

Freedom of Religion - Conscience, Religious Education and the Right of Education in The 1961 - 1982 Constitutions of The Republic of Turkey and Their Developmental Tendencies

Turan Akman ERKILIÇ*

Suggested Citation:

Erkilic, A.T. (2013). Freedom of religion - conscience, religious education and the right of education in the 1961 - 1982 constitutions of the Republic of Turkey and their developmental tendencies. *Egitim Arastirmalari-Eurasian Journal of Educational Research*, 51, 123-140.

Abstract

Problem Statement: The Constitutions are the main sources of legality for democratic societies. The 1961 and 1982 Constitutions have dominated the last fifty years of Turkey. In this regard, it is essential to examine and comment academically on the way these Constitutions and their amendments address the rights of education, freedom of thought and faith in light of the relationship between political and educational systems. It is also important in terms of academically contributing the current constitution polemics.

Purpose of the Study: The main purpose of this study is to comparatively examine the rights of education, freedom of religion and conscience and religious education in the 1961 and 1982 Constitutions of the Republic of Turkey.

Methodology: In this study, among possible analytic research patterns, document research is preferred. The articles on the rights of education, freedom of religion, conscience and religious education in the 1961 and 1982 Constitutions constitute the data source of this study. Descriptive and constant comparative analysis is used in analysis of the data. A related body of the literature is cited for the purpose of reflecting the social, cultural and political context.

Findings and Interpretation: It can be stated that there is no important difference in the 1961 and 1982 Constitutions in terms of considering the freedom of religion-conscience. In both constitutions, it is stated that the state cannot be organized on religious tenets, religion or religious feelings,

* Dr. Anadolu University, Faculty of Education. e-mail: terkilic@anadolu.edu.tr

and things considered sacred by religion can not be exploited and abused in any manner. It is the tendency that strict regulations are made in cases of abuses of religion, and functionalism has dominated by a monist "consensus" in case of conflicts. While religious education and teaching in the 1961 Constitution is subject to the individuals' own will or that of their legal representatives, the lesson "Religious Culture and Knowledge of Morals" becomes compulsory in the curriculum of primary and secondary schools. There is an obvious differentiation about religious education. In both constitutions, it is stated that primary education is compulsory and free at the state's schools; the state takes necessary measures to support students in financial need as well as those who need special training on account of their physical and mental incapacity. It is the tendency that functionalism is empowered with democratic values.

Conclusion and Discussion: The general tendency regarding language is that the debates continue although the education language is not specified directly. Freedom of religion-conscience has been one of the issues that is discussed frequently and seriously. Religion and state affairs have always been affected negatively by the fact that the Republic of Turkey was founded on a large multicultural empire. Thus capitalism did not develop over its own internal dynamics, and Turkey did not experience religious reformation. Compulsory religious education is problematic also in terms of making constitutions. The Constitution of the Republic of Turkey adopts a strict "casuistic" methodology instead of setting general principles, adopting a "framework constitution" and seeking to regulate possible situations. In general, it can be observed that the qualities of strictness and non-amenability strengthen from the 1961 Constitution to 1982 Constitution. We are in a period in which more flexible constitutions are preferred to more detailed and stricter ones. It is possible that more libertarian and egalitarian constitutional regulations could be made. Privatization efforts in education have been ruining the equality of opportunities and possibilities, which has been one of the most important arguments of the Republic since the early years. In this regard, constitutional arguments and regulations are under postmodern and neo-liberal effects.

Key Words: Constitution, freedom of religion-conscience, the right of education, postmodernism, functionalism, interactionism, social-conflict approach

It is a phenomenon that countries seek a source of legality for their education systems. This source has been based on religious or economic power in the past; today, in the contemporary world, it is generally based on a constitution to be decided in a referendum. As a component of a domestic public legal system, constitutions are the basic legal documents that address the foundation and operation of a state, the formation and reformation of power and the freedom of

individuals against power (Teziç, 2007). Therefore, constitutions are dominant and of vital importance regarding the administration of a country and an institution.

Constitutions are the main legal documents of government administration and one of the determinants of government policy. They are the most abstract and the broadest legal regulations, which regulate basic rights and liberties, the structure and government pattern of a state, the bodies of a state and the inter-relations among them (Akı, 2010). On the other hand, education has an important function in society due to its social, political, cultural and individual objectives. As a public duty, education is performed by the government under its supervision and control. The state is a form of sovereignty that activates public power and determines its own basic laws with free will (Teziç, 2007).

The legal system and the constitution of a state have an important role in determining the objectives and implementation phases of education. The definition of a constitution in a broader sense includes the relation between the state and its citizens and social organizations in a society. This basic relationship is formed according to political culture and the development of societies (Öztekin, 2001). In this regard, the content of the constitution regarding education is of crucial importance in terms of making education laws. The constitution is a law which is more permanent, broader and superior to the other laws, and it provides a basis for their existence. Furthermore, the legal and education systems are two effective entities in ensuring social order.

Turkey experienced some tempestuous political periods, particularly after moving into the multi-party political system; the first was the coup on May 27th, 1960, followed by the military intervention on March 12th, 1971; the final was the military government that came into power as of September 12th, 1980. Although some amendments were made to the 1961 and 1982 Constitutions within the parliamentary system, it is a historical fact that political processes have been conducted through the basic perspectives of these constitutions. In general, it is obvious that the political system between 1961 and 1980 and from 1980 to 2010 was formed by the perspectives adopted by the 1961 and 1982 Constitutions. Thus, it is essential to examine and discuss academically the way these Constitutions and their amendments address the rights of education, freedom of thought and faith in light of the relationship between political and educational systems, the constitution and education. The aim of this study is to examine and discuss the articles of the Constitutions of 1961 and 1982 in terms of the rights of education and freedom of thought and faith within the scope of sociological transformation and democratic approaches. Because of considerations of functionalism, interactionism and postmodern approaches to education and legal regulations must be addressed.

Functionalism focuses on the functioning and capacity of the institutions to satisfy needs. It attempts to depict social functioning by relating social systems to organic systems. Institutionalization, which seeks common solutions based on meeting the needs of functioning, was taken as a base in the fields of sociology and social culture. Functionalists expect society to operate as a systematic unity and each

part to meet functional needs as in an organism (Holmwood, 2005). According to this approach, law and education are institutions that have certain functions in a socio-economic and politic structure. Functionalist approaches depict law and education as a means of consensus and balance for a given system. From this point of view, constitutions are expected to have specific qualities and means to ensure the operation of a system.

The conflict approach, also known as mutualism or a Marxist approach, is an approach, that analyzes societies socio-economically. It suggests that societies consist of social classes determined according to possessing means of production, and societies are formed according to that classification; thus the distribution of opportunities is not equal. According to this approach, transformation depends on conflicts. Consequently, education and law are superstructure institutions. The conflict approach attributes the function of political socialization to education in favor of dominant social classes. According to the conflict approach, the legal and educational systems are superstructure institutions that operate to maintain and protect a given socio-economic political system; thus they are formed accordingly (Macionis & Plummer, 2008). According to the conflict theory, constitutions, by definition, are not independent of the socio-economic structure, or rather, relations of production. Consequently, constitutions are the common legal documents for maintaining the interests of the dominant class. Social classes, cliques and categories, i.e. social groups, continuously struggle to monopolize education (Doğan, 2011). Conflict approaches depict education as a means of the political socialization of the dominant classes. Therefore, discussions of politics, law, constitutions and education are the reflection of class conflict.

The interactionist approach examines the relationships among individuals, groups and immediate environment at a micro scale. According to this point of view, behaviors and social events are the results of the interaction between the individual and their environment. An institutional behavior does not result from its internal dynamics and needs but, by definition, is formed through experience, attitude, perception and interaction among the members (Appelrouth & Edles, 2008). Symbols and values attributed to them are important in social life; human behavior is formed according to these values and meaning. Social life depends on how the actors interpret their roles. Social structure is the result of social and individual interaction; it is impossible to consider the society, which consists of individuals, without human beings. Both social and individual lives are built with symbols; one cannot sustain his life without symbols. Symbols are the things to which we attribute meaning. Without symbols, our social relationship would not be any different from animal communication. In a sense, it can be suggested that the interactions between the constitution and education have an important influence on the formation of some behaviors in individuals through the symbols created as a result of such an interaction. Thus, what is symbolized in legal documents and what meanings do they convey that are important?

Interpretive paradigm is an approach opposing the point of view that considers societies as organisms and interprets them at macro scale. This paradigm, in contrast

with functionalist and positivist approaches, suggests that social analyses are individual-based interpretations. Studies focus on micro level mini groups and individuals rather than a macro level. Relationships or struggle among small groups and individuals are studied instead of the results, common premises and hypotheses related to groups or clusters (İnal, 1994). The interpretive paradigm advocates instability, interaction, hierarchical order, holographity of the universe, uncertainty of the future, linearity of relations and mutual causality; the overall belief is that transformation is morphogenetic (Yıldırım & Şimşek, 2011). Internal, simple, micro situations and events are of interest rather than the general formation and functioning of institutions. The functioning of institutions is formed, maintained and reformed by immediate actors.

Postmodernist analyses are defined as a state of chaotic perceptions and understandings, which usually refers to uncertainty and on which discussions have not yet come to an end. Politically, it is observed that third world countries are divided on the basis of ethnicity and religion, and the industrialized world moves towards unity. In a sense, postmodernism is a movement against developed modernity following the industrial world. It considers all ideologies and beliefs as total understanding, predicting the questions in advance and providing certain answers to them (Heartney, 2001). On the other hand, postmodernism defines itself against modernity. In a socio-political point of view, postmodernism tries to be both radical and conservative (Eagleton, 1996). In a sense, postmodernism opposes positivism, behaviorism, functionalism and the conflict approach. However, what is to be replaced remains in question. From this point of view, relations among education, law and constitutions could be considered eclectic.

The main purpose of this study is to comparatively examine the rights of education, freedom of religion and conscience and religious education in the 1961 and 1982 Constitutions of the Republic of Turkey.

1. Which articles exist in the 1961 and 1982 Constitutions on the rights of education, freedom of religion and conscience and religious education?
2. What is the content of the articles on the rights of education, freedom of religion and conscience, and religious education in the 1961 and 1982 Constitution?
3. Do the articles on the rights of education, freedom of religion and conscience and religious education in the 1961 and 1982 Constitutions differ from each other in any way?

Method

Design

This study has an analytic research method. Analytic research goes into the division of document research and mixed method research (McMillan, 2004). In this study, document research is adopted as an analytic research method. Document

research involves examining concepts, thoughts and events by analyzing documents and records. Contextual information is crucial in interpreting the information obtained through document research (Ersoy, 2010). This study conducted document research because the main data source for the study was texts. Another reason for adopting such a research method is that social, cultural and political contexts play a significant role in interpreting constitutional documents.

Data Sources

The constitutions of 1961 and 1982 of the Republic of Turkey comprise the main data sources of the study. The articles on the rights of education, freedom of religion and conscience, and religious education in these Constitutions constitute the data source of this study. Additionally, later amendments to the related articles are reflected on the data.

Analyzing and Interpreting the Data

The data is interpreted and analyzed qualitatively as it mainly involves written documents. Descriptive and continuous comparative analysis method is used for the analysis of the data (Marshall & Rossman, 1999). Within this framework, the first aim was to find the manner and extent to which the concepts in the research questions appeared in the articles. These articles were then analyzed comparatively in both the 1961 and 1962 Constitutions, identifying the differences and similarities. The articles in the Constitutions were tabulated comparatively within the context of the research questions. The review of literature was cited for the purpose of reflecting the social, cultural and political contexts in which these Constitutions were created. Additionally, the data was discussed, associating assumptions of functionalist, conflict and postmodernist paradigms. In order to maintain reliability, peer analysis was also called for, leading to two different approaches in the analysis. Different paradigms in interpreting the data were applied respectively.

Results

The way the Constitutions of 1961 and 1982 consider the issues related to education

Examining distribution of the articles on the rights of education, freedom of religion and conscience and religious education in the constitutions, it was observed that three articles in the Constitution of 1961 and seven in the Constitution of 1982 were directly related to education. The three articles in the Constitution of 1961 include religion education (article 19), control of education (article 21) and the education duty of the state (article 50). On the other hand, there are seven articles that are directly related to education in the Constitution of 1982. These articles include freedom of religion and conscience (article 24), freedom of art and science (article 27), right and duty of education (article 42) and Turkish citizens working abroad (article 62). Articles on freedom of religion and conscience in the Constitutions of 1961 and 1982 are presented in Table 1.

Table 1*Freedom of Religion and Conscience in the constitutions of 1961 and 1982*

<i>The 1961 Constitution</i>	<i>The 1982 Constitution</i>
<p>Article 19- Every individual is entitled to freedom of conscience, freedom of religion and freedom of thought. Forms of worship, and religious ceremonies and rites are provided freely as long as they are not in opposition to public order, morals or to the relevant laws. No person shall be compelled to worship, or participate in religious ceremonies and rites, or to reveal his religious faith and belief. No person shall be reproached for his religious faith and belief.</p>	<p>Article 24 - Everyone has the right to freedom of conscience, religious belief and conviction.</p> <p>Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14. No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.</p>

It could be suggested that Table 1 shows no significant difference in terms of the consideration of freedom of religion and conscience in the 1961 and 1982 Constitutions. Both Constitutions have the common point that every individual is entitled to freedom of conscience; one is free to choose his own religious faith, his/her forms of worship, religious ceremonies and rites; and to express his own opinions. No person shall be compelled to worship, participate in religious ceremonies and rites or to reveal his religious faith and belief; no person shall be reproached for his religious faith and belief. In addition to this, in Article 14 of the 1982 Constitution it is stated that none of the rights and freedoms embodied in the Constitution shall be exercised with the aim of

- violating the indivisible integrity of the State,
- endangering the existence of the Turkish State and Republic,
- destroying fundamental rights and freedoms,
- placing the government of the State under the control of an individual or a group of people,
- establishing the hegemony of one social class over others,
- making discrimination on the basis of language, race, religion or sect, or
- establishing by any other means a system of government based on these concepts and ideas.

On the other hand, the related article of the 1961 Constitution was regulated within the framework of penal law with the amendments made on September 20, 1971 in order to prevent exploitation and abuse of religion, religious feelings or sacred issues through religion in any manner for the purpose of gaining political, personal benefit, power or through basing the fundamental social, economic political and legal order of the State on religious dogmas even to a partial extent.

Regulation on Freedom of Religion and Conscience

The articles in the 1961 and 1982 Constitutions on the regulation of freedom of religion and conscience are presented in Table 2.

Table 2

Constraint of Freedom of Religion and Conscience in The 1961 and 1982 Constitutions

<i>The 1961 Constitution</i>	<i>The 1982 Constitution</i>
<p>Article 19- ... No person shall be allowed to exploit and abuse religion or religious feelings or sacred issues through religion in any manner for the purpose of gaining political, personal benefit, power, or through basing the fundamental social, economic political and legal order of the State on religious dogmas even to a partial extent.</p>	<p>Article 24- ... No one shall be allowed to exploit or abuse religion or religious feelings, sacred issues through religion in any manner for the purpose of gaining political, and personal influence, or through basing the fundamental social, economic political and legal order of the State on religious dogmas even to a partial extent.</p>

Those who violate this prohibition, or those who induce others to do so shall be punishable under the pertinent laws. In the case of associations and political parties the former shall be permanently closed down by the order of authorized courts and the latter by the order of the Constitutional Court.

AMENDMENT: (20. 9. 1971) The provision of pertinent laws shall be applicable to all real and corporate bodies who violate this prohibition, or those who induce others to do so, and the political parties guilty of such violation shall be permanently closed down by the Constitutional Court.

Table 2 presents some common points in the 1961 and 1982 Constitutions regarding regulation of freedom of religion and conscience. First, it is maintained that the State shall not be organized on the basis of religion; no person shall be allowed to exploit and abuse religion or religious feelings or things considered sacred by religion in any manner. Moreover, in both Constitutions, under the provisions of the Act, those who violate this prohibition shall be punished. The Constitutional amendment is written in terms of strict regulations pertaining to the abuse of religion.

Religious Education

The articles in the 1961 and 1982 Constitutions on the regulation of religious education are presented in Table 3.

Table 3

Religious Education in the 1961 and 1982 Constitutions

The 1961 Constitutions	The 1982 Constitutions
<p>Article 19: Religious education and teaching shall be subject to the individual's own will and volition, and in the case of minors, to the request of their legally appointed guardians.</p>	<p>Article 24: Education and instruction in religion and ethics shall be conducted under State supervision and control. Religious Culture and Knowledge of Moral shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own will, and in the case of minors, to the request of their legal representatives.</p>

Table 3 shows that while religious education and teaching in the 1961 Constitution is subject to the individuals' own will or that of their legal representatives, the course "Religious Culture and Knowledge of Morals" becomes compulsory in the curriculum of primary and secondary schools. There is an obvious differentiation regarding religious education. This alteration is far from being egalitarian, and it transforms religious education into an anti-democratic form.

The Right of Education and Its Control

The articles in the 1961 and 1982 Constitutions on the regulation of the right of education and control are presented in Table 4.

Table 4*The Right of Education and Its Control in the 1961 and 1982 Constitutions*

The 1961 Constitution	The 1982 Constitution
<p>Article 21- Every individual is entitled to acquire and impart science and arts, to disseminate knowledge, and to carry out all kinds of research in these fields.</p> <ul style="list-style-type: none"> • Education and teaching shall be free under the supervision and control of the state. • The provisions governing private schools shall be regulated by laws in conformity with the level desired to be attained in state schools. • No educational institutions shall be set up which are incompatible with the principles of contemporary learning and education. 	<p>Article 42 – No one shall be deprived of the right of learning and education. The scope of the right to education shall be defined and regulated by law.</p> <p>Training and education shall be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods, under the supervision and control of the State. Institutions of training and education contravening these provisions shall not be established.</p> <p>The freedom of training and education does not relieve the individual from loyalty to the Constitution.</p>

While in the 1961 Constitution the right of education and its control is introduced in articles 21 and 50, the same issue is gathered under only one article (article 42) in the 1982 Constitution. As can be seen in Table 4, in the 1961 Constitution education is free under the supervision and control of the state; however, it is also stated that no educational institutions shall be set up that are incompatible with the principles of learning and education. On the other hand, in the 1982 Constitution, it is specified that education must be conducted along the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods and under the supervision and control of the State. It also dictates that institutions of education contravening these provisions will not be established. The provision that primary education is compulsory and free at the state schools is also included in the 1982 Constitution. It is also included in the 1982 Constitution that the State must take the necessary measures for those in need of special education.

In the 1961 and 1982 Constitutions, the common points pertaining to the right of education and its provision emphasize that primary education is compulsory and free at state schools; the State takes necessary measures to support financially deprived students as well as those who are in need of special education.

However, while the educational philosophy statement is indicated as “principles of contemporary learning and education” in the 1961 Constitution, it is emphasized

as “the lines of the principles and reforms of Atatürk, on the basis of contemporary science and educational methods”. The change was made in terms of the context; education was placed in a context that the military government of September 12 modeled exclusively rather than the principles of contemporary learning and education.

The Provision and Utilization of Education

The articles in the 1961 and 1982 Constitutions on the regulation of the provision and utilization of education are presented in Table 5.

Table 5

The Provision and Utilization of Education in the 1961 and 1982 Constitution

The 1961 Constitution	The 1982 Constitution
<p>Article 50-</p> <ul style="list-style-type: none"> • One of the foremost duties of the State is to cater for the educational needs of the people. Primary education is compulsory for all citizens, male and female, and shall be provided free of charge in State Schools. • To ensure that outstanding students in need of financial support attain the highest level of learning consistent with their skills, the State shall assist them through scholarships and other means.. • The State shall take the necessary measures for those in need of special education. • The state shall ensure the preservation of works and monuments of historical and cultural value. 	<p>Article 42 -</p> <ul style="list-style-type: none"> • Primary education is compulsory for all citizens of both sexes and is free of charge in State schools. • The principles governing the functioning of private primary and secondary schools shall be regulated by law keeping with the standards set for State schools. • The State shall provide scholarships and other means of assistance to enable students of merit lacking financial means to continue their education. • The State shall take necessary measures to rehabilitate those in need of special education so as to render such people useful to society.

As can be seen in Table 5, education is regulated as a duty of the state in the 1961 Constitution. The common points in the two Constitutions appear as follows: primary education is compulsory for all citizens, male and female, and is provided free of charge in state schools; furthermore, the fact that the state takes the necessary measures to support students in financial need is concluded as a contract. Additionally, taking necessary measures for those who need special education is another common point.

Comparing the 1961 and 1982 Constitutions in the context of the provision and utilization of education, no significant difference is observed. However, the following was added to the 1982 Constitution: "The principles governing the functioning of private primary and secondary schools are regulated by law in keeping with the standards set for state schools". The difference lies in the fact that there is a hesitant attitude towards privatization. Prudence to the provision of private education is an overall tendency.

Discussion and Conclusion

Constitutions are the common basic legal documents of each government in the contemporary world. They constitute the basic foundations of the contemporary administration of a society and country. They have a determinative and dominant role for the government of countries as a result of these particular characteristics. Education, as a social institution, interacts with the legal system and has exclusive functions.

Freedom of religion and conscience is one of the issues discussed extensively and vehemently in Turkey. Religion and state affairs have been negatively affected due to the fact that the Republic of Turkey was founded on a large multicultural empire where capitalism did not develop over its own internal dynamics, and Turkey did not experience religious reformation. It is observed that the 1961 Constitution, which is generally described as a libertarian constitution, attempted to regulate the religion and state affairs to "protect secularism" (article 19) so that destroying the social order would be impossible. The state's control over religious education and religious institutions can be viewed as constitutionally secured. In reality, the Republic treats religion as a matter of public service and tries to control it. This tendency can be observed in the 1961 Constitution. However, the application of elective religious courses can be interpreted as a "compromise which violates equality". The religious education of some sects of Islam such as Alawites is ignored with this decision, while elective religious courses can be interpreted as the existence of a "relatively democratic" attitude.

One of the most problematic periods regarding freedom of religion and conscience seems to be the period after the 1982 Constitution. The main problem in terms of democratization is that religious education became compulsory with the 1982 Constitution. This is criticized as contrasting with the democratic principle of equality and the secular principle of "freedom for all faiths". It is claimed that religion is imposed through this perception, gaining scientific understanding is prevented and thus compulsory religious education must be abolished.

Susceptibility regarding secularism, freedom of religion and conscience and the hesitation to fight with fundamentalism are some of the biggest problems faced by the Republic of Turkey. Therefore, secularism must be examined in detail and through various dimensions.

Within the scope of this study, the following section summarizes different ideas related to this issue. In a general sense, secularism is meant to separate earthly and state affairs from religious affairs and authorities. Characteristics of secularism in terms of government can be summarized as follows: there is no official religion, the state administration and social affairs are not subject to religious rules and the legal system does not have to obey religious rules. On the other hand, in practice, the state's regulation of religious services as a public service is adopted as a component of secularism in Turkey (Deliveli, 2001).

The following conclusions can be reached regarding freedom of religion and conscience. Freedom of religion and conscience is the soft under-belly of the Republic. Although there is the tendency to protect secularism in the Constitutions mentioned, the practice is criticized severely in two ways. Some of the critics address compulsory religious education, while others claim that the people are under the pressure of religious education. In this context, the course "Religious Culture and Knowledge of Morals" should not be compulsory any more, and the curriculum of the course should be revised to be an elective one according to contemporary and secular principles. Religious education other than a sociological religious culture and history instruction must be left to religious institutions. The fact that the state remains at an equal distance to all religions must be regarded as a universal principle of secularism and making related regulations in the Constitutions should be considered an obligation. The need for a structure regarding the regulation of freedom of religion and conscience is the result of modernization, which means making life earthly. From this point of view, it could be suggested that religion-state affairs, freedom of religion and conscience and religious education in the Constitutions are regulated according to this basic perspective. The main problem is creating a synthesis of secularism, which will ensure both citizens' religious freedom and an absence of religious perspective in governmental bodies.

In the Republic of Turkey, regarding the right of education and its provision, improving and spreading education has been a dominant political practice. The main educational purpose of the new Republic was to make all citizens literate, particularly girls. This became subject to the constitutional guaranty and was spread particularly by the 1961 Constitution. The basic themes of learning science and arts, and the following statement in the 1961 Constitution that "no person's right of education can be violated", are protected in the 1982 Constitution with different expressions. However, both Constitutions frame education and teaching as being carried out under the supervision and control of the state. On the other hand, it is frequently discussed that education and teaching were restricted mentally through the statement "the freedom of training and education does not relieve the individual from loyalty to the Constitution" in the 1982 Constitution. For example, some suggest that this is a sign of the suspicion of the constitution maker about this right (Algan, 2007). In a sense, this can be interpreted as the reflex of the constitution maker for protecting the Republic. Mass psychology and social atmosphere are of vital

importance in the governance of a society. It can be suggested that a protective perspective is an instinct regarding social and socio-economic and political chaos before 1980.

The justifications for the approval of Religious Culture and Moral Education as an obligatory course in the Constitution must be emphasized as well. First of all, the political process cannot be isolated from the socio-economic regulation. Some chaotic situations and social problems experienced before 1980 caused a separation of people on the basis of belief and ethnicity (Dursun, 2005). When the discussion of the 1982 Constitution is examined, the main purpose of the military government could be seen as to create common values by introducing an obligatory Religious Culture and Moral Education course.

It can be clearly seen that Kemalism is often emphasized in the 1982 Constitution. The reason behind such an emphasis is the fact that pre-1980 chaotic situations threatened the national unity of the country and caused diversion from Atatürk's political path. The economy lack of productivity and the chaotic situation jeopardizing the security of people and their property was related to this diversion from Atatürk's principles (Kongar, 1995). In a way, Kemalism has been perceived as a uniting power over all political views and parties. Such a situation was seen as a basis to reflect the constitutional view. This has been reflected on issues such as education and secularism within the framework of military approval.

The presentation of the right of education and its provision exhibits common characteristics in the two constitutions. The Republic has attached importance to education and built its existence on this feature since its beginning. This is manifested in both Constitutions. However, the realization of the Constitutions is made possible through taking a position in the socio-economic structure. From this point of view, Turkey has been under the influence of privatization in the service sectors as well as through neo-liberal socio-economic policies starting even before 1980s. While the privatization of education creates some positive changes such as the spreading of education and the enlightening the state, it also negatively affects the equality of opportunities and creates social class problems in terms of access to education. From this point of view, a regulatory perspective concerning the supply and privatization of education is needed.

In general, it is possible to indicate a holistic and functionalist perspective in the 1961 and 1982 Constitutions in terms of sociological approaches. However, while the 1961 Constitution regulates the concept taken over from 1950s according to neo-classical and democratic development, the 1982 Constitution has a conservative and status quo centered consideration. This, in a sense, shows traces of conversion into a neo-liberal and postmodernist eclectic concept.

In conclusion, these points can be emphasized in terms of regulations regarding constitutions. In Turkey, the Constitutions were generally made in extraordinary periods, and they bear the traces of those periods. The Constitutions show characteristics of reactionary responses to the former socio-economic and politic events. Turkey is the first national state that aimed to become a secular, democratic

and social legal state while founded within an Islamic territory and a multi-cultural empire. From this point of view, the tendency to conserve the principles of secularism, democracy and social legal state that is emphasized in the 1961 and 1982 Constitutions is dominant. However, secularism and democracy perspectives seem contradictory according to different points of view. Constitutions are considered differently by different political, sociological and philosophical approaches. The management of society at a macro level and education and school at a micro level are not based solely on legal documents. There are effective socio-economic and political variables in determining and implementing legal regulations. Multidirectional and dimensional democratic processes must be applied during the preparation of the Constitutions for a healthy socio-political advancement and administration.

References

- Akı, E. (2010). *Hukukun temel kavramları [Basic concepts of law]*. (9th ed.). İzmir: Barış Yayınları.
- Algan, B. (2007). *Ekonomik sosyal kültürel hakların korunması [Conserving economical, social, cultural rights]*. Ankara: Seçkin Yayıncılık.
- Appelrouth, S., & Edles, L. D. (2008). *Classical and contemporary socioogical theory*. New Delhi: Pine Forge Press.
- Deliveli, Ö. (2001). *İdare hukuku [Administrative Law]*. Ankara: Yargı Yayınları.
- Doğan, İ. (2011). *Eğitim sosyoloji [Education sociology]*. Ankara: Nobel Yayınları.
- Dursun, D. (2005). *12 Eylül darbesi. [12 september military coup]*. İstanbul: Şehir Yayınları.
- Eagleton, T. (1996). *The illusions of postmodernism*. Oxford: Blackwell.
- Ersoy, A. (2010). *Eğitim biliminde araştırma yöntemleri [Research methods in educational sciences]*. In M. Gültekin (Ed.), *Introduction to Educational Science* (pp.133-154). Eskişehir: Anadolu Üniversitesi.
- Heartney, E. (2001). *Postmodernism*. Cambridge: Cambridge University Press.
- Holmwood, J. (2005). *Functionalizm and its critics*. In A. Harrington (Ed.), *Modern Social Theory: An ntroduction*. (pp. 87-109). Oxford: Oxford University Press.
- İnal, K. (1994). *Eğitim sosyolojisinde yorumcu paradigmanın eleştirisi [Criticism of interpretive paradigm in education sociology]*. *Ankara Üniversitesi Eğitim Bilimleri Fakültesi Dergisi*, 27, 679-690.
- Kongar, E. (1995). *12 Eylül kültürü (3th ed.)*. [The culture of 12th september] İstanbul: Remzi Kitabevi.

- Marshall, C., & Rossman, G. B. (1999). *Designing qualitative research* (3rd ed.). Thousand Oaks: Sage Publications.
- Macionis, J. J. & Plummer, K. (2008). *Sociology: a global introduction*. (4th ed.) Harlow: Pearson Prentice Hall.
- McMillan, J. H. (2004). *Educational research fundamentals for the consumer* (4th ed.). Boston: Pearson Education, Inc.
- Özgü, T. (1991). *Eğitim ekonomisi [Economy of education]*. Eskişehir: Anadolu Üniversitesi Açıköğretim Fakültesi Yayınları.
- Öztekin, A. (2001). *Introduction to political sciences [Siyaset bilimine giriş]*. (3th ed.). Ankara: Siyasal Kitapevi.
- Teziç, E. (2007). *Anayasa hukunun esasları [Constitutional law: General principles]* (12th ed.). İstanbul: Beta
- Yıldırım, A. & Şimşek, H. (2011). *Sosyal bilimlerde nitel araştırma yöntemleri. [Qualitative research methods in social sciences]* (8th ed.). Ankara: Seçkin Yayıncılık.

Türkiye Cumhuriyeti 1961 - 1982 Anayasalarında Din-Vicdan Özgürlüğü, Din Eğitimi, Eğitim Hakkı ve Gelişme Eğilimleri

Atıf:

- Erkilic, A.T. (2013). Freedom of religion - conscience, religious education and the right of education in the 1961 - 1982 constitutions of the Republic of Turkey and their developmental tendencies. *Eğitim Araştırmaları-Eurasian Journal of Educational Research*, 51, 123-140.

(Özet)

Problem Durumu: Demokratik toplumlar için anayasalar meşruiyetin temel dayanaklarıdır. Türkiye'nin son elli yılına 1961 ve 1982 anayasaları yön vermiştir. Bu bakımdan 1961 ve 1982 anayasalarında din-vicdan özgürlüğü, din eğitimi ve eğitim hakkı konularına yer verilmiş biçimleri, süreçte yapılan değişikliklerin incelenmesi ve akademik bir bakış açısıyla yorumlanması bir gereksinimdir. Bu, güncel anayasa tartışmalarına akademik bir katkı verilmesi gereksinimi açısından da önemlidir.

Çalışmanın Amacı: Bu araştırmanın temel amacı, Türkiye Cumhuriyeti'nin 1961 ve 1982 anayasalarındaki eğitim hakkı, din-vicdan özgürlüğü ve din eğitimi ile ilgili maddeleri karşılaştırmalı olarak incelemektir.

Araştırmanın Yöntemi: Araştırmada analitik araştırma desenlerinden doküman araştırması kullanılmıştır. Araştırmanın verileri Türkiye Cumhuriyeti 1961 ve 1982

Anayasa'larındaki eğitim hakkı, din-vicdan özgürlüğü ve din eğitime ilişkin maddeler oluşmaktadır. Veriler betimsel ve sürekli karşılaştırmalı olarak analiz edilmiştir. Verilerin yorumlanmasında ilgili anayasaların hazırlandığı ve uygulandığı sosyal, kültürel ve siyasal bağlamı yansıtmak için alanyazından alıntılar yapılmıştır.

Araştırmanın Bulguları ve Yorum: Her iki anayasada devletin din esasına göre düzenlenemeyeceği; din ve din duygularının veya dince kutsal sayılan şeylerin istismar edilemeyeceği ve kötüye kullanılmayacağı belirtilmiştir. Eğilim, dinin istismar edilmesine karşı katı düzenlemelerin yapıldığı ve çatışmalara karşı tekçi bir "uzlaşma" egemenliğinde işlevselcilik işleyişi biçimindedir. Din eğitim ve öğretimi 1961 Anayasası'nda kişilerin kendi isteğine ve küçüklerin kanuni temsilcilerinin isteğine bırakılırken, 1982 Anayasasında Din Kültürü ve Ahlak Bilgisi dersi ilk ve ortaöğretim kurumlarında zorunlu dersler arasına alınmıştır. Din eğitiminde kesin bir farklılaşma söz konusudur. İki anayasada ilköğretim kız ve erkek bütün yurttaşlar için zorunlu ve devlet okullarında parasız olması, yoksun başarılı öğrencilere öğretimin her kademesinde destek verileceği ve özel eğitime gereksinim duyanlar için gerekli önlemlerin alınacağı belirtilmiştir. Eğilim işlevselci yaklaşımın demokratik değerlerle güçlendirilmesi biçimindedir.

Sonuç ve Tartışma: Din ve vicdan özgürlüğü Türkiye'de sıkça ve sert tartışılan konularından biridir. Din derslerinin zorunlu okutulması anayasa yapımı açısından da tartışmalıdır. Türkiye Cumhuriyeti Anayasası genel ilkeleri ortaya koyup "çerçeve anayasa" anlayışı benimseyip olası durumları düzenlemek isteyen anayasa yerine sıkı, sert yani "kazuistik" yöneme yer verilmiştir. Genel olarak 1961 Anayasası'ndan 1982 Anayasası'na geçişte sertlik, katılık ve zor değiştirebilirlik niteliklerinin güç kazandığı görülmektedir. Din ve vicdan özgürlüğü konusunda daha özgürlükçü ve eşitlikçi anayasal düzenlemelerin yapılması önerilebilir. Eğitimde özelleştirme çabaları erken Cumhuriyet'ten beri eğitimin önemli argümanı olan fırsat ve olanak eşitliği ilkesini zedelemektedir. Bu açıdan anayasal tartışma ve olası düzenlemeler postmodern ve neo-liberal etkilerin altındadır.

Anahtar Sözcükler: Anayasa, din-vicdan özgürlüğü, eğitim hakkı, postmodernizm, işlevselcilik, etkileşimselcilik, çatışmacı yaklaşım