



PUBLIC PERCEPTION STUDY ON CONDITIONAL RELEASE AND HANDCUFFED MEDICAL EXAMINATION OF SICK PRISONERS



HUMAN RIGHTS ASSOCIATION

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1. Introduction

According to data released by the Directorate General of Prisons and Detention Houses, there are 399 penal institutions in Turkey, with a total capacity of 288,798 as of 1 September 2022.¹ Further, according to the data of the directorate general, the total number of prisoners in penitentiary institutions was 326,243 as of 31 August 2022.² Although this number includes prisoners (convicts and detainees) whose enforcement of sentences has been suspended within the scope of COVID-19 measures, it is seen that the capacity has been largely exceeded.

Yet, the directorate general's data does not provide information on how many of these prisoners were sick or in critical condition. According to the report published by the Human Rights Association (İHD) on 29 April 2022, there were 1,517 sick prisoners, 651 of whom were in critical condition.³ However, considering that these are the figures collected by the İHD through applications lodged with it and lawyers' conferences with prisoners, it can be estimated that the number of sick and seriously sick prisoners is much higher.

The press has recently published news reports about the Ministry of Justice's decision on both sick prisoners and medical examination of sick prisoners in handcuffs.⁴ In this context, it is stated that with an amendment to be introduced to Article 50 of Law No. 5275 on the Enforcement of Sentences and Security Measures, conditional release (parole) will not cover

¹ According to an official statement released on 2 February 2021, these figures were 369 prisons with a capacity of 244,896 people. Therefore, 30 new penal institutions have been opened in the last year and a half, increasing the capacity by more than 40,000. See: <https://ihd.org.tr/en/perception-study-on-prisons-and-prisoners-in-turkey/>

² <https://cte.adalet.gov.tr/Resimler/Dokuman/7092022090042istatistik-1.pdf>

³ <https://ihd.org.tr/en/ihd-2021-prisons-report/>

⁴ See: <https://www.cumhuriyet.com.tr/turkiye/adalet-bakanligindan-hasta-olan-tutuklu-ve-hukumluler-icin-sartli-tahliye-duzenlemesi-1961590;> <https://www.cnnturk.com/turkiye/kelepcesiz-muayene-geliyor;> <https://www.hurriyet.com.tr/gundem/kelepcesiz-muayene-geliyor-42106434>



prisoners who are convicted of “membership in a terrorist organization” and “showing a tendency towards violence that can harm others” regardless of whether they are sick or in critical condition, and it is also stated that the decision to examine prisoners in handcuffs will not be left to medical doctors, except for those convicted of the above-mentioned offenses.

One can argue that such a practice regarding both conditional release and examination in handcuffs is unlawful. This is because international standards and conventions emphasize that it is an obligation of the state to grant the right to health equally to all prisoners, and in Turkey, Article 6/f the Law No. 5275 on the Enforcement of Sentences and Security Measures, states that “In penitentiary institutions, all measures must be taken to protect convicts’ right to life and their bodily and mental integrity”, thus protecting the rights to life and health of all prisoners.

In addition, one of the main problems that prisoners in Turkey face in accessing the right to health is the imposition of medical examination in handcuffs. Applying different practices among prisoners in this regard constitutes an obstacle to the enjoyment of the right to access health care and violates fundamental principles such as the prohibition of discrimination and the principle of equality. This is also contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners,⁵ known as the Mandela Rules. Imprisonment of a person for any act should never be used as an additional punishment. Therefore, examining a prisoner for medical purposes in handcuffs when they want to exercise their right to health is a second punishment.

“Public Perception Study on Conditional Release and Handcuffed Medical Examination of Prisoners” was conducted within the framework of the above-mentioned issues. The aim of the study was to understand the perceptions of the participants towards conditional release and handcuffed medical examination of sick prisoners and the justice system in Turkey and to explain underlying reasons. The study was conducted between 15 and 30 August 2022 with a

⁵ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf



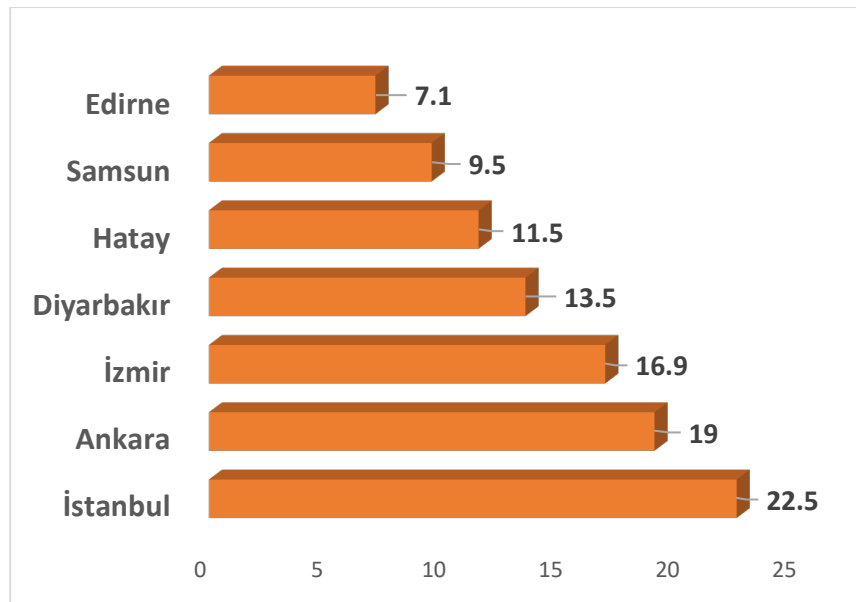
questionnaire through face-to-face interviews with a total of 1,000 people. Participation in the study was voluntary.

The data obtained from this study are presented below.

2. Demographic Data of the Participants

The study was conducted by selecting a total of seven city centers from 26 provinces and sub-regions determined as Level 2 framework according to TurkStat Statistical Regional Units. The total number of surveys conducted in seven city centers was 1,000.

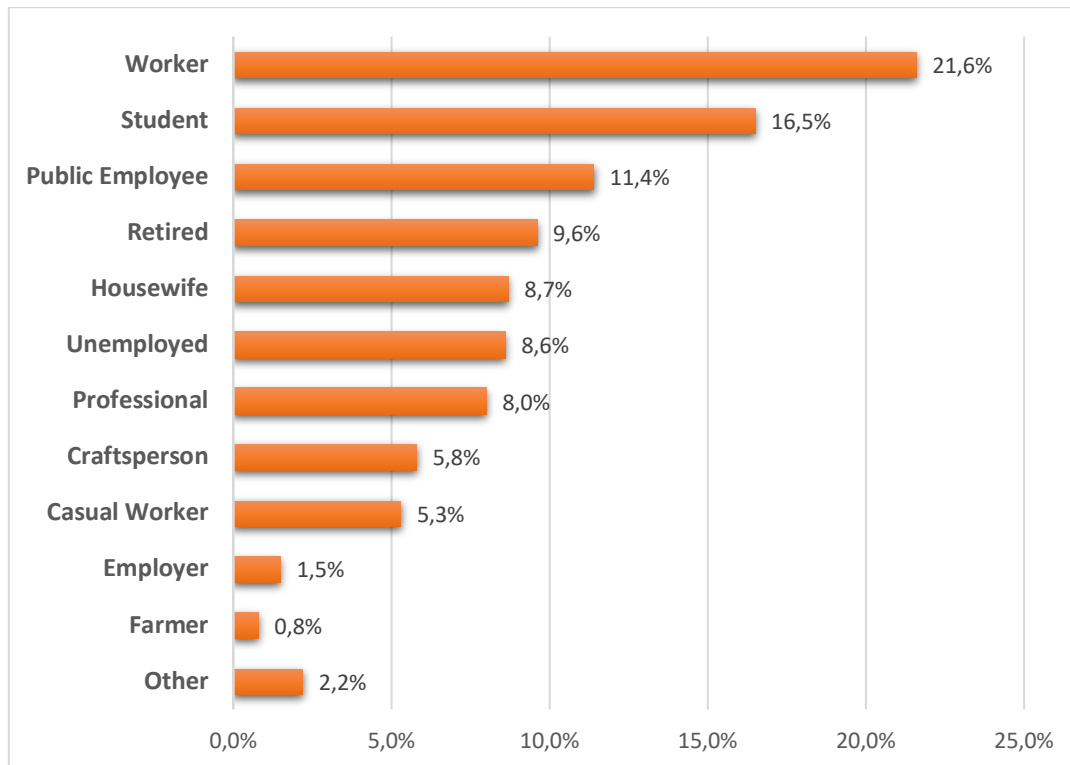
Chart 1: Surveyed City Centers



The mean age of the participants was 37.39 (minimum 18, maximum 82). 509 (50.9%) of the participants were male and 468 (46.8%) were female. 23 (2.3%) participants did not want to specify their genders. The employment status of the participants is presented in the chart below:



Chart 2: Employment Status of the Participants



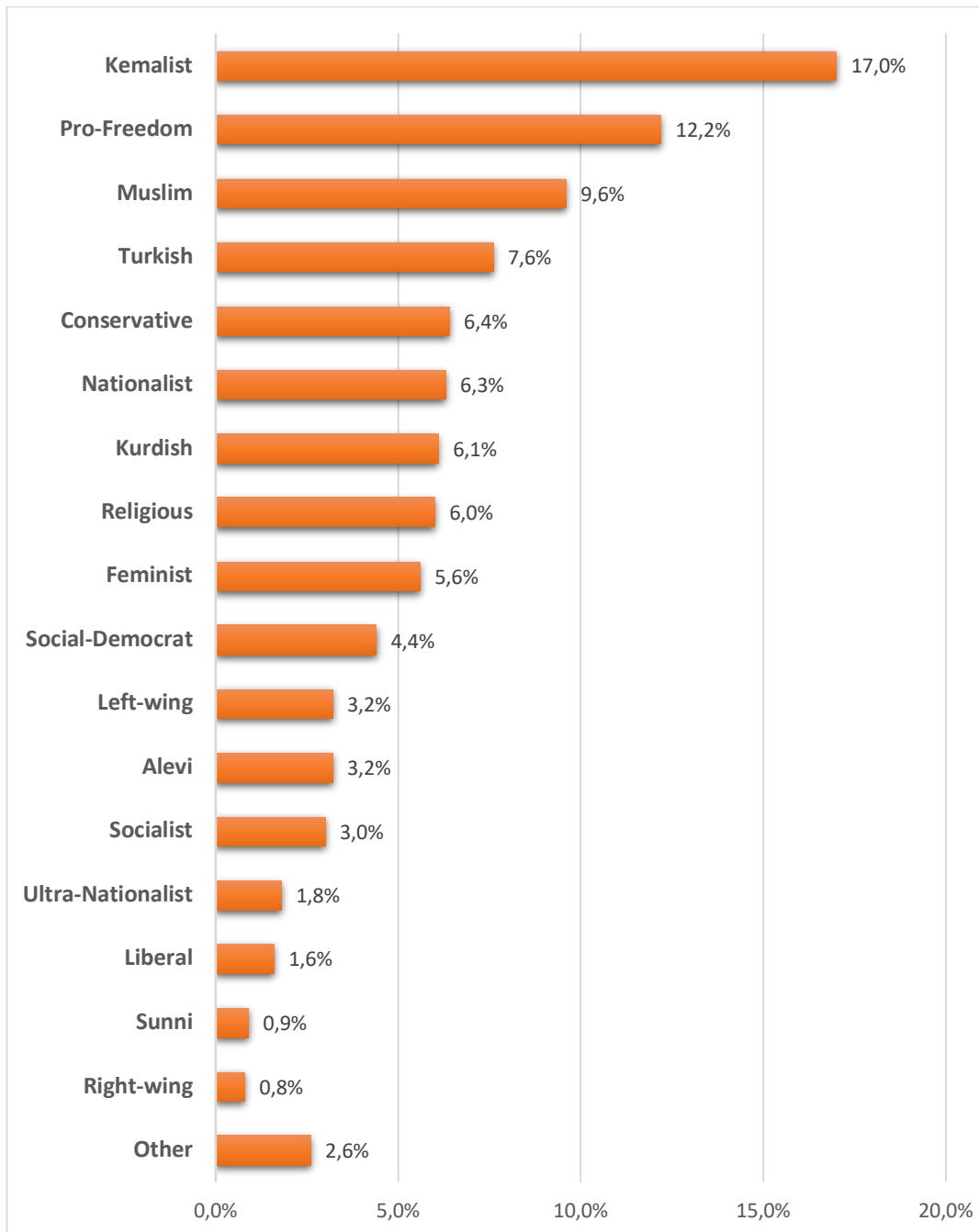
Slightly more than one-fifth of the participants stated that they were employed as workers. When public employees are added to this figure, the proportion of wage earners among the respondents approaches one third. The second largest group consists of students (16.5%). The third and fourth largest groups are the retired (9.6%) and housewives (8.7%), respectively.

The majority of the participants have undergraduate (39.8%) and high school (31.9%) degrees. These are followed by those who have secondary school (10.8%), primary school (9%) and postgraduate (8.4%) diplomas.

In the study, the participants were asked with which particular identity they identified themselves. The chart below shows the responses to this question.



Chart 3: Identities of the Participants



Most of the participants identified themselves as Kemalist, pro-freedom, Muslim, Turkish, conservative, nationalist, Kurdish, and religious.

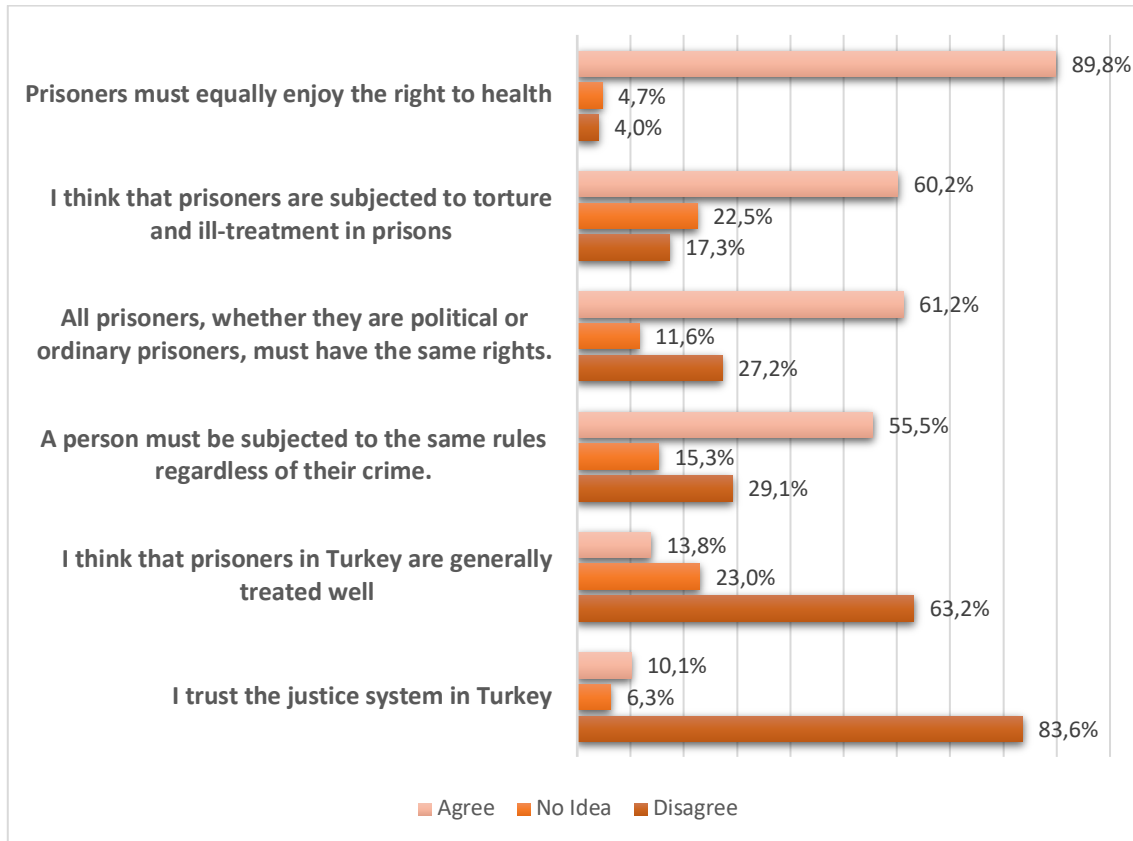


The total income of the participants with all employees in the household was 13,118 TL on average, with a minimum of 850 TL and a maximum of 100,000 TL. In this sense, it can be said that the average income of the participants is relatively higher than the average income in Turkey.⁶

3. Perception of the Justice System and Prisons in Turkey

The participants were firstly asked questions on a five-point Likert-type scale in order to understand their perceptions of the justice system and the situation of prisoners in Turkey. The chart below presents the responses to these questions.

Chart 4: Justice System and the Situation of Prisoners



* The graph presents the “completely agree-agree” and “completely disagree-disagree” categories in a unified form.

⁶ <https://www.haberturk.com/ortalama-ucrette-ocdden-uzaklastik-3475946-ekonomi>



As can be seen in the chart above, a significant majority of the participants (83.6%) do not trust the justice system in Turkey. Moreover, the majority of the participants think that prisoners are not treated well and that prisoners are tortured or ill-treated in prisons. In addition, the majority of the participants think that all prisoners should have the same rights (61.2%), should be subjected to the same rules in prison (55.5%) and that all prisoners should enjoy the right to health equally (89.8%). When we compare some of the data obtained here with the participant' self-identification data, we come across some important indicators. The table below shows the comparison of the answers given to the statement "I trust the justice system in Turkey" with the answers provided to the question of how participants defined their own identity.

Table 1: Trust in the Justice System and the Identity of the Participants

	Completely Agree		No Idea		Disagree		TOTAL	
	S	%	S	%	S	%	S	%
I trust the justice system								
Kemalist	24	7,3	25	7,6	281	85,1	330	100
Muslim	49	26,3	21	11,3	116	62,4	186	100
Religious	19	32,2	13	22	27	45,8	59	100
Conservative	17	27,4	6	9,7	39	62,9	62	100
Left-wing	-	-	6	4,8	119	95,2	125	100
Socialist	-	-	-	-	146	100	146	100
Turkish	33	22,4	12	8,2	102	69,4	147	100
Kurdish	-	-	3	2,5	116	97,5	119	100
Nationalist	31	25,2	17	13,8	75	61	123	100
Ultra-nationalist (Grey Wolves)	13	38,2	6	17,6	15	44,2	34	100
Liberal	1	3,2	2	6,5	28	90,3	31	100
Sunni	3	17,6	2	11,8	12	70,6	17	100
Alevi	-	-	-	-	63	100	63	100
Pro-freedom	9	3,8	6	2,5	222	93,7	237	100
Social democrat	1	1,2	4	4,7	81	94,1	86	100



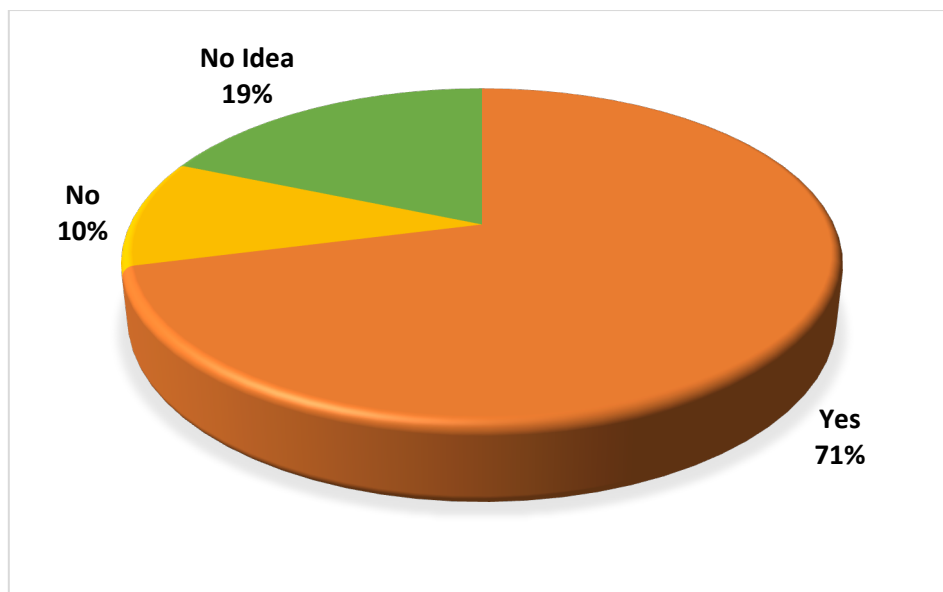
Right-wing	7	43,8	3	18,8	6	37,5	16	100
Feminist	-	-	1	0,9	108	99,1	109	100
Other	6	11,8	2	3,9	43	84,3	51	100
TOTAL	213	11	129	6,6	1599	82,4	1941	100

* Since one participant mentioned more than one identity the total figure is higher than 1,000. Also, the “completely agree-agree” and “completely disagree-disagree” categories are presented in a unified form.

According to the table above, the rate of distrust in the justice system is high in all other groups, except for those who categorize their identity as right-wing. Therefore, it would be wrong to say that the negative perception of the justice system is an attitude specific only to those who may be seen as opponents of the government, since individuals from almost all segments of the society have such a negative perception. Taking these results into consideration for any regulation to be made in the justice system will ensure the emergence of a more democratic system.

In the study, participants were asked whether there was discrimination against prisoners. The chart below shows the responses to this question.

Chart 5: Are prisoners subjected to discrimination?

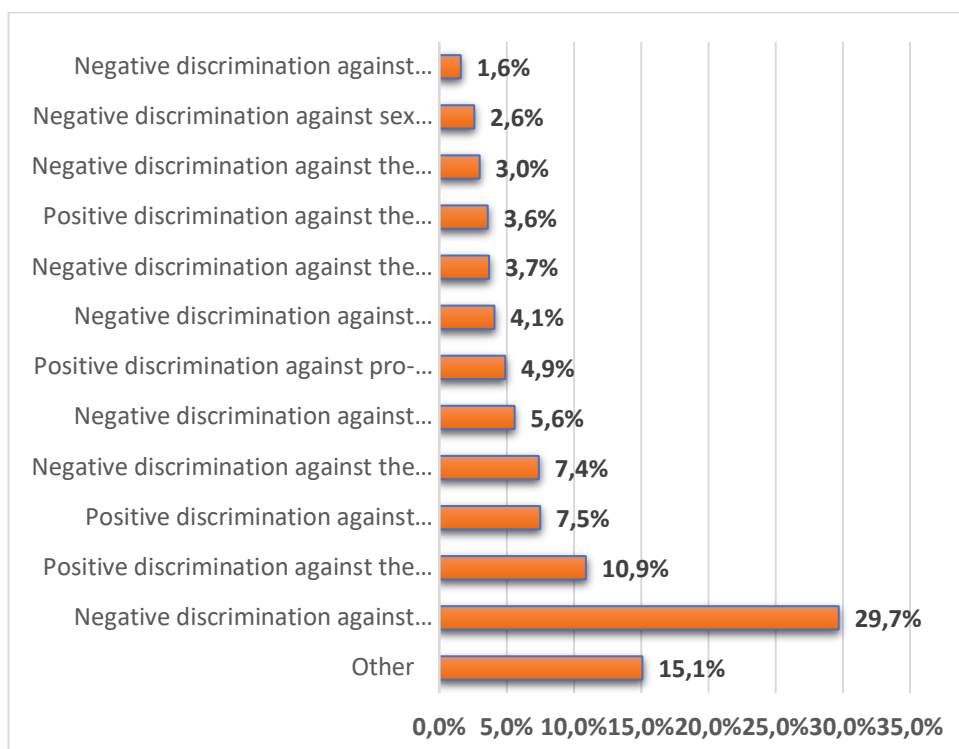




The chart shows that the majority of the participants (71%) think that prisoners are discriminated against in prisons. The rate of those who think that there is no discrimination is only 10%. We compared the answers given to the question above with the identity statements with which the participants defined themselves. The result is similar to the one in Table 1. In other words, no matter how they define their identities, the rate of those who think that there is discrimination in prisons is higher in almost all identity groups. As a matter of fact, these rates are 70% for those who define themselves as liberal, 63.3% for those who define themselves as Kemalist, 55% for those who define themselves as conservative, 50% for those who define themselves as nationalist and 50% for those who define themselves as right-wing. These rates are much higher among those who identify themselves as Alevi, Kurdish, left-wing, social democrat and feminist.

Participants who answered “yes” to the above question were asked who they thought was discriminated against in particular. The chart below shows the responses to this question:

Chart 6: Who is discriminated?

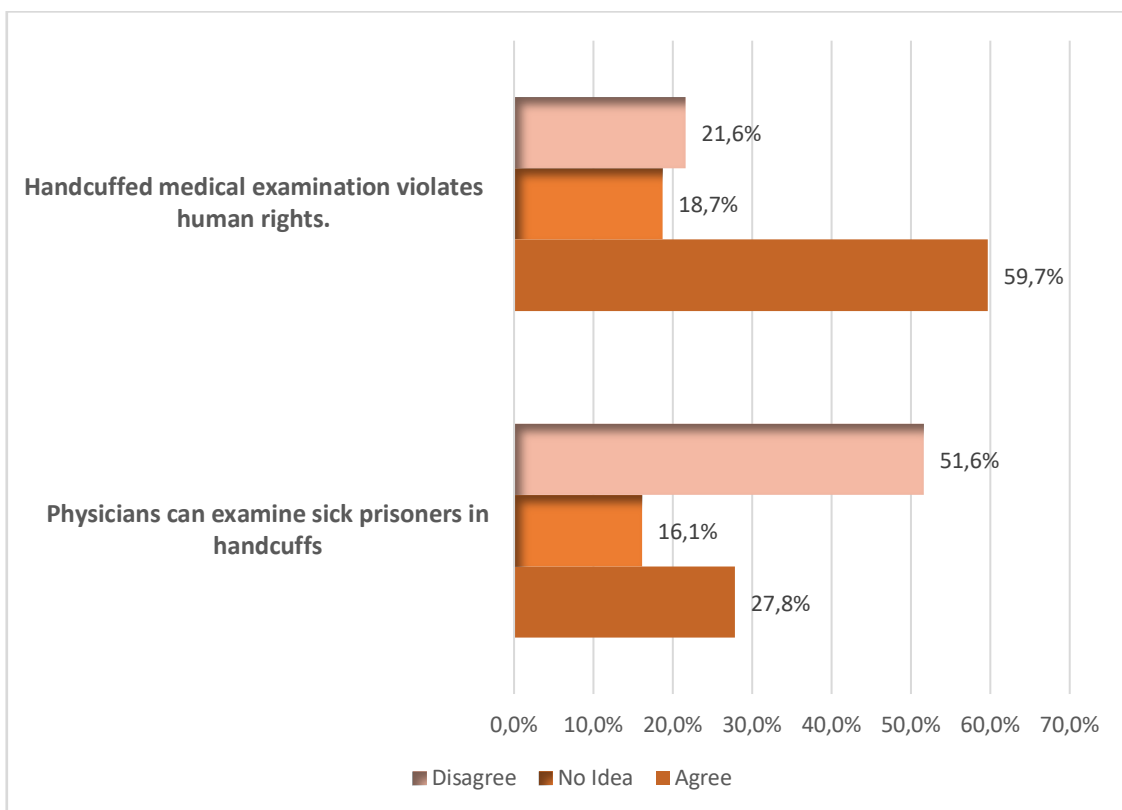




The majority of the participants think that political prisoners are negatively discriminated against. There is also a widespread perception that Kurds, dissidents, and prisoners of conscience are negatively discriminated against. On the other hand, there is a widespread perception that there is positive discrimination for the rich, influential people and those close to the government.

Additionally, the participants were asked about their opinions on handcuffed medical examination, which is an important problem for sick prisoners today. The data regarding these two Likert-type questions are shown in the chart below.

Chart 7: Handcuffed Medical Examination

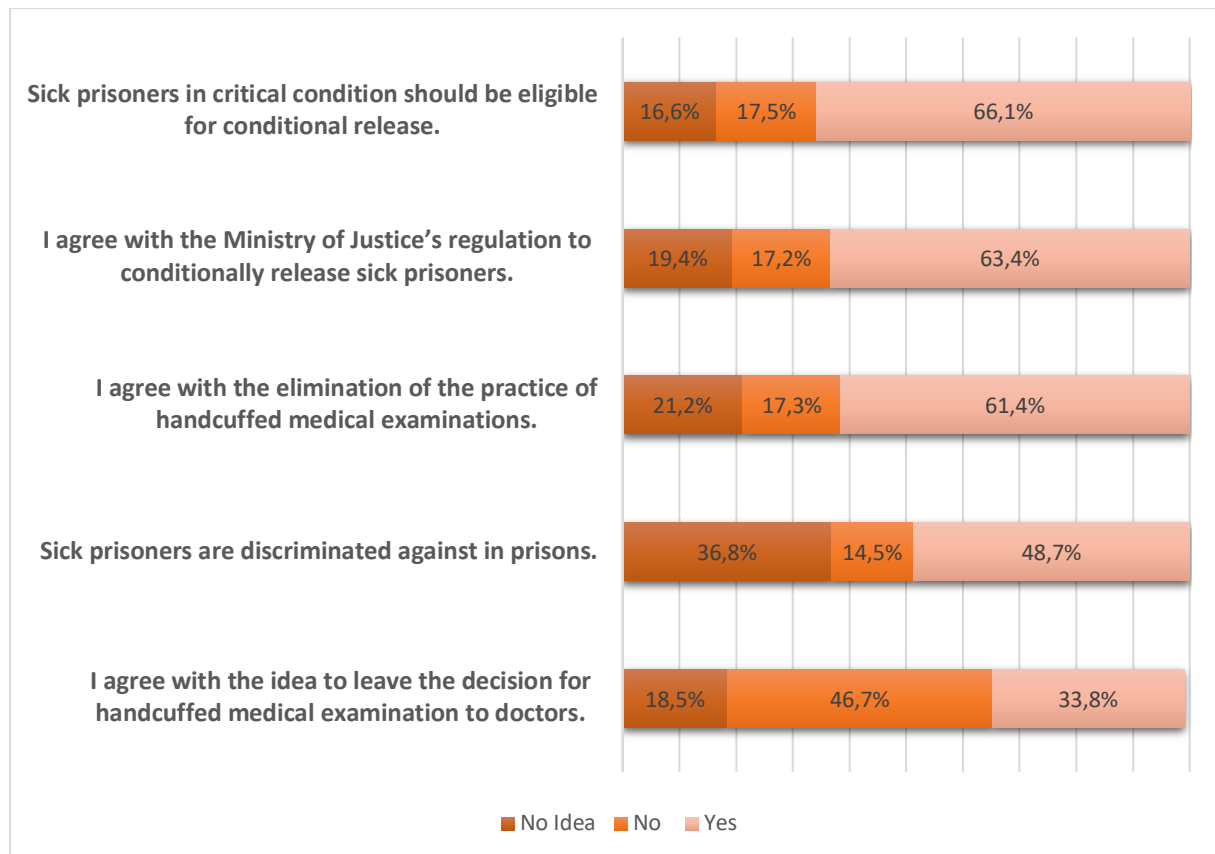


The chart shows that the majority of the participants in this study (59.7%) think that medical examination in handcuffs would mean violation of human rights. In addition, the majority of the participants disagree with the idea that sick prisoners can be examined in handcuffs by a medical doctor (56.1%).



In order to better understand the public perception on this issue, the participants were asked questions about the situation of sick prisoners and whether there was any negative discrimination against sick prisoners, the conditional release of sick prisoners and the medical examination of sick prisoners in handcuffs. The chart below shows the responses to these questions.

Chart 8: Perceptions of Conditional Release and Handcuffed Medical Examination



The chart above shows that the majority of the participants approve of conditional release for sick prisoners in critical condition (66.1%) and a regulation to be introduced by the Ministry of Justice on conditional release (63.4%). Participants also approve of the repeal of the practice of handcuffed medical examinations (61.4%) and almost half of the participants disapprove of the practice of leaving the decision to examine prisoners in handcuffs to medical doctors (47.6%). As will be seen below, this ambivalent attitude towards handcuffed examinations



rather stems from the concern that there may be violence against doctors. This, too, is a situation that can be rectified by measures to be taken by the state. In this context, the participants (48.7%) who think that sick prisoners are currently discriminated against in prisons would also think that discrimination will exacerbate if decisions contrary to their stated perceptions were taken.

After the questions asked in the chart above, the participants were asked the reasons for their opinions through open-ended questions. The answers provided to these questions will be discussed below.

Indeed, those who answered “yes” to the question that conditional release should be made available to sick prisoners were asked why they thought so. It was observed that most of the participants made a distinction between “patient” and “prisoner.” The participants justified the “prisoner” being “sick” and stated that denying conditional release would violate the right to health. Another important justification is that the prison conditions do not provide adequate treatment facilities. As a matter of fact, according to the participants, these situations mean that the person is punished a second time. Below are the responses of some participants to this open-ended question:

Due to the nature of serious illness, the accused should be granted conditional release as they have lost the ability to commit a crime (Male, 35, Diyarbakır).

The criminal justice system should not turn into a tool of revenge; prison conditions are not fit for sick individuals (Male, 39, İzmir).

They must be released on condition so that they can live the remainder of their lives with moral support from their families (Female, 27, Diyarbakır).

Not only those in critical condition, but also all those who need treatment must not be held in prison so that they can receive treatment (Female, 27, İstanbul)

The reasons of those who were against conditional release are mostly focused on the points that “they must serve their sentences” and “being sick does not eliminate the



crime/punishment.” It was observed that these participants did not make any distinction between “patient” and “prisoner.” Samples from these responses are presented below:

(Prison) Conditions can be improved but they should not be released only because they are sick (Female, 35, İstanbul).

Punishment cannot be forgiven in any way. Whatever the punishment is, it must be implemented, and they must serve their sentences (Male, 18, Edirne).

Those who answered “yes” to the statement “sick prisoners are discriminated against” were asked why they thought so. The answers provided are similar to the data in Chart 6. In other words, most of the participants think that political prisoners, Kurds, dissidents and prisoners of conscience are subjected to negative discrimination. On the other hand, there is a widespread belief that there is positive discrimination against the rich, influential people and those close to the government.

The majority of those who answered “no” to the above question did not explain why they thought this way, and only three responded that “not all crimes should be evaluated in this way.”

In Chart 8, it was seen that most of the participants did not approve of handcuffed medical examinations. When asked about the reason for their answer to the question “Do you think it is right to abolish the practice of handcuffed medical examination?”, the participants who answered “yes” mostly provided the answers along the lines that it was “against patient rights” and “against human dignity.” Those who answered “no” mostly concentrated on the answers “there may be violence against doctors” and “they may run away.” In this case, if the security and safety of the doctor is ensured in different ways (such as the hospital security officers being present in the examination room if there is a dangerous prisoner), these participants would also approve of uncuffed medical examinations. Moreover, violence against doctors or violence in the health care sector in general is a problem that the state should solve. Samples from responses to this question are presented below:



(Yes) Patients cannot be discriminated. No adequate health service can be received in (Male, 40, İzmir).

(Yes) It is appropriate in terms of human rights and the right to life, but it should be applied without exception (Female, 43, İzmir).

(Yes) Handcuffs are restrictive, degrading and handcuffed medical examination is a crime (Male, 25, İstanbul).

(Yes) Handcuffs are already a practice that humiliates people, a person in handcuffs cannot be examined properly (Female, 56, İstanbul).

(Yes) It is degrading, against human rights, patient rights are violated (Female, 42, İzmir).

(No) Handcuffs are also important for the safety of doctors, police, and gendarmerie (Male, 52, İstanbul).

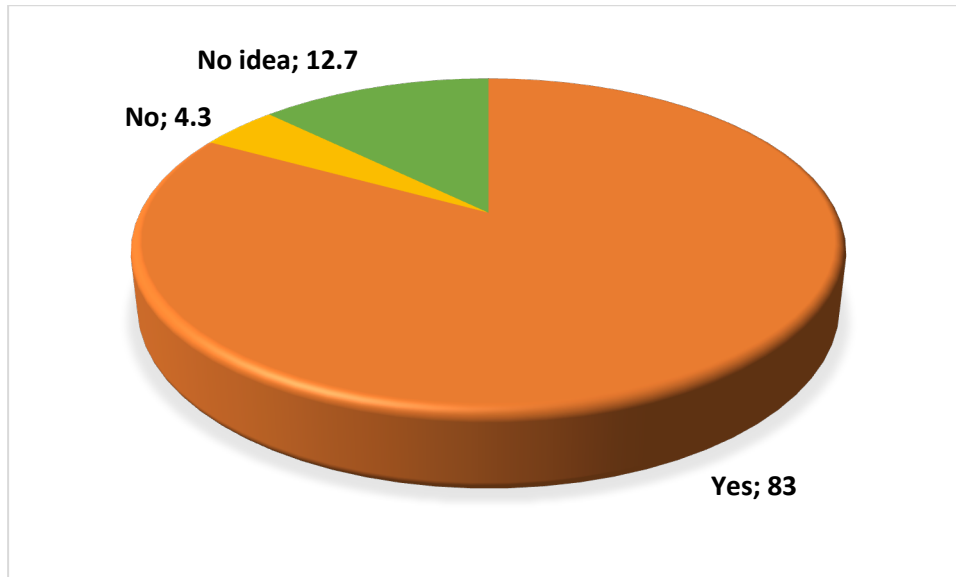
(No) Safety of life of healthcare professionals can be negatively affected, there is a danger of violence (Male, 24, Diyarbakır).

As seen in the last chart above, almost half of the participants disapprove of the idea to leave the decision to examine prisoners in handcuffs to doctors. When asked why, the participants emphasized that “it would create discrimination among prisoners” and “it is a right, it cannot be left to doctors.” Those who think that handcuffed examination can be performed by a doctor state that “there should be a distinction among crimes.” According to those who agreed, there may be a problem of violence against doctors and therefore some “serious criminals” and “terrorist criminals” should not be included in this category. We have mentioned above that measures to be taken for the safety of doctors can change this result.

Finally, the participants were asked whether they thought that the number of prisoners in Turkey was increasing. The chart below shows the responses to this question:



Chart 9: Has the Number of Prisoners Increased in Turkey?



As can be seen, a significant majority of the participants think that the number of prisoners has increased in recent years. The reasons provided by those who answered “yes” to this question were mostly “oppression of the government”, “dysfunctional justice system” and “economic conditions and crisis.”

4. Conclusion

The aim of this study was to understand the public perceptions towards sick prisoners in Turkey pertaining to their conditional release and medical examination in handcuffs, and the level of public trust in the justice system in general. The most general conclusion that can be drawn from the data obtained is that the majority of the participants have a positive view of conditional release of sick prisoners and the majority of them are against medical examination in handcuffs. Moreover, leaving the examination in handcuffs to doctors’ decision is not supported by the majority either. Therefore, if the Ministry of Justice considers the public perception and the opinions of civil society organizations and professional chambers working in this field, it will increase the credibility of the regulation in the eyes of the public.



According to the Human Rights Association's 2021 Prisons Report,⁷ the main health problems in prisons in terms of the right to health are multidimensional and diverse. Sick prisoners are not taken to the infirmary on time when they are in need and when they get sick, and they are kept waiting for months for referrals from infirmaries to outpatient clinics and from outpatient clinics to tertiary health services. Moreover, healthcare services in prisons are not of quality and capacity to handle the overcrowding. While these conditions are not sufficient even for the normal capacities of prisons, it would not be wrong to say that more violations will occur in the current situation where the prison population is far above capacity.

The Human Rights Association, thus, recommends the following:

1. All prisoners in critical condition currently in prisons should be released immediately based on a full-fledged hospital report, their treatment should be continued with their families or relatives and their health insurance should be covered by the state.
2. The discretionary power of public prosecutors in decisions to postpone enforcement of sentences due to health reasons should be abolished, and enforcement should be postponed on the basis of hospital reports.
3. The Forensic Medicine Institution should be removed from being the final and sole authority in reports on postponement of enforcement of sentences due to health reasons. Expert committees should be established to render decisions within the framework of medical science and ethics, and NGOs should be consulted.
4. Medical examination of sick prisoners in handcuffs should be abandoned and this decision should not be left to doctors. In case of a dangerous situation, prisoners should be examined without handcuffs in the presence of hospital security guards.

⁷ <https://ihd.org.tr/en/ihd-2021-prisons-report/>