and its members, who would normally be expected to protect the child, are involved in the prostitution, acting as examples and even selling their child into prostitution, is thought-provoking. This finding underscores the importance of identifying people at risk by conducting meticulous social examinations on suspects of sexual abuse and prostitution, and on families involved in organizing cases of prostitution.

Evaluation of the families' attitude towards the victim following the abuse revealed that eight (47.1%) of the parents were supportive and protective, while eight (47.1%) were pressuring and constraining towards the child. On the other hand, one (5.9%) of the families treated the victim in an accusing manner. In terms of the family's behavior towards the abuse, the study showed that in three of the cases, the families concealed the act of prostitution, while in the five of the cases (29.4%), the families did not know that prostitution was taking place.

An evaluation of the social consequences of the abuse reveals that seven of the cases (41.2%) escaped from home and dormitory, while five (29.4%) left their families, three (17.6) discontinued their education, and two cases (11.8%) faced intense pressures from their social environment and neighborhood.

A child exposed to sexual abuse "feels helpless and powerless, developing beliefs such as guilt, embarrassment, impurity and worthlessness. Social labeling and stigmatizing further intensifies these effects. In the social attitudes towards the abuse, the perception of being 'impure' is a very serious social stigma, and results in life-long suffering of the victim" (Yücel and Ögel, 2008).

The literature reports that every three out of four persons convicted of sexually abusing children are family members, close relatives, neighbors, or persons known beforehand (Johann et al., 1994; Murray, 2000; Cengel et al., 2007; Erdoğan et al., 2011). A recent multicenter study in Turkey determined that 78.0% of the abusers were acquaintances, while 13.2% were family members (Soylu et al., 2012).

Another study on children forced into prostitution observed that in 12 (70.6%) of the cases, the first abusers were strangers. Furthermore, in parallel with the literature, our study showed that in 15 (88.3%) of the cases, the victims faced physical force, threats and abduction. Table 4 indicates that nine (52.9%) of the victims tended to hide the abuse they experienced, while six (35.3%) sought help from law enforcement.

Studies show strong association in adolescents between drug use and being forced to prostitution (Maxwell and Maxwell, 2000; Kramer and Berg, 2003; Cobbina and Oselin, 2011). Drug use is an important factor in the continuation of prostitution, due to the need to find money for drugs. Limited life experience, and the fact that the brain has not yet completed its development, leads to increased risk taking behavior and impulsiveness among the youth. In addition, by decreasing the inhibition of behavior and impairing judgment, drug and alcohol use can increase risk-taking behavior while reducing the perception of danger. Identifying risk factors is important for taking measures and intervening at an early stage of the problem (Lederer and Wetzel, 2014).

In agreement with the literature, our study determined that the rate of drug use in children is 47.1% (eight cases). A study conducted by Williamson in 2009 on 13 girls regarding the risk factors for child prostitution reported that the ratio of drug use among the parents was 64% (Williamson and Prior, 2009). In our study, the ratio of alcohol use among the parents of the cases was seven (41.2%). The literature reports that the most common psychiatric disorder in sexually abused children is PTSD, with a rate of 40 to 50% (McLeer et al., 1992; Bernard-Bonnin et al., 2008). Similar results were obtained in other studies conducted in Turkey (Cengel et al., 2001; Ayaz et al., 2012) In line with the literature, our study diagnosed (PTSD) in 11 (64.7%) of the cases. It is reported that these individuals are more likely to suffer from the abuse due to mental deficiency, limited cognitive skills, and borderline intelligence functioning (Spencer et al., 2005). Our study diagnosed borderline intelligence functioning in four (23.5%) cases. Fourteen (82.4%) of the cases were started on medication and placed under follow-up as outpatients.

The study determined that working to prevent child abuse and neglect before they take place is a far more beneficial and effective approach. Measures to protect the child from abuse and neglect are defined as the primary, secondary and tertiary protection measures. Primary protection includes activities to prevent abuse from taking place; secondary protection refers to early detection and treatment studies; and tertiary protection covers rehabilitation of the person or persons exposed to the abuse (Turhan et al., 2006).

Considering the characteristics of the families at risk, it is important to organize educational programs and seminars in order to increase family function and to emphasize its importance, and to also gain the support of the media by preparing public service announcements on the subject. Given the high incidence of the history of prostitution in the family that was identified in this study, it is essential that social evaluations on prostitution victims and their families are conducted carefully and meticulously. In addition to training schools on child abuse and the methods for protecting against it, it is necessary to increase the awareness of teachers and guidance counselors at primary, secondary and higher education institutions on this issue. It is equally necessary to train them on possible post-abuse behavioral changes and psychological symptoms.

Furthermore, it is important to inform and increase the awareness on this issue of public and social organizations that work with children. In this context, the family, immediate social circles, social support institutions, child protection police and the media assume a particularly important role. It is necessary to plan the activities for increasing social sensitivity and awareness, and for reporting of suspected cases.

In addition to increasing the level of psychological, medical, social and administrative support being provided, the number of centers that provide safe conditions for children – and where the children may apply, find shelter and plan their future lives safely – needs to be increased as well. It is crucial to enforce laws and sanctions in order to ensure the protection of the rights and interests of children and adolescents.

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CONCEPT OF INDECENT BROADCASTING IN AMERICA AND TURKEY

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Özge ATIL

ABSTRACT

Broadcasting principles are regulated by law and some sanctions are prescribed in the case of violations of these principles in most countries. Such principles, however, have been infringed frequently. Ethical violation, unsurprisingly, is one of the most common breaches of broadcasting principles.

America and Turkey, having two different law models, have substantially distinct points of view about indecent broadcasting because of their different backgrounds, histories, cultures, politics, and perspectives. Regardless of this, however, two similarities stand out between these two legal systems.

First, they both pay attention to protection of minor and young people. Second, indecent broadcasting principles in both countries are not well explained and clear; thus, agencies possess unlimited power to interpret such principles and impose sanctions.

This study argues that, first, certain standards about indecent broadcasting should be secured in order to minimize agencies' power to interpret such standards. Second, it argues that if the freedom of speech competes with the protection of children with regard to indecent broadcasting, the protection of children should be given more importance since physically and mentally healthy children are one of the most significant conditions of a healthy society.

Key Words: Broadcasting principles, ethical protection, indecent broadcasting, morality, America, Turkey, FCC, and RTÜK.

1. INTRODUCTION

Mass media, especially major television news network[1] has substantial influence over society. Beside its benefits such as providing information, teaching, and entertaining, mass media has several harms such as being time consuming, misleading the society, and adversely affecting personal growth and human psychology. In addition to these, with the emergence of globalization, ethical issues have been raised by the conduct of media sectors.

What is morality? When some authorities define morality as a rule that a person who lives in a certain society must obey, others say morality is a code of behavior that regulates certain individuals' mutual relationships in a certain time period.[2] As it seen from these definitions, morality shows an alteration according to time, societies, and individuals' perspective.

[1]Nurdogan Rigel, Haber, Çocuk Ve Şiddet [News, Child, And Violance], 1st Edition, Der Yayinlari [Der Publishing], İstanbul 1995, p. 109.
[2]Ahmet Koc, Rtuk Kararlari Çercevesinde Turkiye Televizyon Haberciliginde Etik [Ethic With Regard to Turkish Televison News by the Light of Rtuk Decisions], unpublished master thesis, Gazi University, Ankara 2007, p. 6.

America and Turkey, having two different cultures and law models, have substantially distinct points of view about indecent broadcasting. The Federal Communications Commission (FCC) that regulates communication in America as an independent agency defines a broadcast to be indecent if it includes "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory activities or organs."[3]

Courts have ruled that indecent materials, which are secured by the First Amendment, can be restricted but not banned.[4] The Commission adopted a rule with the intention to comply with the courts' decisions that the hours between 6:00 a.m. and 10:00 p.m. are considered as a "safe harbor" period during which indecent materials are prohibited.[5]

In Turkey, the Law No. 6112 on the Establishment of Radio and Television Enterprises and Their Media Services sets up principles for media services in Article 8. Besides other provisions, the Article states that: ''Media services;

Shall not be contrary to the national and moral values of the society, general morality and the principles of protection of family

Shall ensure that the Turkish language is used in a proper, favourable and intelligible way without undermining its characteristics and rules; shall not display coarse, slang and poor quality use of the language

Shall not be obscene."[6]

In addition to these provisions, the Article states that ''in radio and television broadcasting services, the programs, which might seriously impair the physical, mental or moral development of minors and young people, shall not be broadcasted during the time intervals they are likely to watch and without the presence of a protective symbol."[7] Furthermore, in 1992, Turkey signed the European Convention on Transfrontier Television that prohibits pornographic and indecent broadcast and requires not broadcasting programs during the time intervals minors and young people are likely to watch which might affect the physical, mental or moral developments of them.[8]

This study aims to provide deep understanding of how America and Turkey interpret and evaluate indecent broadcasting. The chapter following this introduction describes the evolvement of the FCC's indecency regulations and current regime by analyzing related cases. The third chapter examines the concept of indecent broadcasting in Turkey both historically and currently by means of related cases. Finally, the conclusion states the most remarkable similarities of both systems and attempts to explore the best approach to dealing with indecent broadcasting.

2. THE CONCEPT OF INDECENT BROADCASTING IN AMERICA

2.1. Evolvement of the FCC's Indecency Regulations

The FCC's authority to regulate indecent broadcasting derives from 18 U.S.C. § 1464, which rules that, ''whoever utters any obscene, indecent, or profane language by means of radio communications shall be fined under this title or imprisoned not more than two years, or both.''[9] However, the statute does not define the terms "obscene, indecent, or profane."

[3]Obscene, Indecent and Profane Broadcasts, "Federal Communication Commissions," http://www.fcc.gov/guides/obscenity-indecency-and-profanity, last visited 13 March 2013.
[4]*Id.*
[5]*Id.*
[6]Turkish Broadcasting Law, Article 8 (No. 6112) (2011).
[7]*Id.*
[8]Koc, p. 52.
[9]18 U.S.C. § 1464.

In *FCC v. Pacifica Foundation,*[10] a father complained that his son heard the "Filthy Words" monologue by comedian George Carlin aired by Pacifica Foundation radio station.[11] The FCC determined that the words used by George Carlin at a time "when children were undoubtedly in the audience" was indecent and a violation of 18 U.S.C. § 1464,[12] and this order was confirmed by the Supreme Court.

The Commission took into consideration whether or not broadcasters used the "seven dirty words," which were first listed by before 10 p.m. when it determined indecency until 1987.[13] The seven dirty words are: shit, piss, fuck, cunt, cocksucker, motherfucker, and tits. They were first listed by American comedian George Carlin in 1972. In its 1987 order, the FCC stated that "notwithstanding any prior contrary indications… we find that the definition of indecent broadcast material set forth in *Pacifica* appropriately includes a broader range of material than the seven specific words at issue in *Pacifica*."[14] The Commission also stated that repetition of those words was not necessary to determine indecency.[15] Furthermore, the Commission warned broadcasters that indecent material broadcasted after 10 p.m. would be actionable.[16]

This order was challenged by alleging that the latest norm was against the Constitution in *Action for Children's Television v. FCC (ACT I*), and the United States Court of Appeals for the District of Columbia Circuit rejected the constitutional claims.[17] The D.C. Circuit upheld the Commission's indecency standard, but ruled that "after a full and fair hearing of the times at which indecent material may be broadcast."[18]

After the D.C. Circuit decided in *Action for Children's Television v. FCC (ACT I*), Congress mandated the FCC to promulgate regulations to enforce its indecency standards 24 hours a day. In response to Congress, the FCC regulated the 24-hour ban of broadcast indecency,[19] but the regulation was later invalidated by the United States Court of Appeals for the District of Columbia Circuit. [20]

Instead of the 24 hour ban, Congress adopted the Public Telecommunications Act of 1992, which mandated the FCC to create a safe harbor from midnight to 6 a.m. except for public radio and television stations whose safe harbor would begin at 10 p.m.[21] The Commission promulgated regulations in accordance with the Act, but the United States Court of Appeals for the District of Columbia Circuit vacated the regulation, stating that the underlying statute was unconstitutional.[22] Following the decision of the D.C. Circuit, the case was reheard in 1994 upon the Commission's request, and the court required the FCC to restrict its prohibition on the broadcast of indecent materials on all stations to the hours of 6 a.m. to 10 p.m.[23]

[10]438 U.S. 726 (1978).
[11]*Id.* at 730.
[12]*Id.* at 732.
[13]Lili Levi, "The FCC's Regulation of Indecency," A First Amendment Center Publication, Washington 2008, vol. 7, p. 11.
[14]Stuart Minor Benjamin / Howard A. Shelanski / James B. Speat & Philip J. Weiser, Telecommunications Law and Policy, 3rd Edition, Carolina Academic Press, Durham 2012, p. 230.
[15]2 F.C.C. Rcd. 2698, ¶15.
[16]Angie A. Welborn / Henry Cohen, "The FCC's Indecency Regulations: Background and Legal Analysis," CRS Report for Congress, Washington 2005, vol. RL32222, p.4.
[17]Levi, p. 12.
[18]852 F.2d 1344 (1988).
[19]Enforcement of Prohibitions v. Broadcast Obscenity and Indecency, 4 F.C.C. Rcd. 457 (1988).
[20]Action for Children's Television v. Federal Communications Commission (ACT II), 932 F.2d 1504 (1991).
[21]Welborn & Cohen, p. 5.
[22]Action for Children's Television v. Federal Communications Commission, 11 F.3d 170 (D.C. Cir. 1993).
[23]Welborn & Cohen, p. 6.

2.2. The Current Regime

The current period of indecency enforcement has substantial amendments both in procedure and substance, and the new regulations have taken affect since August 28, 1995.[24]

The FCC considers two principles to decide whether the challenged material is indecent. First, the challenged material must meet the criteria of the ''subject matter scope'' of the definition of indecency that requires depiction or description of a sexual or excretory organ or activity.[25] Second, the material must be "patently offensive as measured by contemporary community standards for the broadcast medium.''[26]

The FCC has stated that "the full context in which the material appeared is critically important'' to decide whether the material is clearly offensive.[27] In determining whether the material is clearly offensive, the commission has recognized three elements: (1) the explicitness or graphic nature of the description or depiction of sexual or excretory organs or activities; (2) whether the material dwells on or repeats at length descriptions of sexual or excretory organs or activities; (3) whether the material appears to pander or is used to titillate, or whether the material appears to have been presented for its shock value.[28] Furthermore, as stated before indecent materials are prohibited between 6:00 a.m. and 10:00 p.m. In addition, the Commission may impose a penalty for a violation of indecent standards that have been already mentioned.[29]

As a recent alteration, in June 2012, Supreme Court invalidated FCC indecency enforcement actions that had been relied on a ''beefed-up enforcement policy under which the agency was cracking down on even fleeting expletives and brief glimpses of nudity'' in the *FCC v. Fox Television Stations*, and in response in September 2012 Julius Genachowski directed FCC enforcement employees to center upon only the most awful samples of claimed violations.[30]

2.3. Related Cases

2.3.1. Radio Morning Show in 1992

The Commission stated that the following phrase — "The hell I did, I drove mother-f…er, oh." — announced during a radio morning show was not indecent by reasoning that the broadcast only contained a "fleeting and isolated utterance.''[31]

2.3.2. Rape Song Aired by an University Radio Station in 1993

The Commission penalized a university radio station that aired a rap song that contained a line depicting anal intercourse by stating sexual activities were described in graphic terms that were clearly offensive and as a result indecent.[32] The Commission emphasized that children were at risk of being exposed to indecent material because the song was aired in the mid-afternoon.[33]

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[24] *Id.*
[25] 2001 Policy Statement, 16 F.C.C.R. at 8002 ¶ 7.
[26] 2001 Policy Statement, 16 F.C.C.R. at 8002 ¶ 8.
[27] 2001 Policy Statement, 16 F.C.C.R. at 8002 ¶ 9.
[28] *Id.*
[29] Brian J. Rooder, "Broadcast Indecency Regulation in the Era of the "Wardrobe Malfunction": Has the FCC Grown Too Big For Its Britches?," Fordham L. Rev., New York 2005, vol. 74, p. 881.
[30] FCC To Target 'Egregious' Indecency Cases, "TvNewsCheck The Business of Broadcasting," http://www.tvnewscheck.com/article/66560/fcc-to-target-egregious-indecency-cases, last visited 10 April 2013.
[31] L.M. Communications of South Carolina, Inc., 7 F.C.C. Rcd. 1595 (1992).
[32] Welborn & Cohen, p. 7.
[33] *Id.* at 8.

2.3.3. Bubba the Love Sponge Show in 1994

The FCC issued a *Notice of Apparent Liability* (NAL) *to* Clear Channel Broadcasting for aired "Bubba, the Love Sponge" show that contained indecent material.[34] The Commission determined that all the broadcasts included "conversations about such things as oral sex, penises, testicles, masturbation, intercourse, orgasms and breasts'' and it also stated that the broadcasts involved "sufficiently graphic and explicit references."[35]

2.3.4. Denver Area Educational Telecommunications Consortium, Inc. v. FCC in 1996

In *Denver Area Educational Telecommunications Consortium, Inc. v. FCC,*[36] the court invalidated provisions of a state law that allowed cable operators to separate the ''patently offensive'' material on a particular channel and ban broadcasting of the material unless a viewer declaratively asked access in writing by ruling that the provisions impermissibly infringed freedom of speech.[37] The court added that the regulation is deficient to protect children against to indecent broadcast, and viewers are most likely to not request access to ''patently offensive'' material for fear of disclosure.[38]

2.3.5. United States v. Playboy Entertainment Group, Inc. in 2000

In *United States v. Playboy Entertainment Group, Inc*.,[39] the Supreme Court struck down a provision of the Telecommunications Act of 1996, which asked cable operators who furnished primarily sexually oriented programming to wholly scramble or wholly ban those channels or restrict their programming to between 10 p.m. and 6 a.m.[40] The provision was intended to protect children against sexually-oriented material,[41] and claimed that it was a violation of the First Amendment.[42]

In response, the Supreme Court stated that the statute was unconstitutional by noting the regulation was a "content-based restriction on speech."[43] The *Playboy* Court distinguished cable television from regular broadcast media, and stated that cable systems hold the ability to ban undesired channels on a "household-by-household basis."[44] Therefore, if a household notices that the material is offensive, that household may get in touch with the cable provider and have that channel blocked.[45]

2.3.6. Opie & Anthony Show in 2003

The FCC imposed Infinity Broadcasting Corp. $357,000 for a show [46] in which the programmers held a contest in which interested couples were encouraged to make love in certain locations, and once the hosts identified a couple obviously involved in sexual activities in St. Patrick's Cathedral in New York.[47] The Commission stated that the show had "graphic and explicit references to sexual and excretory organs and activity", and the hosts of the program "dwelled at length on and referred repeatedly to sexual or excretory activities and organs," and that "the descriptions of sexual and excretory activity and organs were not in any way isolated and fleeting."[48]

[34]Rooder, p. 889.
[35]Welborn & Cohen, p. 14-15.
[36]Denver Area Educational Telecommunications Consortium, Inc. v. FCC, 518 U.S. 727 (1996).
[37]Rooder, p. 876.
[38]*Id.*
[39]United States v. Playboy Entertainment Group, Inc., 529 U.S. 803 (2000).
[40]Michael Kaneb, "Neither Realistic Nor Constitutionally Sound: The Problem Of The FCC's Community Standard For Broadcast Indecency Determinations," Boston College Law Rev., Boston 2008, vol. 49, p. 1119.
[41]Rooder, p. 878.
[42]Levi, p. 8.
[43]Rooder, p. 878.
[44]Playboy, 529 U.S. at 815.
[45]Levi, p. 8.
[46]Rooder, p. 885.
[47]Levi, p. 16.
[48]Welborn & Cohen, p. 13.

2.3.7. Golden Globe Awards in 2003

In a ruling involving the Golden Globe Awards, where a variation of the word ‘‘fuck’’ was expressed by Bono, from the group U2 twice during an award acceptance speech, the FCC’s Enforcement Bureau determined that the broadcast of the program including the utterance did not infringe indecency restrictions because the language did not define or demonstrate “sexual or excretory activities or organs.”[49]

However, the full Commission found that the broadcast of Golden Globe Awards infringed federal restrictions with regard to the broadcast of indecent and profane material [50] by stating that the terms in question defined or demonstrated sexual activities because “given the core meaning of the ‘F-Word,’ any use of that word or a variation, in any context, inherently has a sexual connotation, and therefore falls within the first prong of our indecency definition.’’[51] Furthermore, the Commission found that the broadcast was patently offensive, determining that “[t]he ‘F-Word’ is one of the most vulgar, graphic and explicit descriptions of sexual activity in the English language,” and that “[t]he use of the ‘F-Word’ here, on a nationally telecast awards ceremony, was shocking and gratuitous.”[52] In addition, the Commission found that the usage of the ‘‘F-Word’’ was an infringement of 18 U.S.C. 1464, and constituted profanity.[53]

The term profanity was defined as ‘‘vulgar, irreverent, or coarse language’’ by the Commission, and the Commission determined that the ‘‘[u]se of the ‘F-Word’ in the context at issue ... is clearly the kind of vulgar and coarse language that is commonly understood to fall within the definition of ‘profanity.’’’[54] Pursuant to this new definition of “profane,” the Commission said that ‘‘…depending on the context, will also consider under the definition of ‘‘profanity’’ the ‘‘F-Word’’ and those words (or variants thereof) that are as highly offensive as the ‘‘F-Word,’’ to the extent such term is broadcast between 6 a.m. and 10 p.m., and the Commission also added that other words would be determined on a “case-by-case basis.”[55]

2.3.8. Super Bowl Halftime Show in 2004

In the Super Bowl Halftime Show in 2004 that was broadcasted at 8:30 p.m., Janet Jackson’s breast was exposed while she was performing, and the Commission determined that the show infringed its limits on the broadcast of indecent material.[56]

The FCC rejected broadcaster’s claim that the exposure was fleeting by stating that: “In cases involving televised nudity, the contextual analysis necessarily involves an assessment of the entire segment or program, and not just the particular scene in which the nudity occurs. Accordingly, in this case, our contextual analysis considers the entire halftime show, not just the final segment during which Jackson’s breast is uncovered.”[57] In addition, the Commission highlighted that the Super Bowl had been broadcast ‘‘to a nationwide audience,’’[58] and was watched by families together.[59]

[49]Rooder, p. 885.
[50]“Complaints Against Various Broad. Licensees Regarding Their Airing of the “Golden Globes Awards” Program,” F.C.C.R., Miami 2003, vol.12, p. 861.
[51]“Complaints Against Various Broad. Licensees Regarding Their Airing of the “Golden Globes Awards” Program,” F.C.C.R., Miami 2004, vol. 19, p. 4977.
[52]*Id.* at 4979.
[53]*Id.* at 4981.
[54]*Id.*
[55]*Id.*
[56]Welborn & Cohen, p. 11.
[57]Super Bowl XXXVIII Half Time Show, 21 F.C.C.R. at 2765 ¶ 10.
[58]Kaneb, p. 1092.
[59]Levi, p. 25.

3. THE CONCEPT OF INDECENT BROADCASTING IN TURKEY

3.1. Evolution of Indecency Regulations

The first television broadcasting in Turkey began in 1968 after the Turkish Radio and Television Corporation (TRT) was established in 1964 as an only state institution in the broadcast field. The first constitutional arrangement related to radio and television broadcasts was regulated in Turkish Constitution of 1960.[60] The Law No. 359 on Turkish Radio and Television Corporation that was amended by the Turkish Constitution of 1960 had set up principles about radio and television broadcasts until the new Turkish Constitution of 1982 provided The Law No. 2954 on Turkish Radio and Television about radio and television broadcasts.[61] The Law No. 2954 required TRT to be respectful to general morality, and national and moral values of the society.[62] It also ruled that radio and television broadcasts shall not include any materials that might seriously impair the physical or mental health of society, and the Turkish language shall be used in a proper, favorable and intelligible way.[63]

With the emergence of the technological improvements and increase of new players in the mass communications area, the broadcast field was re-regulated in 1994 by the Law No. 3984 on the Establishment of Radio and Television Enterprises and Their Broadcasting that led the establishment of today's Radio and Television Supreme Council (RTÜK) which is charged for monitoring, regulating, and sanctioning radio and television broadcasts.[64]

The Law No. 3984 set up principles for media services in Article 4. Besides other provisions the article states that: ''Media services;

Shall not be contrary to the national and moral values of the society, general morality and the principles of protection of family

Shall ensure that the Turkish language is used without undermining its characteristics and rules

Shall not be obscene.''[65]

It also rules that ''in radio and television broadcast services, the programs, which might seriously impair the physical, mental or moral development of minors and young people, shall not be broadcasted during the time intervals they are likely to watch.''[66]

3.2. The Current Regime

The Law No. 3984 was amended by The Law No.6112 on the Establishment of Radio and Television Enterprises and Their Media Services in 2011. The Law No. 6112 sets up principles for media services in Article 8. Besides other provisions the article rules that: ''Media services;

Shall not be contrary to the national and moral values of the society, general morality and the principle of protection of family

Shall ensure that the Turkish language is used in a proper, favorable and intelligible way without undermining its characteristics and rules; shall not display coarse, slang and poor quality use of the language

Shall not be obscene.''[67]

It also states that ''In radio and television broadcast services, the programs, which might seriously impair the physical, mental or moral development of minors and young people, shall not be broadcasted during the time intervals they are likely to watch and without the presence of a protective symbol.''[68]

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[60]Tarihçe [History], "TRT," http://www.trt.net.tr/Kurumsal/Tarihce.aspx, last visited 13 March 2013.
[61]*Id.*
[62]Yayın İlkelerimiz [Broadcasting Principles], "TRT," http://www.trt.net.tr/Kurumsal/YayinIlkelerimiz.aspx, last visited 13 March 2013.
[63]*Id.*
[64]The Radio and Television Supreme Council, http://www.rtuk.org.tr/sayfalar/English.aspx, last visited 13 March 2013.
[65]The Law on the Establishment of Radio and Television Enterprises and Their Broadcasting, Article 4 (No. 3984) (1994).
[66]*Id.*
[67]Turkish Broadcasting Law, Article 8 (No. 6112) (2011).
[68]*Id.*

RTÜK also leads some projects that intend to protect children by informing parents about indecent broadcasting. These projects are: media literacy, smart signs similar to television rating systems in other countries, internet safety, and "good night kids," a cartoon that aims to help children gain the habit of going to bed early.[69]

In addition, in 1992 Turkey signed the European Convention on Transfrontier Television that prohibits pornographic and indecent broadcast and prohibits broadcasting programs during the time intervals minors and young people are likely to watch which might affect the physical, mental or moral developments of them.[70]

3.3. Related Cases

3.3.1. "Gül Yüzlü Roza" in 1995

RTÜK warned the broadcast corporation about the broadcasting of ''Gül Yüzlü Roza,'' a movie alleged to involve indecent material. However, the broadcasting corporation continued to broadcast, and the Commission ruled that the broadcasting of ''Gül Yüzlü Roza'' was obscene, and therefore a violation of The Law No. 3984. The broadcast corporation sued the commission by claiming that RTÜK's decision was illegal, and the Administrative Court overturned the Commission's decision by stating that the movie is about a prostitute's life story and does not include any obscene material.[71]

3.3.2. Music Program in 1998

The Commission penalized a broadcast corporation that aired a video clip involving images of two groups who were fighting with cutlery by stating that this action ''might seriously impair the physical, mental or moral development of minors and young people.'' The broadcast corporation sued the Commission by claiming that RTÜK's decision was illegal but the Administrative Court affirmed the decision.[72]

3.3.3. "Üvey Baba" in 1999

Bad words such as ''bitch and bastard'' were used several times during the broadcasting of the television series ''Üvey Baba.'' In response, RTÜK ruled that the usage of these words was ''contrary to the national and moral values of the society, general morality and the principle of protection of family,'' and therefore was a violation of The Law No. 3984. The broadcast corporation sued the Commission by claiming that RTÜK's decision was illegal but the Administrative Court affirmed the Commission's decision.[73]

3.3.4. Secret Filming Images in 2000

In a main news bulletin, a channel aired secret filming images about a woman who was alleged to selling her daughters, stealing, and prostituting in 2000. In the same year, the channel also aired a fourteen years-old girl's naked images, which were gained by secret filming. [74] In response, the Commission determined that these actions were ''contrary to the national and moral values of the society, general morality and the principle of protection of family,'' and therefore were a violation of The Law No. 3984.[75]

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[69]RTÜK's Family Projects, "RTÜK," http://en.wikipedia.org/wiki/RT%C3%9CK, last visited 15 March 2013.
[70]Koc, p. 52.
[71]Ankara 10. İdare Mahkemesi [Administrative Court] (1995/806 E).
[72]Ankara 3. İdare Mahkemesi [Administrative Court] (1998/567 E).
[73]Ankara 10. İdare Mahkemesi [Administrative Court] (1999/732 E).
[74] Koc, p. 75.
[75]*Id.*

3.3.5. "A'dan Z'ye" in 2000

The broadcast corporation aired a magazine program that involved an interview with a Turkish folk music singer. The singer alleged that some sexually explicit notes were left in front of his door, and the broadcast corporation aired the notes such as ''we will have different fantasy every night, you cannot leave me, and you will want me forever.'' [76] In response, the Commission determined that this action ''might seriously impair the physical, mental or moral development of minors and young people.''[77]

3.3.6. "Güne Merhaba" in 2000

During the program named ''Güne Merhaba,'' broadcast corporation aired the images of a person whose relative died in a hospital. The corporation aired the person when he was breaking the glass of the hospital, and cutting off his arm with the glass. In response, the Commission determined that this action ''might seriously impair the physical, mental or moral development of minors and young people,'' and therefore was a violation of The Law No. 3984. The broadcast company brought this action in a court, and the Administrative Court affirmed the Commission's decision by reasoning that the broadcast in question may lead children to understand violent as a natural case, and imitate this person and facts.[78]

3.3.7. Main News Bulletin in 2003

In a main news bulletin, a broadcast corporation aired a truck driver's image when he was agonizing after an accident without media blockout, and in response the Commission determined that this action ''might seriously impair the physical, mental or moral development of minors and young people,'' and therefore was a violation of The Law No. 3984.[79] The broadcast company brought this action in a court, and the Administrative Court affirmed the Commission's decision by reasoning that the broadcast in question did not intend to encourage people being careful in traffic. Instead, it aired a person whose life was ending slowly.[80]

3.3.8. "İyi Geceler Öpücüğü" in 2003

The presenter of the program interviewed a person on the phone, and the Commission found that the following phrases that were used during the program:

- ''I both cheated and was cheated.
- Oh, fine, you are equal.
- Absolutely equal.
- First who cheated?
- Certainly, I was cheated.
- What happened later?
- My dear confessed and apologized, but I cheated too.
- How did you feel after you cheated?
- Actually I felt guilty, but I got pleasure too.
- Congratulations, good job!''

''might seriously impair the physical, mental or moral development of minors and young people,'' and therefore was a violation of The Law No. 3984.[81]

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[76]Koc, p. 95.
[77]*Id.*
[78]Ankara 8. İdare Mahkemesi (2001/1241 E).
[79]Yavuz Sen, Radyo Televizyon Üst Kurulu Ve Kararlarinin Yargısal Denetimi [Judicial Review of the Radio and Television Supreme Council and Its Decisions], 1st Edition, Adalet Bakanligi Yayinlari [Ministry of Justice Publishing], Ankara 2007, p. 75.
[80]*Id*. at 76.
[81]*Id.*

3.3.9. "Kadının Sesi" in 2005

After a husband had killed his wife, claiming she had had a relationship with an another man, the families of the two parties were invited to the program Kadının Sesi, and during the program the families argued; then unfortunately after two days one person was killed because of the families' conflict.[82] Furthermore, approximately one month later, a woman who was invited to program was killed by her son; and the son claimed that his mother had humiliated him on the television program. [83] In response, the channel discontinued broadcasting the program by reasoning that the program became a social problem in society.[84]

4. CONCLUSION

Even though broadcasting principles are regulated by law and some sanctions have been prescribed in the case of violations of these principles in most countries, such principles have been infringed frequently. Ethical violation is one of the most common breaches of broadcast principles because broadcast corporations assume that usage of sexually oriented materials, dirty speech, and slang words affects their ratings positively.

Although, America and Turkey have different legal regulations about indecent broadcasting because of their different backgrounds, histories, cultures, politics, and perspectives two similarities stand out between them. First, they both pay attention to protection of minor and young people. In this respect, there is a substantial connection between limitations on indecent broadcast and freedom of speech; when the value given to freedom of speech is high, limitations on indecent broadcast is low.

America is more liberal than Turkey; therefore freedom of speech in America is given more value than Turkey. FCC rules that the hours between 6:00 a.m. and 10:00 p.m. indecent materials are banned.[85] RTÜK, on the other hand, states that ''in radio and television broadcast services, the programs, which might seriously impair the physical, mental or moral development of minors and young people, shall not be broadcasted during the time intervals they are likely to watch and without the presence of a protective symbol."[86] RTÜK, in contrast to FCC, does not prefer to limit its authority on controlling the indecent broadcast by ruling specific time interval. RTÜK's this approach provides better protection for children since every child does not go to bed before 10:00 pm.

Second, even though both FCC and RTÜK set up principles about indecent broadcasting, these principles are not well explained and clear. Therefore, the agencies possess unlimited power to interpret such principles and impose sanctions.

In conclusion, first, indecent broadcasting principles should be unambiguous. In this regard, in order to minimize agencies' power to interpret the principles, certain standards should be secured. Second, children are at risk of being exposed to unwanted images and sounds that might seriously impair their physical or mental health because broadcast companies generally target children since they are the most easily affected audiences. Therefore, if the freedom of speech competes with the protection of children, the protection of children should be given more importance since physically and mentally healthy children are one of the most significant conditions of a healthy society.

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[82]Kemal Cem Baykal, "Radyo ve Televizyonda Yayin Ilkelerinin Ihlali ile Yaptirim Uygulamasi Sorunlari [Problems of Broadcasting Codes Application and Violations]," Iletisim Kuram ve Arastirma Dergisi [Journal of Communication Doctrine and Research], Ankara 2007, vol.25, p. 95.

[83]*Id*.

[84]*Id*.

[85]*See supra* note 5.

[86]Turkish Broadcasting Law, Article 8 (No. 6112) (2011).

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SUICIDE: SOCIAL AND MENTAL HEALTH ASPECTS

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Asst. Prof. Sunay FIRAT
Correspondence Author Çukurova University, Faculty of Health Sciences, Psychiatric Nursing USA, Turkey

ABSTRACT

Suicide is an important social problem which is a common case of all societies. Suicidal thoughts and attempts emerge when the person is faced with a psychologically and physically destructive event and she/he cannot solve the problem.

It is thought that suicide behavior is a result of not only personal or social problems but also fundamentally biological, psychiatric/psychological and social factors. Furthermore, sociodemographic factors like gender, age, marital status, vocation, education status, economic level affect suicide attempts as well.

This study discusses how to put forward suicide attempts and risk factors and solutions to prevent suicides so that it can contribute to formation of protective health policies in order to stop suicides.

Health professionals are responsible for legal notices which are issued when such events defined as "suicide attempts" occur and these attempts don't result in deaths within the scope of notification responsibility belonging to them.

As a result, it is suggested that risk factors of suicide be evaluated as a social psychological problem, physical and mental conditions of people who have attempted to suicide before be monitored regularly, suicidality be investigated within the society, treatment methods and prevention programs be assessed in terms of efficiency.

Key Words: Suicide, suicide attempt, risk factors, prevention

BİR TOPLUM RUH SAĞLIĞI SORUNU OLARAK İNTİHAR

Özet

İntihar bütün toplumlarda ortak olarak görülen önemli bir toplumsal sorundur. İntihar ile ilgili düşünceler ve girişimler, bireyin ruhsal ve/veya fiziksel açıdan yıkıcı bir olay ile karşılaştığında ve bu olayı çözümleyemediği durumlarda ortaya çıkmaktadır.

İntihar davranışı sadece bireysel veya toplumsal sorunların sonucu olmayıp temelde biyolojik, psikiyatrik/psikolojik ve toplumsal etmenlerin bir bileşkesi sonucu oluştuğu düşünülmektedir. Ayrıca cinsiyet, yaş, medeni durum, meslek, eğitim düzeyi, ekonomik düzey gibi sosyodemografik etmenler de intihar girişimini etkilemektedir.

Bu çalışmada intiharları önlemeye yönelik koruyucu sağlık politikalarının oluşturulmasında yararlı olabilmesi amacıyla intihar girişimleri ve risk faktörlerinin ortaya konulması ve intiharları önlemeye yönelik çözüm önerileri tartışılmıştır.

"İntihar girişimleri" olarak nitelendirilen ve bu girişimlerin ölümle sonuçlanmaması durumunda bu eylemlerle ilgili olarak yapılan adli ihbarlar sağlık çalışanlarının ihbar yükümlülükleri arasında yer almaktadır.

Sonuç olarak, bir toplum ruh sağlığı sorunu olarak intiharın risk faktörlerinin değerlendirilmesi, intihar girişiminde bulunan kişilerin fiziksel ve ruhsal durumlarının düzenli takip edilmesi, toplumda intihar girişimi eğilimlerinin takip edilmesi, tedavi yöntemlerinin ve önleme programlarının etkinliğinin değerlendirilmesi önerilmektedir.

Anahtar Kelimeler: İntihar, intihar girişimi, risk faktörleri, önleme

1. Introduction

Suicide is defined as "ending his/her own life by herself/himself and behaving in an extreme way which will put her/his own life under risk because of social and psychological reasons" (Öztürk, 2014). Suicidal behavior is a quite general term, and it contains three basic behaviors called "completed suicides, suicide attempts and suicidal thoughts" according to Eskin (2003). On the other hand, suicide possibility is defined as "a deed which may result in death and is carried out by the person intentionally or the condition under which another deed or deeds being necessary for the survival are not carried out intentionally" (Eskin, 2003; Öksüz and Bilge, 2014).

World Health Organization (WHO) divides suicides into two parts as real suicides (completed) and suicide attempts. Real suicides are suicides resulting in deaths, and suicide attempts contain all nonfatal deliberate attempts which the person shows in order to destruct or poison herself/himself, damage to herself/himself. (Gürkan and Dirik, 2009; Yavuz et al., 2006). The fact that rates of suicide and forms of suicide range from one society to another and suicide ways and rates may vary even in different sections of the same society indicates that social events affect suicides. (Odağ, 1995; Langford et al., 1998).

Suicide is an incident which occurs with the impacts of psychological, social, pecuniary and cultural factors, and thoughts and attempts to suicide appear when the person is faced with a devastating event in terms of mental and/or physical viewpoints and when she/he cannot solve such problems. Although suicide shows a general increase in global sense, the rates differ among societies. Social structure, traditions, religious beliefs and social identities of each country are significant factors which have effects on suicidal behaviors. However, rates of suicide attempts are much more than those of suicides which result in deaths, and they differ according to gender, education status and age among sociodemographic variables (Gürkan and Dirik, 2009; Foster et al., 1999).

This study discusses how to put forward suicide attempts and risk factors and solutions to prevent suicides so that it can contribute to formation of protective health policies in order to stop suicides.

2. Risk factors for suicide

Suicide behavior is not only a result of personal and social problems but it is also fundamentally thought as a resultant of biological, psychiatry/psychological and social effects (Sayıl, 2002). It is thought that there is a relationship between suicide attempts and many mental illnesses such as firstly depression and socioeconomic factors like alcohol and drug addiction, negative domestic interactions, inadequacy of social collaboration, economic problems and migration (Gould et al., 1990) Moreover, sociodemographic factors such as gender, age, marital status, vocation, education status, and economic conditions also affect suicide attempts (Gould et al., 1996; Foster et al., 1999; Stack, 2000).

Suicide is an important social problem which is also a common problem of all societies. According to data of TUIK (Turkish Statistical Institute) (2015), suicide events occurring within a year have been evaluated and it has been found out that it changes from 3169 to 3211 with 1,3% increase rate. It can be seen that 72,7% of people committing suicide are male and 27,3% of them is female (Özgüven and Sayıl, 2003; Şahin and Batıgün, 2009; Türkiye İstatistik Kurumu (TÜİK), 2015).

Suicide is an incident with which people from different ages are faced. (Beautrais et al., 1999) There are some studies which indicate suicide rates increase especially for young people all over the world and in Turkey (Küçüker and Aksu, 2002) 34,3% of people committing suicide in 2015 are in age group

between the ages of 15 and 29 when people commiting suicide are considered in terms of age groups. (Türkiye İstatistik Kurumu (TÜİK), 2015). When people commiting suicide are considered in terms of gender it can be seen that whereas the highest rate is 18% for women between the ages of 15 and 19 the highest rate is 12,8% for men between the ages of 20 and 24. It is found out that 33,3% of men committing suicide and 46% of women commiting suicide are people under the age of 30. When marital status, another variable, is considered according to gender it is established that 54% of men commiting suicide are married and 36,4% of them have never got married, and 41,1% of women commiting suicide are married and 41% of them have never got married (Türkiye İstatistik Kurumu (TÜİK), 2015).

Research in Turkey asserts that more than the half of people who have died as a result of suicide for the last five years are young people and the foremost reason of their suicides is the fact thay they feel under pressure and they couldn't get enough attention. On the other hand, the fact that young people couldn't develop the ability to solve their problems may cause suicides. Additionally, it has been found out that the reasons like severe childhood depressions, socialization drawback and identity crisis, strong conflicts within family and immediate environment, physical violence to which he/she is exposed in the company of peers, loss of a loved person, fierce pressure by families, feeling to fail by children, school report syndrome for children are among reasons of suicides in childhood and adolescence phases Sonuvar, 1985; Çakmak et al., 1988; Küçüker and Aksu, 2002; Atay and Kerimoğlu, 2003).

Low socioeconomic conditions are one of the significant risk factors for suicide attempts. It is stated that more than the half of people attempting to suicide in Europe are in the group with low socioeconomic conditions (Deveci et al., 2005).

Studies which deal with reasons why people are pushed to suicide in adolescence period put emphasis on such reasons as existence of a suicide attempt story beforehand, bad health conditions, exposure to domestic violence, traumatic events, alcohol and drug addiction. On the other hand, it has been found out such reasons as umemployment and/or migration weaken social bonds and affect suicide behavior. A study brings out that adolescents attempting to suicide have mood disorders, previous suicide attempts and alcohol and/or drug addictions. Moreover, it has been stated that adolescents having attempted to suicide beforehand have loss of a parent and 80-90% of them have psychological disorders (Sayar Öztürk and Acar, 2000; Uçan, 2005). According to results of a study which is carried out via 683 people between the ages of 15 and 65, people have less eagerness to maintain his/her own life and suicidal thoughts are increasing within this group in parallel with these findings (Batıgün, 2005). Another study puts forward that suicide rates are more for the group between the ages of 15 and 34 than other age groups (Atay, Eren and Gündoğar, 2012).

Gender is also a variable which is investigated within two categories among suicide reasons. While rates of men are more those of attempts to suicide by women in terms of completed suicides suicide attempts by women are more than those by men (Öztürk, 2014). On the other hand, 54% of men who attempted to suicide in 2015 are married and 36,4% of them are single (never got married); 41,1% of women who attempted for suicide in the same year are married and 41% of them are single (never got married) if we consider marital status in terms of gender (Türkiye İstatistik Kurumu (TÜİK), 2015).

As education level decreases rates of suicide increase (Yiğit, Söyüncü and Berk, 2010). It has been stated that university graduates have less possibility of committing suicide compared to elementary education and high school graduates (Batıgün, 2005). It has been indicated that 22,2% of people who attempted to suicide in 2014 are primary school graduates, and this rate ascends to 23,7% in 2015. These rates are followed by 21,4% rate by elementary school graduates, 20,9% rate by high school and their equivalents graduates, 11,7% rate by higher education graduates (Türkiye İstatistik Kurumu (TÜİK), 2015).

Unemployment and financial difficulties are among important risk factors with regard to suicide and suicide attempts (Rutz, 2006) and it has been stated as well that suicide attempts are more common among people, especially the ones with low socioeconomic opportunities (Öztürk, 2014).

The fact that a person has attempted to suicide before is the most significant factor for the next suicide attempt. A study which is conducted via people between the ages of 15 and 24 puts forward that 47,6% of people having attempted to suicide before have felt the desire to die at least for two weeks, and 44,4% of them have had suicide thoughts before and 31,7% of them have attempted to suicide before. For this reason, it is of great importance to monitor people with stories about suicide attempts medically (Güleç and Aksaray, 2006).

Psychiatric illnesses and suicide are phenomena which affect each other and this case is one of the risk factors for people (Öztürk, 2014). A previous study indicates that three people out of four who have applied to emergency because of suicide attempt have been diagnosed with at least one psychiatric illness, and another study shows that 90-95% of such people share the same case too. There are many studies which state there is an important relationship between suicide and depression, and it has been indicated that depression together with desperatenees is the strongest trigger for suicide (Goldston et al., 2009) A study carried out with 600 people between the ages of 18 and 65 in Turkey has showed that there is an increase in death thoughts and suicide for people diagnosed with major depression, and common anxiety disorder is more often for people who have attempted to suicide before. It has been observed that death thoughts bear great importance for the development of panic disorder and specific phobia (Atay, Eren and Gündoğar, 2012). A comprehensive study which deals with 2964 completed suicides in Japan has showed that people have been diagnosed with firstly major depression at most, secondly mood disorders and psychotic disorders, respectively dementia, sleep disorder, adjustment disorders, personality disorders, eating disorders, obsessive compulsive disorder and alcohol and drug disorders (Takizawa, 2012).

Life stressors have an important effect on suicide etiology. When many stress factors like marriage problems, family problems, physical illnesses, economic difficulties and failure in education life of students are taken into account skills to deal with problems and solve them gain great importance (Şevik, Özcan and Uysal, 2014) A study carried out with people who have psychiatric disease and get outpatient care has detected that problem solving ability are among significant reasons of suicide thoughts and attempts (Eskin, Akoğlu and Uygur, 2006). Another study has also showed that 74,2 % of people who are between the ages of 15 and 24 and have attempted to suicide thought that they couldn't solve their problems and chose suicide as a liberation from the life (Ertemir Ertemir, 2003). On the other hand, another study carried out with high school and university students has stated that the fact that problem solving ability of people is not enough and their anger/aggression and impulsivity is high triggers suicide possibility (Batıgün and Şahin, 2012).

A person with suicidality chooses the easisest material, place, method and time to find in order to attempt to suicide. Suicide methods which are used vary according to age groups, sociologic and cultural conditions. It is found out that the most frequently used methods in Turkey are using guns and sharp objects, suffocation, jumping from a high place, taking overdose (Küçüker and Aksu, 2002).

Family is defined as "a social unity consisting of mother, father, children and relatives having blood relations" (Gökçe, 1996). Unsolved problems cause people to be deprived of such feelings as love, respect, affection, trust and belonging and to be psychologically affected in a negative way (Sungur, 1998). Studies show that family structure is an important determinant for suicidality by people. Techonological developments make people lonely and cause a variety of problems for families, the basic unit of the society, cause social life of people to be negatively affected and consequently cause them to show tendency towards suicide. Disruption of domestic communication and family integrity cause love, respect and affection feelings of people to be wiped out, cause family integrity not to be maintained and consequently result in increase in suicide possibility (Beskow and Wasserman, 1996).

3. Responsibility of Legal Notice by Health Professionals

Firstly doctors and then all health professionals have the duty to protect human life and health which is guaranteed under Constitution of Turkish Republic without any doubt (Güleç and Aksaray, 2006) Another responsibility of health professionals is to notify legal authorities about criminal deeds which they have realized during treatment, and to help social order to be kept and losses of personal rights to be prevented. The boundaries of responsibility of doctors and other health professionals bear great importance. There is responsibility of legal notice about conditions which negatively affect health of people in this age when health is defined as "not only nonexistence of illness and disability but also a complete physically, mentally and socially wellness condition". The best example for such cases is legal notices carried out for acts which are described as "suicide attempts" and when they don't result in death. There are "injuries defined as suicidal attempts" under the heading of deeds whose legal notices must be carried out in a number of forensic science resources nowadays (Hayran, Sur and Çevik 1998; Gündoğmuş et al., 2004).

Legal responsibilities of health professionals are stipulated in Article 280 of Turkish Criminal Code. It stipulates that:

(1) A health professional gets punishment reaching one year if she/he doesn't inform authorities or is late to do it although she/he comes across a sign showing a crime is committed.

(2) A health professional means doctor, dentist, pharmacist, midwife and other people giving health service (Türkiye Büyük Millet Meclisi (TBMM), 2004; Yiğit et al, 2010). This notice means such a noticification in order to inform concerning people by health professionals here. Notice is not expertness or witnessing. It has been stated that it is conflicting in terms of responsibility of legal notice that it gives the opportunity to the doctors and health professionals not to be a witness as it is accepted as a professional secret on one hand; on the other hand, it also gives notification responsibility (Erem, 1993).

4. Treatment of Suicide Facts and Prevention of Suicide

As suicide cannot be explained via only one reason, this case must be taken into consideration for efforts to prevent it. In other words, biological, psychological, sociological, social and cultural phenomena may create suicide behavior. The fact that reasons of suicide behaviours are very complicated causes the solution to be complex as well (Leenaars, 2005).

The general aim of prevention studies for suicide is to learn about suicidal thoughts and develop attitudes and techniques to prevent it (Küçüker and Aksu 2010). Instead of focusing on one factor or a few risk factors, evaluation of many reasons which interact with each other in a comprehensive way and with biopsychosocial integrity must be needed for prevention studies (Çakmak et al., 1988). Suicide is a social phenomenon which can be prevented if it is foreseen. Reasons of suicide must be found out so that it can be prevented. For this reason, physical, economic, social and psychological matters of people must be investigated. People who are under the risk must be considered, and people with suicidality must be detected. Furthermore, early diagnosis and treatment of major depression which is very common in some regions of the society is a very important indicative for decrease in suicide attempts. The route for treatment of depression must be appropriate for people; collaboration of the person and her/his family is necessary. Moreover, factors which result in depression must be investigated and tried to be decreased. Usage of medications which have negative effects on psychological conditions msut be provided with great care. Physical illnesses and psychological disorders msut be investigated holistically, and a fast and effective treatment must be applied in order to minimize suicidality (Sonuvar, 1985).

Following suicide attempt of the person, if suicide thought of the person is still available this means that the crisis which create suicide attempt has not been solved; if the person has suicide plan this means that high risk is still in question. Desperateness feelings, physical illnesses during chronic or terminal periods increase suicidality for people. Attempts for suicide at a lower danger rate, for instance medications with little dosage and/or lacerations (cut on the skin) don't have much risk and the person will

probably survive. If the family and/or friends of the person attempting to suicide is with him/her and the events which trigger the crisis have the possibility of being solved the patient will be discharged from emergency service and she/he may be led for outpatient care. Attempts such as medications with much dosage, knife wounds, jumping from places with medium height bear medium danger level. If the person still has suicide thoughts after the attempts with medium danger level and/or she/he has a psychological disorder needing acute treatment foreseeing dangerous cases to emerge and monitoring patients for proper care will be required. If the person who has attempted for suicide doesn't accept seriousness of the case, he/she is not willing for outpatient care and relatives of the person cannot help he/she must be hospitalized in a psychiatry clinic (Sayar et al., 2000).

A person who goes to a hospital because of suicide needs emergency medical intervention at the fist instance. This intervention is important for the survival of the person. If the person has consciousness he/she must be contacted (Uçan, 2005). Psychotherapautic and pharmacological agents are used for the treatment of people with suicidality (Atay, Kerimoğlu, 2003). However, it is important for these patients that little medication should be used, agents with little toxic effect should be preferred and medications of people needing outpatient care should be given by their relatives in a controlled way (Uçan, 2005). The whole team of mental health and diseases. If the team members keep in touch about patients and they collaborate with each other this will contribute much to getting more information about patients and treatment process (Batıgün, 2005).

Health professionals have important duties and responsibility for prevention of suicides. Health professionals providing health service must be informed about suicide and prevention of it at the first stage. What is needed can be summarized like that: appropriate medical and psychological approaches should be employed for the person in the state of crisis, fast and effective treatment should be applied for people attempting to suicide and their families by people educated on this issue, required psychological support should be provided, a database must be created about suicides by means of registration system, and there should be information sharing among team members by means of interdisciplinary collaboration. On the other hand, diagnosis and treatment of people with psychological disorders must be provided by means of education of people treating the patients and health professionals. Quickest treatment and rehabilitation of people with suicidality by health professionals and detecting and transferring people with suicidality to experts are among aims of health professionals. It is needed that suicide prevention centers should be founded, regular psychological/psychiatric counseling services should be provided for people with major depression diagnosis and high suicidality and the society should be educated about this issue in order to decrease potential suicidality. Concerning policies and laws should also back up studies (for instance, gun control, medication supply, usage of alcohol and drug) about foundations, institutions and people within the scope of mental health in order to prevent and/or decrease suicide. Mass media should capture the attention about reasons of suicide in this field and they should not publish news which promotes the case. As a result, vocational, social and legal regulations including personal efforts must be arranged in order to decrease global suicide rates (Atay et al., 2012; EMS, 2013).

Interdisciplinary and business-to-business studies are suggested for the prevention of suicide. Suicide could be diagnosed early and prevented thanks to mutual studies by institutions and foundations and educational studies to be undertaken socially. A national health plan in which experts of different subjects will be in a variety of commissions via collaboration among foundations must be developed (Beautrais et al., 1999; WHO, 2013).

5. Results

It is a known fact that the number of people committing suicide or attempting to it ranges from one society to another and even from one region to another in the same society (De Leo, 2002; De Leo, 2002). People may apply to suicide in order to get rid of negative physical and emotional cases which

increase depending on life stressors. The person attempting to suicide may aim to explain that she/he cannot solve problems and she/he feels desperate by ending her/his life. Health professionals must deal with each suicide attempt with care; they must have an active role in early diagnosis and treatment of suicide by evaluating both patients attempting for suicide and risky groups in the society (Ertemir ve Ertemir, 2003).

As a consequence, it is suggested that risk factors of suicide, as a mental health problem of the society, should be evaluated, physical and mental states of people attempting to suicide must be followed regularly, suicidality in the society should be investigated, and effectiveness of treatment methods and programs must be assessed (Batıgün ve Şahin, 2012). As long as suicide is an important mental health problem of the society studies about effectiveness of national health policies and national institutions being responsible for this problem must proceed (Gökçe, 1996).

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BİR GRUP YÜKSEK LİSANS ÖĞRENCİSİNİN ETİK İKİLEMLERİ DEĞERLENDİRME VE AŞİNALIK DURUMLARI

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Serap TORUN
Correspondence Author Yrd. Doç. Dr., Çukurova Üniversitesi Sağlık Bilimleri Fakültesi
torunserap@gmail.com

ÖZET

Amaç: Bu araştırma profesyonel hemşirelik yapan, aynı zamanda *Klinik Etik* dersi alan bir grup yüksek lisans öğrencisinin etik karar verebilme düzeylerini incelemek ve lisans döneminde etik dersi almalarının etik karar verebilme düzeyleri üzerinde etkisini belirlemek amacıyla yapılmıştır.

Yöntem ve Araç: Tanımlayıcı tipte olan araştırma bir üniversitede Sağlık Bilimleri Fakültesi Hemşirelik Bölümünde 2015-2016 eğitim yılında *Klinik Etik* dersini alan ve çalışmaya katılmayı kabul eden 9 yüksek lisans öğrencisi ile yapılmıştır.

Veriler öğrencilerin demografik özelliklerini içeren bir veri toplama formu ve *Hemşirelik Etik İkilem Testi* kullanılarak toplanmıştır. Verilerin değerlendirilmesinde tanımlayıcı istatistiksel analizler kullanılmıştır.

Bulgular: Katılımcıların yaş ortalaması 31± 8.689 (min:23, max:45), tamamı kadın, lisans mezunu, ikisi araştırma görevlisi, 7 si klinik hemşiresi olarak çalışmaktadır. Çalışma yılları ortalaması 9.67± 9,220 dir. Katılımcıların %66,7 si lisans eğitimleri sırasında etik dersi almış olduğunu belirtmiştir. Tüm katılımcıların ilkesel düşünme puan ortalaması 42,33±3.54 (min:36-max:50), pratik düşünme puan ortalaması 21,67±4,79(min:15-max:30) olduğu saptanmıştır. Benzer durumlara aşinalık puanları ise 14,89±1,691 (min:13-max:18) olarak belirlenmiştir.

Sonuç: Hemşirelik eğitiminde verilen etik derslerinin öğrencilerin etik karar verme düzeylerini geliştirdiği düşünülmektedir. Mesleki deneyiminde etik karar vermeyi etkilediği ve aşinalık yarattığını söylemek olanaklıdır.

Anahtar Sözcükler: aşinalık**,** etik ikilem, etik karar verme, hemşire, tıbbi etik.

ABSTRACT

Aim: The purpose of this research is for who makes professional nursing and also a group of master degree students that takes *Clinical Ethics* course to examine their level of ability to decide ethical and purpose of determining the impact on their level of ability to decide ethical by taking Ethics course at the license period.

Methods and Means: The research is descriptive. It was conducted by nine master degree students that took the *Clinical Ethics* course and who agreed to participate in the study at a state university in the Faculty of Health Sciences Department of Nursing in 2015-2016 school year.

Data were collected by using data collection form that includes the demographic characteristics of students and also by using the *EthicalDilemmas in Nursing Test*. Descriptive statistical analysis was used to evaluate the data.

Findings: The average age of participants was 31±8.689 (min:23, max:45) they are all female with master degree, two of them have been research assistants and seven of them have been working as a clinical nurse. Study year average is 9.67± 9,220. %66.7 of the participants stated that they have taken Ethics course during the under graduate education. Average score of all participants *Principal Thinking*s core 42,33±3.54 (min:36-max:50) and their *Practical Consideration* scor e21,67±4,79 (min:15-max:30) were found to be. The scores of their familiarity with similar situations is determined 14,89±1,691 (min:13-max:18).

Conclusion: Ethics courses in the nursing education is thought to improve the level of ethical decision making for students. Ethics courses affect the ethical decision making in the Professional experience and it is possible to say that it creates familiarity.

Keywords: familiarity, ethical dilemmas, ethical decision, nurses, medical ethics

Giriş

Hemşirelik mesleği çalışma alanına özgü olarak, klinik etik anlamında pek çok olgu ile karşılaşan ve karar verme aşamasında, eylemde uyulmak istenen etik ilkelerin tercihinde zorlanıldığı için ikilem yaşanan mesleklerdendir. Çalışma koşulları, hasta ve yakınlarının beklentileri, kaygıları, diğer ekip üyelerinin mesleki bilgi-deneyim-bireysel inanç ve değerleri, hemşirenin bilgi- deneyim- bireysel inanç ve değerleri etik ikilem/etik sorun yaşanmasına zemin yaratan açık kapılardan birkaçıdır. Hemşireler görev statüleri gereği etik ikilemleri etik sorunlara göre daha sık yaşamaktadır.

Hemşirelik eğitiminde son on yıldır adları değişmekle birlikte içeriği tıbbi etik/ tıp etiği olan, hemşirelerin mesleki alanda karşılaşacakları etik ikilem/etik sorun ve çözüm yöntemlerine ilişkin bilgiler bulunan dersler müfredatta yerini almıştır. Ülke genelinde tüm sağlık çalışanlarının etik eğitimi için 2008'de "Doktorluk, hemşirelik, ebelik, diş hekimliği, veterinerlik, eczacılık ve mimarlık programlarının asgari eğitim koşullarının belirlenmesine ilişkin yönetmelik" yayınlanmıştır. Yönetmeliğe göre, hemşirelik eğitim programında okutulması gereken konular arasında meslek alanına özgü etik bilgiler ilk sırada yer almaktadır.[1]

Adları değişmekle birlikte tıp etiği konularını içeren derslerin yaygın ve zorunlu bir şekilde lisans müfredatında yerini almasının kökeninde değişen dünya düzeni ve teknolojik gelişmelerin sağlık alanına yansımaları, toplumsal ve bireysel olarak değişen değerlerdir. Bu makalede geçen "Tıbbi Etik" adlandırması; tüm sağlık mesleklerinin kendilerine özgü olarak farklı farklı adlandırdıkları ve temelde tıp etiğini içeren dersleri kastetmek için kullanılmıştır.

Etikçilerin üzerinde tartıştıkları ana konulardan biri etik davranış geliştirme sonradan kazanılabilir mi? Davranış değişikliği oluşturmak eğitimin işlevsel ve başarılı olduğunu göstermektedir. Hemşirelikte tıp etiği/tıbbi etik eğitimi ile "mesleki bilinçlenme" amaçlanmaktadır.[2,3] Tıbbi etik eğitiminde öğrenim hedefleri; etiğe has temel değerler, ilkeler anlatılarak, öğrencinin yapıp etme ve eylemelerinde etik davranması, ilkelere bağlı kalması, ilke çatışmalarında karar verme becerisine ulaşması, etik sorun ile karşılaştığında tanıyabilmesi ve çözüm geliştirebilmesidir. Bu mesleki hazırlık ile hemşireler genişleyen rol ve fonksiyonlarının getirdiği karmaşık durumların üstesinden gelebilirler.[4] Etik kararlar vermek ve bu kararların sorumluluğunu üstlenmek durumunda kaldıklarında eğitimleri sırasında edindikleri bilgiler yol gösterici olabilir.[5-8]

Bu çalışmanın ortaya çıkmasına neden olan gözlemlere dayanarak hemşirelik alanına özgü klinik ortamında etik sorun oluşturan birkaç durumu şöyle sıralamak olanaklıdır: Hasta bakımı ve tedavisine yönelik ekibin diğer üyeleri ile görüş ayrılıkları, kurumun kişisel değerlere ters düşen prosedürleri, serbest piyasa ekonomisi ve hasta haklarının çatışmasıdır. Ek olarak, değişen toplumsal değerler nedeniyle yoğun bakımların palyatif bakım verilen hospis merkezleri ya da agoni odaları olarak kullanımı sonucu sınırlı kaynakların dağıtımında ciddi sorunlar ortaya çıkmaktadır. Bu durum iş yükü, zaman ve maliyet etkin düşünüldüğünde ortaya çıkan tablo iyi değerlendirilmelidir. Bir diğer sorun bilgilendirilmiş rıza/

aydınlatılmış onamda ortaya çıkmaktadır. Kanuni bir zorunluluk haline gelmiş olan bilgilendirme ve onam alma kâğıt üzerinde olan bir uygulama olarak kalmaktadır. Hekimler çoğu zaman bu görevlerini hemşireye devretme yolunu seçmektedir. Hastane ortamında sağlık çalışanlarının ahlaki değerleri ve tutumları, mesleki uygulamaları ve kişilerarası ilişkilerine doğrudan yansımaktadır. Kültürlerarası değişkenliğin çok olduğu hastane ortamında, genel olarak tüm sağlık çalışanlarında, özelde ise hemşirelerde etik ilkelere bağlı kalmaya ilişkin sıkıntılar yaşanabilmektedir.

Genellikle hemşirelerin çağdaş hemşirelik modelinin gereklerini (örneğin; hasta hakları savunuculuğu rolünü) yerine getirirken yaşadıkları ya da yaşayabilecekleri etik ikilemler; ahlaki ve etik değerlerin, yükümlülüklerin çatışması olup, çoğunlukla hemşirelik bakımı anında yaşanmaktadır.[8] Bakım fiziksel ve psikolojik açıdan yakın ilişkiyi gerektirdiği için hemşireler hastalarının en güçsüz ve mahrem yönlerini görebilmekte; onların acılarına, yalnızlık, umutsuzluk vb. duygularına tanık olabilmektedirler. Böylesine fiziksel yakınlığın ve tanıklığın bir bedeli vardır. Bu bedel, kimi zaman hastalar ile ilgili vicdani yükü olan güç kararlar almak, kimi zaman da uygun olmayan seçenekler arasında karar verememek ve ikilemde kalmaktır[9,10].

Dinç'in belirttiği gibi (2010) hemşirelik bakımı; bakımın ahlaki yönü konusunda farkındalık ve duyarlılığın yanı sıra, bilimsel bilgi temelini ve özelleşmiş psikomotor becerileri de gerektirir[9]. Dinç'e göre hemşire bakım verirken; doğru bilgisini (episteme), pratik aklını ve yargı yetisini (phronesis) ve özelleşmiş teknik becerisini ve manevra yetisini (techne) etik ilkeler ve mesleki değerler doğrultusunda birleştirmeli ve özenli ve saygılı bir tutumla sunabilmelidir. Bu yapılmazsa bakım vicdani bir duyuş, önsezi, iyi niyet ve şefkate dayalı olarak sunulacak ve yeterli olamayacağı gibi, bakım verilen kişiye zarar verme riskini de beraberinde getirebilecektir[9].

Etik karar vermeyi kolaylaştırıcı olan etik duyarlılık, bakım esnasında ortaya çıkan belirsiz durumlarda hızlı ve yararlı bir şekilde karar verme kapasitesidir. Karar vermede etik kodlar, kritik düşünme, bilgi birikimi, deneyim, öngörü ve cesaret önemlidir. Hemşirelikte etik eğitiminin yeterliliğinin sağlanması; çağdaş hemşirelik rollerinin yaşama geçirilmesi, kaliteli hasta bakımı sunulması ve hemşirelik mesleğinin profesyonel rollerini sunabilmesi için önemlidir. Barnett (1986), hemşirelerin etik eğitimi ile hemşirelik mesleği ile hastalara büyük yarar sağladığını belirtmiştir[11]. Etik eğitimi alan hemşireler hastalarına karşı daha sağduyulu ve sorumlu davranmakta ve böylece kendileri de daha mutlu çalışmaktadır.[13,14] Bu nedenle aynı zamanda profesyonel hemşire olan yüksek lisans öğrencilerinin aldıkları "*Klinik Etik*" dersi hemşireliğe özgü etik davranışlar üzerinde geliştirici ve destekleyici etki sağlayabilir ve klinik ortamda karar verme yeteneğini geliştirebilir.

Amaç:

Bu araştırma *Klinik Etik* dersini alacak olan profesyonel hemşirelik yapan yüksek lisans öğrencilerinin etik karar verebilme düzeylerini incelemek ve lisans döneminde etik dersi almalarının etik karar verebilme düzeyleri üzerinde etkisini belirlemek amacıyla yapılmıştır.

Yöntem: Araştırma tanımlayıcı niteliktedir.

Araştırmanın evreni ve örneklemi

Araştırmanın evrenini bir devlet üniversitesinde hemşirelik programında yüksek lisans eğitimi alan ve *Klinik Etik* dersine kayıt yaptırmış olan öğrenciler oluşturmuştur. Örneklemi ise 2015-2016 bahar dönemi ders alan ve çalışmaya katılmayı kabul eden dokuz yüksek lisans öğrencisi oluşturmuştur.

Veri toplama araçları

Araştırmada, veri toplama formu ve *Hemşirelik Etik İkilem Testi* kullanılmıştır**.** Veri toplama formu, öğrencilerin sosyodemografik özellikleri ve eğitimlerine ilişkin sorulardan oluşmuştur. Diğer veri toplama aracı olan *Hemşirelik Etik İkilem Testi* (HEİT)nin orijinal adı "*Nursing Dilemma Test*"tir. Dr. Patricia Crisham tara-

fından 1981 yılında geliştirilmiş, ülkemizde geçerlilik ve güvenilirliği Cerit tarafından 2010 yılında yapılmıştır.[15] HEİT de anomalili yeni doğan bir bebeğe yeniden canlandırma girişimi uygulama, zorla ilaç uygulama, yetişkinin ölme isteği, yeni göreve başlayan bir hemşirenin kliniğe uyumu, ilaç hatasının rapor edilmesi ve ölümcül hastalığı olan yetişkin bireyin bilgilendirilmemesine ilişkin altı etik ikilem senaryosu yer almaktadır.

Her bir ikilem üç bölümden oluşmaktadır. Birinci bölümde (A) açıklanan senaryoda yer alan ikileme ilişkin hemşirenin ne yapması gerektiği sorulmuş ve her ikileme ilişkin üç seçenekten birini işaretlemesi istenmiştir.[15] İkinci bölümde (B) katılımcıdan ahlaki ikilem içeren senaryoyu düşünerek buna yönelik yaklaşımında göz önünde bulundurabileceği altı maddelik ifadeden kendisine göre önem sırası doğrultusunda numaralandırması istenmiştir. Testin bu bölümüne verilen yanıtlar doğrultusunda öğrencilerin "İlkesel Düşünme" (İD) ve "Pratik Düşünme (PD) düzeyleri belirlenebilmektedir. Hemşirelerin ahlaki bir karar verirken ahlaki ilkeleri göz önünde bulundurmaları ilkesel düşünmeyi, etik sorunlara ilişkin karar vermede hasta sayısı, kullanılabilir kaynakların sayısı, kurumsal politikalar, hemşireler tarafından yönetimin verdiği desteğin algılanma ölçüsü ve hekim kontrolü gibi çevresel faktörlere verdikleri önem ise pratik düşünmeyi göstermektedir. Hemşirelerin bu belirtilen altı ifadeyi önem sırasına göre numaralandırarak verdikleri yanıtlardan İD ve PD düzeyi puanı hesaplanmaktadır.[15] Her bir ikilemin B bölümündeki altı maddenin en önemliden (6 puan) en az önemli olana doğru (1 puan) yapılan sıralama değerlendirilmektedir. Hemşirelerin yaptıkları sıralama testin cevap anahtarı ile karşılaştırılmaktadır. Cevap anahtarında İD ve PD'ye karşılık gelen maddeler hemşirelerin yaptıkları sıralamada belirlenip ve maddelerinin sırası karşılaştırılarak puanlama yapılmaktadır. Böylece katılımcının her bir ikilemin B bölümündeki düşünce/ sorulara yönelik yanıtları dikkate alınarak İD ve PD puanları hesaplanmaktadır. Her bir ikilemden elde edilen İD ve PD puanları ayrı ayrı toplanarak katılımcının toplam İD ve PD puanları belirlenmektedir. Testte ulaşılabilecek en düşük İD puanı 18, en yüksek İD puanı 66'dır. Elde edilebilecek en düşük PD puanı 6, en yüksek PD puanı ise 36'dır.[15]

Üçüncü bölümde (C) ise hemşirelerin geçmişte benzer bir ikilemle karşılaşma deneyimlerini belirtmeleri istenmektedir. Bu bölümdeki soruya verilen yanıtlara dayalı olarak hemşirelerin benzer bir ikilemle daha önceden karşılaşma durumu beşli likert tipi skala ile değerlendirilerek "Aşinalık" puanı hesaplanmaktadır.[16]

Verilerin toplanması

Araştırmanın verileri, 2015-2016 eğitim yılı güz ve bahar döneminde *Klinik Etik* dersi alan ve çalışmaya katılmayı kabul eden dokuz yüksek lisans öğrencisi ile yüz yüze görüşme tekniği ile toplanmıştır (n:9). Veri toplama formu ve HEİT formunun cevaplanması yaklaşık 20 dakika sürmüştür.

Verilerin değerlendirilmesi

Verilerin değerlendirilmesinde istatistik paket programı kullanılmış, tanımlayıcı istatistiksel yöntemlerden (sayı, yüzde, ortalama, standart sapma, ortanca) yararlanılmıştır. Hemşirelik Etik İkilem Testi'nin A ve C bölümlerine ilişkin verilerin değerlendirilmesinde frekans, yüzde ve ortalama hesapları, B bölümünden elde edilen verilere göre hemşirelerin etik karar verebilme davranışlarının belirlenmesinde ise ortalama ve standart sapma değerleri kullanılmıştır.

Araştırmanın etik yönü

Araştırmanın uygulamasına başlamadan önce gerekli izinler alınmış olup, katılımcıların sözel onamları alınmıştır.

Araştırmanın sınırlılıkları

Araştırmanın sınırlıklarını, yalnızca bir kurumda yapılmış olması ve yapıldığı eğitim yılında dersi alan öğrenci sayısının az olması oluşturmaktadır.

Bulgular

Katılımcıların yaş ortalaması 31± 8.689 (min:23, max:45)dir. Katılımcıların tamamı kadın, lisans mezunu, ikisi araştırma görevlisi, 7 si klinik hemşiresi olarak çalışmaktadır. Çalışma yılları ortalaması 9.67± 9,220 dir. Katılımcıların %66,7 si lisans eğitimleri sırasında içeriği tıp etiği olan bir ders almış olduğunu belirtmiştir. Tüm katılımcıların İD puan ortalaması 42,33±3.54 (min:36-max:50) , PD puan ortalaması 21,67±4,79(min:15-max:30) olduğu saptanmıştır. Benzer durumlara aşinalık puanları ise 14,89±1,691 (min:13-max:18) olarak belirlenmiştir.

Daha önce tıp etiğine ilişkin ders alan yüksek lisans öğrencisi hemşirelerin, İD puan ortalaması 43,00±5,93 (min:37-max:50), PD puan ortalaması 20,17±4,49(min:15-max:27), benzer durumlara aşinalık puanları ise 15,33±1,862 (min:13-max:18) olarak belirlenmiştir. Etik dersi almayan katılımcıların İD puan ortalaması 41,00±5,68(min:36-max:47), PD puan ortalaması 24,67±4,61(min:22-max:30), benzer durumlara aşinalık puanları ise 14,00±1,00 (min:13-max:15) olarak belirlenmiştir. Öğrencilerin Etik İkilem Testi'nin C bölümüne ilişkin yanıtları değerlendirildiğinde; katılımcıların tamamının 13-18 puan aralığında yer alarak benzer ikilemlere aşina olduğu belirlenmiştir.

Tartışma

Etik ikilemler bir eylem sırasında ya da karar verilmesi gereken bir durumda iki ilke arasından seçim yapmakta zorlanmaktan kaynaklanmaktadır. İkilemler eylemin kendisi ile ya da eylemin sonuçları ile ilgili olabilir. Bu yüzden iki değer çatıştığında bir seçim yapılarak karar verilmelidir.[7] İlkesel düşünme (İD), hemşirelikle ilgili bir konuda karar verirken etik ilkelere sadık kalmaya verilen önemi göstermektedir. Hemşirelik Etik İkilem Testinde İD'ye ilişkin alınabilecek en yüksek puan 66'dır. Bu çalışmada daha önce etik dersi alan öğrencilerin İD puan ortalaması 43.00, etik dersi almayan öğrencilerin ise 41,00 olarak hesaplanmıştır. Katılımcıların ilkesel düşündüklerini söylemek olanaklıdır. Daha önce etik dersi almayan katılımcıların mesleki deneyimlerinin 20 yılı aşkın olması önemli ilkesel düşünme geliştirmiş olmaları açısından önemli bir faktör olarak değerlendirilebilir. Bu çalışmada etik dersi alan katılımcıların çalışma yıllarının minimum bir yıl olması klinik deneyimlerine ek olarak lisans eğitimlerinde aldıkları etik dersi ile farkındalık geliştirdikleri ve etik ilkeler doğrultusunda karar verdikleri söylenebilir.

Hemşirelik Etik İkilem Testi'nden elde edilen bir diğer değer; pratik düşünme puanıdır. Pratik düşünme puanı, hemşirelerin etik sorunlara ilişkin karar vermesinde hasta sayısı, kaynak kullanımı, kurumsal politikalar, kurum yönetiminin hemşirelere verdiği desteğin algılanma ölçüsü ve hekim kontrolü gibi çevresel faktörlere verdiği önemi ölçmektedir.[15]

Hemşirelik Etik İkilem Testi'nden PD'ye ilişkin alınabilecek en yüksek puan 36'dır. Cerit ve Dinc calışmasında hemşirelerin PD puan ortalamasını 17,54±4,13 olarak belirlemiştir[17]. Bu çalışmada PD puan ortalamasının değerinin 21,67±4,79, daha önce etik dersi alan katılımcıların PD puan ortalaması 20,17, almayanların puan ortalaması ise 24,67 olarak belirlenmiştir. Bu bulgu etik dersi almayan ancak çalışma yılı olarak 20 yıl ve üzeri mesleki deneyim yaşamış olan katılımcıların, etik dersi alan ancak çalışma yılı yedi ve daha az yıl olan katılımcılara göre çevresel faktörlerden daha az etkilendiklerini göstermektedir. Burada klinik deneyimin etkili olduğu değerlendirmesi yapılabilir. Benzer bir çalışma olan Auvinen ve arkadaşları (2004) tarafından yapılan ilk ve son sınıf hemşirelik öğrencilerinin etik karar verme düzeylerinin karşılaştırıldığı çalışmada da, son sınıf öğrencilerinin etik karar verme düzeylerinin daha yüksek olduğu belirlenmiştir.[18] Etik karar verebilme üzerine eğitimin etkisinin incelendiği literatür çalışmasında; çalışmalarda eğitimin etik karar verebilme üzerine olumlu etkisinin olduğu vurgulanmıştır.[19] Karataş ve Ak (2012) tarafından yapılan ve tıp fakültesi öğrencilerinin etik ve etik kurslara bakış açılarının değerlendirildiği çalışmada da etik dersi alan tıp fakültesi öğrencileri ile etik kurallarla ilgili bilgiye sahip olanlar arasında istatistiksel açıdan anlamlı bir ilişki bulunmuştur.[20] Bu çalışmada elde edilen sonuçlar söz edilen sonuçları destekler niteliktedir. Mezuniyet öncesi alınan "Tıbbi Etik" dersi etik karar vermeyi kolaylaştırmaktadır.

Çalışmada kullanılan HEİT'nin üçüncü bölümünde, yüksek lisans öğrencilerinin etik karar verebilme düzeyini belirlemek amacıyla geçmişte benzer bir ikilemle karşılaşma durumları, yani ikilemlere aşinalıkları değerlendirilmiştir. Bu bölümden alınabilecek 6-17 puan aralığı benzer ikileme aşina olmayı, 18-30 puan aralığı ise, benzer bir ikileme aşina olmamayı ifade etmektedir. Bu bölümden lisansta (lisans eğitiminde) etik dersi alan katılımcıların 15,33 puan, lisans öğreniminde etik dersi almayan katılımcıların ise 14,00 puan aldıkları belirlenmiştir. Bu sonuç her iki grubunda etik ikilemlere aşina olduklarını göstermektedir. Nolan ve Markett (2001)'in öğrenci hemşirelerin eğitimleri sonunda etik uygulamalar konusunda yeterli klinik olgunluğa erişemedikleri ancak çalışma ortamlarında karşılaştıkları etik ikilemlere aşina olduklarını saptamıştır.[21] Bu çalışmada da etik dersi almayanların klinik deneyim yıllarının yüksek olması aşinalığa neden olduğunu düşündürmektedir. Anomalili yenidoğana ilişkin senaryoya benzer bir durumda ikilem yaşayıp karar vermek zorunda kaldığını ifade eden iki katılımcının daha önce etik dersi almamış olması ancak mesleki deneyimlerinin 20 yıl üzeri olması nedeniyle ilkeler arası seçim yapabildiklerini söylemek olanaklıdır. Bu sonuç klinik yeterliliğe erişmede çalışma yılının önemli olduğunu göstermektedir.

Sonuç

Bu çalışmada lisans eğitimleri sırasında Tıbbi Etik konularını içeren ders alan yüksek lisans öğrencilerinin İD puan ortalamaları ders almayan öğrencilerden 2 puan yüksek çıkmış, PD puan ortalamaları ise almayanlara göre yaklaşık 4 puan düşük bulunmuştur. Lisans öğreniminde tıbbi etiğe ilişkin ders almış olmak ilkesel düşünmeyi sağlamaktadır. Aynı zamanda karşılaşılan etik sorunlar ve etik ikilemler konusunda farkındalık yaratmış olabileceğini düşündürmektedir. Çalışmanın sonuçları doğrultusunda hemşirelik eğitiminde tıbbi etik konularını içeren derslerin öğrencilerin etik karar verme becerilerini geliştirdiği, aşinalık yarattığı söylenebilir. Etik ikilemlerde ilkeli ve pratik karar vermenin mesleki deneyimle geliştiği de söylenebilir. Lisans ya da lisans üstü düzeyde hemşirelikte eğitiminde verilen Hemşirelikte Etik, Tıbbi Etik, Klinik Etik derslerinde eğiticilerin dersin içeriğini vaka analizleriyle zenginleştirmesi aşinalığı arttırmak, pratik ve ilkesel düşünmeyi kolaylaştırmak açısından önerilebilir.

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