



Analysis of Legal Actions on the Fundamental Principles of the Turkish National Education¹

Türk Milli Eğitiminin Temel İlkeleri ile İlgili Açılan Davaların Değerlendirilmesi¹

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ABSTRACT: Today's Fundamental Principles of Turkish National Education are based on fourteen tenets that were designed and legislated in 1973 numbered 1739 of 4th and 17th clauses of the Basic Law of National Education. This study aims to examine the subject matters and realms of lawsuits brought against adducing these fourteen educational principles. Twenty-four cases opened between 1982 and 2013 were reached by the records of The State Council. The research figures out that all were brought before the court referring 27 times to ten fundamental educational principles and it is observed that there was no any legal action taken on the grounds of the remaining four principles. This research unveils different views between rulings of administrative court and the verdicts of the State Council. It also aims to shed light on future studies on the point of outcomes it has produced.

Keywords: Turkish national education system, fundamental principles of national education, the state council

ÖZ: Türk Milli Eğitiminin Temel İlkeleri, 1973 tarih ve 1739 sayılı Millî Eğitim Temel Kanunu'nun 4 ve 17. Maddeleri arasında yer alan 14 adet eğitim öğretim ilkesidir. Araştırma söz konusu 14 eğitim ilkesine dayanarak açılan davaları incelemektedir. Danıştay kararları taranarak 1982- 2013 döneminde açılan 24 adet davaya ulaşılmıştır. Araştırma sonucunda 10 adet ilkeye 27 kez başvurularak toplam 24 dava açıldığı, 4 ilke hakkında ise açılan dava bulunmadığı görülmüştür. Araştırma idari mahkeme kararlarıyla Danıştay kararları arasındaki görüş farklılıklarını ortaya koymaktadır. Diğer yandan benzer sorunlar nedeniyle dava açmak isteyen kişi ve kuruluşlar için bilgi ve veri toplama problemlerini ortaya koymakta ayrıca ulaştığı sonuçlar bakımından başka araştırmalara ışık tutmaktadır.

Anahtar sözcükler: Türk milli eğitim sistemi, milli eğitim temel ilkeleri, danıştay

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1. INTRODUCTION

Education is a multi-faceted, long-term and dynamic process, and a societal phenomenon which always remains on the agenda against changing topics, but never loses its significance for both individuals and societies. As an attempt to recreate the person of a community and bring their future under control (Aydın, 1994), education is carried out via schools, the social institutions where the people are formally educated in terms of values, skills and knowledge. It also transfers social and worldly values (Hesapçioğlu, 1998). The institutions that help children become adults (Hesapçioğlu, 2004) stand as a path to organize a society's future. However, informal education is in a close relationship with schools, too (Gutek, 2001). It is claimed that there is a strong bond between learning and love; i.e. real, authentic and permanent learning becomes possible when these two are intertwined. The subject would be a thing, profession, academic discipline, or even a person as long as loved (Kenan, 2005). Education as a process to produce a positive conscientious change in a person's behaviours and mental world through their own experience is a period of enhancing their good and positive sides. Education occurs depending on love towards a person, a topic or learning (Kenan, 2005). To conclude, it is essential to introduce by various means the outcomes of applications in both formal and informal education.

Fundamental Principles of National Education, the research scope, are those which have been developed to recreate the person and control future. They address the values and ethics wished for both individuals and the society to have. This law is a significant step to guide Turkish educational policy and display history of republic and parallel periods in education.

Below are the distinctive laws for academic operations in Turkish National History;

1. 3th March, 1924 Law on Unity of Education
2. 1st November, 1928 Law on Acceptance and Application of Turkish Alphabet
3. 5th November, 1961 Primary Education Law
4. 14th June, 1973 Basic Law of National Education
5. 30th April, 1992 Law on Organization and Duties of Ministry of National Education
6. 16th July, 1997 Law on Compulsory Education
7. 4th November, 1981 Higher Education Law
8. 5th June, 1986 Vocational Education Law
9. 8th February, 2007 Law on Private Schools (Erdoğan, 2011)
10. Finally, Law on Amendments in Some Legislation and Primary Education Law numbered 6287 and legislated on 30th March 2012, known by the public as 4+4+4. They occupy an important place in legislation connected with our educational history. As for the fourth one in the list, the research topic of educational principles is a critical step in our history of education.

The main problem of the research consists of for what rationales the Fundamental Principles between the articles 4 and 17 of the law 1739 were at issue and how the cases ended. The questions about the main problem to be explored are as following:

What are the causes of the lawsuits opened in our country with regard to Fundamental Principles of national Education? Which years were they opened in? Is there a density in any specific year? What particular principles composed a basis for the cases? What were the frequency differences between the

subject matter principles? What were the disputes that led to open lawsuits? What were the litigation actions? How did the cases end?

This study aims to examine the lawsuits brought before the court regarding Fundamental Principles of National Education between the Article 4 and 17 of Basic Law of National Education legislated in 1973, numbered 1739. It is intended to analyze the guiding laws on education and relevant applications in the field. This analyzes, which will be conducted on the basis of general educational goals, will try to investigate regulations, and implications and problems in practice.

2. METHOD

This is an institutional analytical research concerning the lawsuits brought before the State Council by several persons and organizations on the grounds of Fundamental Principles of National Education in Basic Law of National Education, 1739. Hence, it is a qualitative study. It was carried out by using document review method, a type of qualitative study. Literature reviews related to research findings were also included. Formal durations of the emergence of principles and subsequent reforms will also be explored. For conclusion part, some subjective reviews will be mentioned of the researcher.

3. FINDINGS

The fourteen educational tenets, the Fundamental Principles of Turkish National Education, between the Article 4 and 17 in Basic Law of National Education legislated in 1973 and numbered 1739, take place in the legislation as following;

I – Universality and Equity:

Article 4 - Educational institutions are open to anyone regardless of language, race, gender or religion. No person, family, group or class is to be privileged in education.

II – Needs of the Individuals and Society:

Article 5 – National Education Service is to be customized according to wishes and capabilities of Turkish citizens and needs of Turkish society.

III - Direction:

Article 6 – Individuals are to be trained by being directed to a variety of programmes or schools in accordance with their level of interests, aptitude and abilities.

(Amendment: 16.8.1997-4306/3 Article) National education system is to be organized in all respects to achieve this direction. For that purpose, preparatory classes can be arranged in secondary schools in parallel with the objectives of educational programmes. Guidance services and objective assessment and evaluation methods are to be utilized in direction and measuring success.

IV – Right to education:

Article 7 – Every Turkish citizen has the right to primary education. Citizens can benefit from educational institutions subsequent to primary schools, in accordance with their interests, aptitude and abilities.

V – Equal opportunity:

Article 8 -Equality is to be ensured in educational opportunities for everyone; no matter they are men or women. Those lacking financial possibilities are to be supported up to the highest educational levels through public boarding schools, scholarships, student loans and some other means for necessary aids. Special precautions are to be taken to educate children in need of special training and protection.

VI - Continuity:

Article 9 – It is essential for individuals to have a life-long education period in vocational and general. It is also an educational responsibility to take necessary precautions to provide adults with continuing training so as to help young adapt themselves into life or working areas as well as their education.

VII – Atatürk’s Reforms and Principles and Atatürk Nationalism:

Atatürk’s Reforms and Principles and Atatürk Nationalism, which is obviously stated in the constitution, are to be based upon in any sort of educational activities, preparation and implementation of the curriculum about any kind or level of our education system. It is significant that National ethics and culture be preserved, developed and taught within the universal culture, by its unique shape to us with no corruption or deterioration.

As a key fact of national unity and integrity, Turkish language is to be taught in every step of education with no deformation or excessiveness; It is tried to develop within the limits of modern education and science, and necessary precautions are to be taken to achieve that by National Ministry of Education in liaison with the Higher Institute of Atatürk Culture, Language and History.

VIII – Democracy education:

It is essential through all kind of educational activities to try to have students gain democracy awareness, a sense of responsibility carrying knowledge, understanding and behaviours related to country administration and respect to spiritual values, which citizens should bear in order to develop and maintain a dynamic and stable, liberal and democratic system of society; however, it is never allowed to perform political or ideological inculcations in educational institutions against Atatürk nationality guaranteed by the Constitution or to involve in such daily political events or hassles.

IX - Secularism:

Secularism is a basis for Turkish National Education. Religious culture and Moral education is one of the compulsory courses taught at primary schools, elementary and secondary schools.

X – Being Scientific:

Article 13 – Every level or kind of syllabus and training methods, class tools and materials are to be perpetually developed according to the needs of environment and country and the scientific and technological principles and innovations.

A constant reform and improvement status and increasing in educational effectiveness are to be ensured by scientific researches and reviews.

Educational institutions responsible for producing knowledge and technology and develop our culture are to be supplied and strengthened accordingly; efforts in these are encouraged and supported materially and spiritually.

XI – Planning:

Article 14 – National education development is to be designed and achieved in a way to concentrate on vocational and technical education which will generate the necessary industrialization and technological modernization, considering relations among education-man power-employment in compliance with the goals of financial, social and cultural growth.

Occupation levels and their title, power and responsibilities are to be determined by law, and establishment and the programmes of any kind or level of formal and non-formal vocational educational institutions are to be arranged in accordance with those levels.

Standards about location, staff, building, premises, equipment, tools, materials and capacities are determined in advance and they are ensured to establish in compliance with those standards and run efficiently.

XII – Coeducation:

Article 15 – It is essential to have schools in which girls and boys study together. However, some schools can provide training for either girls or boys separately according to the type of education, facilities or requirements.

XIII – Parent-school cooperation:

Cooperation between school and parent is to be provided in order to make a contribution to achievement of schools' aims.

For this purpose, school-parent associations are to be founded. School-parent associations are allowed to accept donations in kind and cash, organize social and cultural activities or campaigns to get financial aids, run canteens, open areas, lounges and similar places existing within the schools or have them run so that they can bring efficacy and efficiency to the educational services of schools, meet mandatory needs of them and their students who lack financial possibilities.

Under no circumstances can parents be forced to donate. Procedures and principles related to founding and running school-parent associations, establishing committees and election methods, financial contributions made by social and cultural activities, accepting donations, spending and auditing, and running some places like canteens, open areas and lounges and distribution ratios and topics related to earnings by those activities, spending and auditing are regulated by a bylaw cooperatively designed by Ministries of National Education and Finance.

Revenues of school-parent associations are exempted from any kind of taxes, levies or charges.

XIV – Education everywhere:

Article 17 – Objectives of National Education are to be achieved not only in public or private institutions but also at home, in the vicinity, at working areas; everywhere and on every occasion. Educational facilities of public, private and non-profit organizations are subject to the inspection by ministry of National Education in terms of consistency with Objectives of National Education.

Some of the principles seem to have additions and amendments on different dates. Changes made on the principles show that there have generally been long discussions in long congresses (Grand National Assembly of Turkey). Principles appear to have rooted in pre-republican times. Innovations brought by the period of reorganizations (Tanzimat), the concept of Ottomanism and inclusion of non-muslims in education are typical characteristics of that period. Educational Philosophy in Republican

times has national characteristics. Ottomanism conception was replaced by Republicanism. The principles of republicanism, nationalism, populism, statism, secularism and reformism formed the core of educational philosophy of the times (Kenan, 2013).

Principles legislated at present time are as following;

1. Universality and Equity
2. Needs of Individuals and Society
3. Direction
4. Right to Education
5. Equal opportunity
6. Continuity
7. Atatürk's Reforms and Principles and Atatürk Nationalism
8. Democracy education
9. Secularism
10. Being Scientific
11. Planning
12. Coeducation
13. Parent-school cooperation
14. Education everywhere

Twenty four cases opened between 1982 and 2013 were reached regarding to article 4 and 17 of Law 1739. Ten of them appear to have been referred twenty-seven times. It is found that many of the available lawsuits were mostly opened on the grounds of more than one law or article. Case years and numbers are shown in Table 1.

Table 1: A chronologic list of case years and numbers of the lawsuits opened on the grounds of the fundamental principles of Turkish national education⁴

Row Number	Principles	Case years	Lawsuit Entries
1	Equal opportunity	1982	1
2	Universality and Equity	1985	1
3	Secularism	1986	1
4	Right to Education	1988	1
5	Right to Education	1992	1
6	Continuity	1996	1
7	Education everywhere	2000	1
8	Parent-school cooperation	2001	1
9	Equal opportunity	2003	2

⁴ Obtained from the State Council and *Kazanıcı içtihat*- the archives of legal documents in Turkey- pages.

10	Atatürk's REforms and Principles and Atatürk Nationalism & Secularism	2004	3(x2)
11	Continuity Equal opportunity	2005	2
12	Secularism	2006	1
13	Direction Secularism Parent-school cooperation	2007	3
14	Atatürk's Reforms and Principles and Atatürk Nationalism	2008	1
15	Parent-school cooperation (3) Planning	2009	4
Total Number of Lawsuits			24
Total Number of Referrings to the Principles			27

As in Table 1, the State Council has passed verdicts on twenty four lawsuits referred twenty seven times in fifteen years. Some of the principles appear to be referred in various years. Needs of Individuals and Society, Democracy Education, Being Scientific, Planning, and Co-education are the principles not referred in the lawsuits.

Table 2: Years of lawsuits opened on the grounds of the fundamental principles of Turkish national education

Row Number	Principle	Case Year
1	Universality and Equity	1985
2	Direction	2007
3	Right to Education	1988, 1992
4	Equal opportunity	1982, 2003(2),2005
5	Continuity	1996, 2005
6	Atatürk Reforms and Principles and Atatürk Nationalism	2004(3), 2008
7	Secularism	1986, 2004(3), 2006, 2007
8	Planning	2009
9	Parent-School cooperation	2001, 2007, 2009(3)
10	Education everywhere	2000

As in Table 2, four principles were referred once and six of them in different years repeatedly. So, there appears a variety in frequency about lawsuits opened on the grounds of those principles. Figure 1 and 2 show a distribution of principles and years, based on Chart 2. You can see how frequent the principles were referred in the lawsuits.

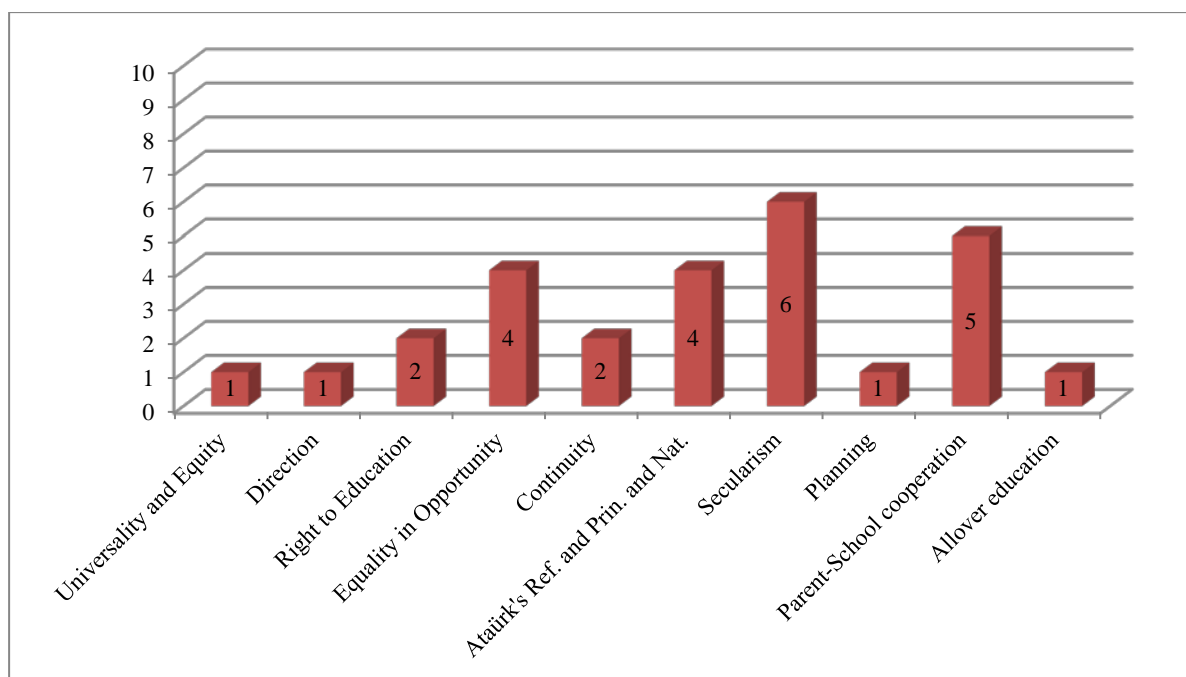


Figure 1: Lawsuit frequency on the fundamental principles of Turkish national education. (obtained from State Council - Kazancı İçtihat pages.)

As in Figure 1, four of the principles were referred once, two of them twice, two of them four times, one of them five and another one six times, 27 times in total. Figure 2 shows the percentages about referring to the principles in the lawsuits.

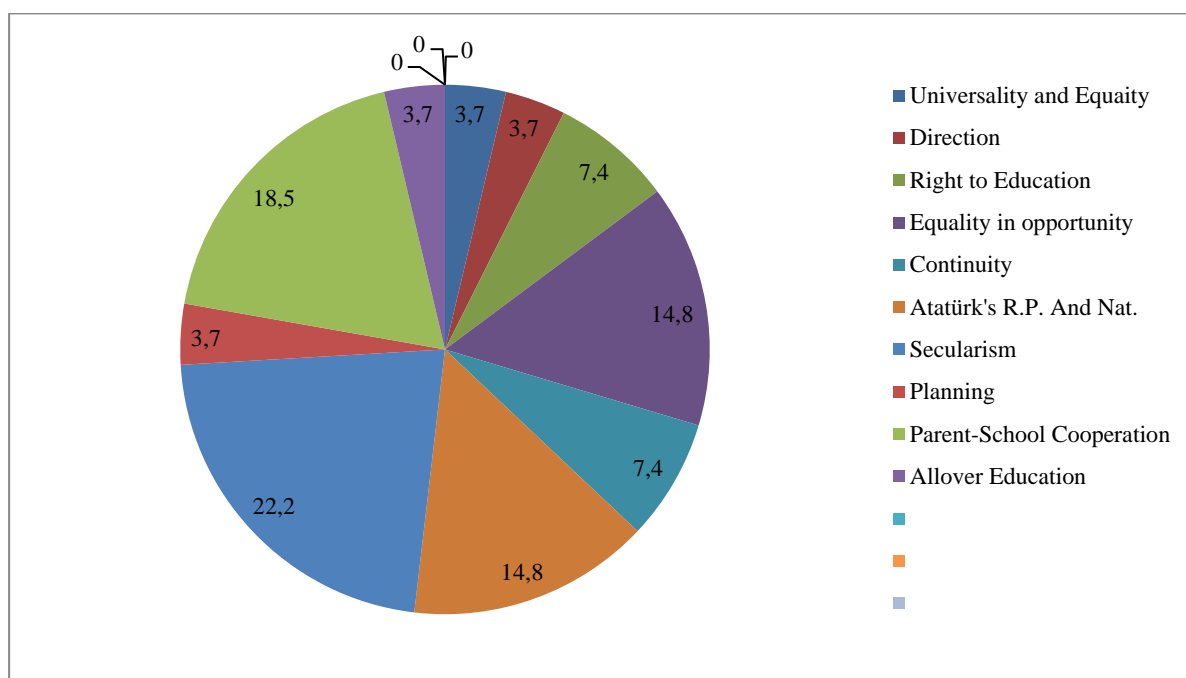


Figure 2: Percentages about referring to the principles in the lawsuits

Figure 2 show a high incidence of referring to the Principles of Secularism and Parent-School Cooperation by %22.2 and 18.5 respectively.

Given the case years of lawsuits, there appears a density in specific years. Figure 3 shows a chronological distribution of the lawsuits.

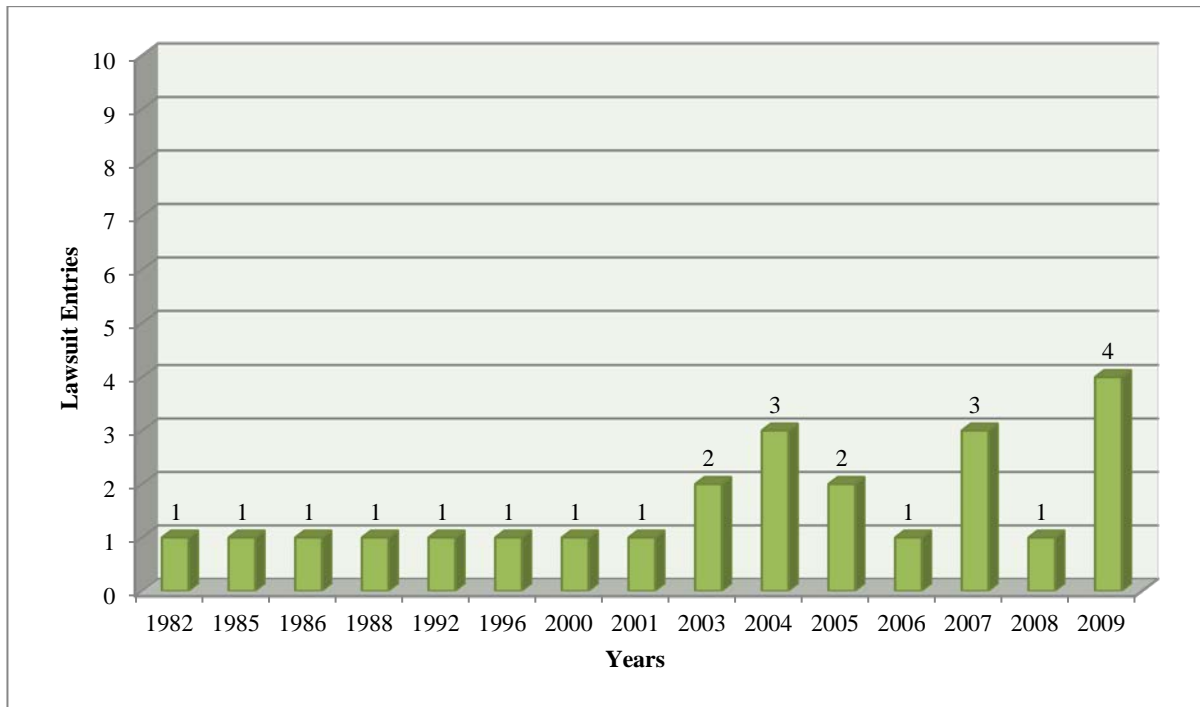


Figure 3. Chronological Lawsuit Entries

Figure 3 shows that one lawsuit was opened in each year between 1982 and 2002 but there occurred an increase in the number of lawsuits after 2003. The highest ratios exist in 2004 and 2009.

Verdicts of the State Council care available in the State Council's website and Kazancı İçtihat pages. The research has reached all the phase. The lawsuits are available some in State Council's pages, some in Kazancı İçtihat pages and some from both sources. Most of the lawsuits are found to include more than one article. On the other hand, the lawsuits appear to have been under discussion by various chambers. Table 3 lists all the case years, all the referred principles and the resources the information obtained from.

Lawsuits were opened by various persons such as parents and organizations such as unions, schools, MEB (Ministry of National Education), Ministry of Health, Mayorships, Governorates, and School-parent Associations. Table 3 lists the case years, complainants and the chambers the lawsuits were discussed by.

Table 3: Case years, complainants, lawsuits discussed

Lawsuit Number	Principle	Art.	Title of the Principle	Case year	Date and number of the Verdict	Complainant	Chamber
1	1	4	Universality and Equity	1985	24/02/1987- 88	İstanbul-Person	-
2	3	6	Direction	2007/905	31/03/2008-2352	Union	8
3	4	7	Right to Education	1988/460	11/12/1989-1011	M.E.B.	8
4	4	7	Right to Education	1992	16/11/1993-3652	Person	-
5	5	8	Equal opportunity	2003	17/07/2003-2504	Union	-
6	5	8	Equal opportunity	1982	21/06/1983-1383	Person	-
7	5	8	Equal opportunity	2003	02/06/2004-2590	Person	-
8	5	8	Equal opportunity	2005/3398	01/05/2006-1788	Person	8
9	6	9	Continuity	1996/311	10/11/1998-2618	Ministry of Health	5
10	6	9	Continuity	2005	07/02/2006-6384	-	-
11	7	10	<i>Atatürk R.P. and Atatürk Nation.</i>	2004/4617	02/05/2005-1545	Bursa-School Administration	2
12	7	10	<i>Atatürk R.P. and Atatürk Nation.</i>	2004/4552	02/05/2005- 1547	Balıkesir-School Administration	2
13	7	10	<i>Atatürk R.P. and Atatürk Nation.</i>	2004/4051	26/10/2005- 3366	Ankara-School Administration	2
14	7	10	<i>Atatürk R.P. and Atatürk Nation.</i>	2008/3883	24/09/2008- 3863	Association	8
15	9	12	<i>Secularism (the same with number 11)</i>	2004/4617	02/05/2005- 1545	Bursa- Person	-
16	9	12	<i>Secularism (the same with number 12)</i>	2004/4552	02/05/2005- 1547	Balıkesir-Person	-
17	9	12	<i>Secularism (the same with number 1)</i>	2004/4051	26/10/2005-3366	Ankara	-
18	9	12	Secularism	1986	10/02/1987- 54	Person	-
19	9	12	Secularism	2006/4107	28/12/2007- 7481	Person	8
20	9	12	Secularism	2007/679	29/2/2008- 1461	Person	8
	10	13	Being Scientific	None	None	None	-
21	11	14	Planning	2009/5547	7.10.2009- 5193	School Administration	12
22	13	16	Parent-School Cooperation	2001/4236	21/06/2002-3741	Governorate	8
23	13	16	Parent-School Cooperation	2009	12/06/2009-24	İstanbul	-
24	13	16	Parent-School Cooperation	2007/11142	6/2/2008- 1440	School-Parent Association	13-Y ⁵
25	13	16	Parent-School Cooperation	2009/5232	7/5/2009- 8026	School-Parent Association	3-Y
26	13	16	Parent-School Cooperation	2009/248	23/5/2011- 4403	School-Parent Association	8
27	14	17	Education Everywhere	2000/44	31/12/2010- 50	Mayorship	1

⁵ Court of Cassation.

Verdicts have brief explanations below. Table 4 includes the abstracts of judgements.

Table 4: *Verdicts on the lawsuits opened on the grounds of the fundamental principles of Turkish national education*

Lawsuit	Principle	Art.	Title of the Principle	Case year	Date and number of the verdict	Complainant	Chamber
1	5	8	Equal opportunity	1982	21/06/1983-1383	Person	
Concerning inappropriateness of disenrollment of the non-commissioned officer, who after passing university exam registered in higher teacher education, because s/he is on duty							
2	1	4	Universality and Equity	1985	24/02/1987- 88	İstanbul-Person	
Concerning necessity for bestowing the right of entering the exam in newly-appointed counties, which is applied to officers who enter the examination for external students when they are appointed to another place, to those who work in private sector or are self-employed as well.							
3	9	12	Secularism	1986	10/02/1987- 54	Person	
Concerning the obligation for every Turkish citizen, who study at the schools at issue, to attend the course of Religious Culture and Moral Education as it is one of the compulsory courses at primary and secondary education.							
4	4	7	Right to Education	1988/460	11/12/1989-1011	MEB	8
Concerning unenforceability of nonjudicial punishment in this clause of the related bylaw by which the student, who got permanent debarment by clause 5 of student discipline regulations for elementary and secondary schools ruled by Ministry of National Education, will have no chance to attend any educational organization with in the country, as it is against the constitution and basic law of national education.							
5	4	7	Right to Education	1992	16/11/1993-3652	Person	
Concerning that permanent debarment the complainant got can't lead to an end in depriving student of right to education.							
6	6	9	Continuity	1996/311	10/11/1998-2618	Ministry of Health	5
Concerning that the mentioned person can not be forced by the administration that has discretionary power in paying regard to the educational status of the complainant on the strength of dijudication to appoint to the place where the school s/he got the right to enter is located.							
7	14	17	Education Everywhere	2000/44	31/12/2010- 50	Mayorship	1
Concerning the requirement for getting prior permission by foundations, associations and municipalities to open vocational courses.							
8	13	16	Parent-School cooperation	2001/4236	21/06/2002-3741	Governorate	8
Concerning that there is no inconsistency about the price determined by the chamber of tradespeople with the law of 507, in provisions related to defining rates of student transport directive in ...city schools which brings an arrangement to pricing transport services by tender based on estimated price, since the transport prices that will be determined by general service car firms will not bind the members of the chamber of commerce but the member tradespeople of the mentioned chamber; ...for, both firms who are the members of the commerce and tradespeople run transporting business.							
9	5	8	Equal opportunity	2003	02/06/2004-2590	Union	
Concerning the suspension of execution because the regulative operation of holding a competitive examination aiming to place the students of low-income families, who pass the exam, in private schools is on course to allocate fund from the general budget for private educational institutions without having any legal grounds, and it creates a contradiction to both law and public weal in terms of equality in providing educational service.							
10	5	8	Equal opportunity	2003	17/07/2003-2504	Union	
Concerning the suspension of execution because the regulative operation of holding a competitive examination aiming to place the students of low-income families, who pass the exam, to private schools is on course to allocate fund from the general budget for private educational institutions without having any legal grounds, and it creates a contradiction to both law and public weal in terms of equality in providing educational service.							

11	7	10	<i>Atatürk R.P. and Atatürk Nationalism & Secularism</i>	2004/4051	26/10/2005- 3366	Ankara-School administration	2
<p>Given the facts that there have been statements about complainant's occasionally wearing religious headscarf at school, on the way to school and while going out of the school, and that she had two separate disciplinary punishments before because of similar behaviours though they are in the scope of disciplinary remission, and those who study at the schools where she would work as an administrator are far from the age period to rationale and deduce as they are young; because it is certain that she, who has to be a good model in that and the external environment where education somehow echoes, violates both constitution and fundamental principles based on basic law of national education in relation to modern education when she is on her way to school or home from school, it is justifiable in terms law, public weal and service requirements to discharge her from administrative position and appoint as a teacher, before starting her duty.</p>							
12	7	10	<i>Atatürk R.P. and Atatürk Nationalism & Secularism</i>	2004/4617	02/05/2005-1545	Bursa-School Administration	2
<p>Concerning the necessity for reversal of the relevant court ruling as it will be for the public weal to appoint to another city on account of the fact that the complainant violates the principle of secularism and she feels raw about the changes in girls' wearing styles and coeducation.</p>							
13	7	10	<i>Atatürk R.P. and Atatürk Nationalism</i>	2004/4552	02/05/2005- 1547	Balıkesir-School Administration	2
<p>Concerning that there is no inconsistency with public weal or service requirements in appointing the complainant to another school outside the city as it is obvious that s/he affects negatively the teaching and learning facilities in his/her school by his/her behaviours against the principle of secularism</p>							
14	6	9	Continuity	2005	07/02/2006-6384	-	
<p>Concerning that bylaw on open education high schools under Ministry of National Education promulgated in the official journal day 14.12.2005 and numbered 26023 is inconsistent with legal provisions of the law 1739 on which the issues in dispute are based, educational period adopted and implemented by judicial decisions about educational system.</p>							
15	5	8	Equal Opportunity	2005/3398	01/05/2006-1788	Union	8
<p>It has been agreed upon that 1-the educational period of three-year high schools, vocational and technical schools will be gradually risen to 4 years starting with the 9th grades in 2005-2006 academic year, 2- the high schools with a 9th grade prep-class will be reorganized according to four-year education period,3- Anatolian Schools and Foreign Language Intensive High Schools will be combined into one curriculum under the name of Anatolian Schoos, by the resolution on Reorganizing Secondary Education day 07.06.2005 and numbered 184 by Board of Education and Discipline at issue. These provisions, which are at issue to be avoided, are found to be justifiable.</p>							
16	9	12	Secularism	2006/4107	28/12/2007- 7481	Person	8
<p>Concerning that there is no contradiction to law in making the course of Religious Culture and Moral Knowledge obligatory with its present contents since it can not be considered as teaching Religious Culture and Moral Knowledge in terms of content though it is called so at primary and secondary schools.</p>							
17	13	16	Parent-school cooperation	2007/11142	6/2/2008- 1440	Parent-school association	13-Y
<p>The association, who has been mentioned as the hostile, does not have a legal entity status. The parent-school association, the defendant, has been established in compliance with the bylaw of Ministry of National Education. That is, the legal representative of the parent-school associations who do not have a legal entity status is Ministry of National Education. It is not correct to mention president or deputy president of the association as the representative of school-parent association, who do not have a legal entity status. The complainant has been wrong about the representative. Legal sanction towards this mistake in identifying the representative can not lead as heavy result as a dismissal due to being wrong on hostile. In such cases, the condition should be stated by an interim decision, the complainant should be granted an extension to correct the lawsuit petition and have it notified by mentioning Ministry of National Education as the representative of defendant for the concrete case and continue the court action after correcting procedural fault, according to both theory and practice of Court of Cassation, which has gained stability.</p>							

18	9	12	Secularism	2007/679	29/2/2008- 1461	Person	8
<p>It is beyond question that Religious Culture and Moral Education is among the obligatory subjects at primary and secondary schools in accordance with the 10th article of the Constitution. However, this teaching needs to be carried out by a convenient syllabus with the objectives the constitution prescribed, the content be objective and plurulastic, the religion of the person not be used as an element of discrimination or disparity, and the government behave impartially towards religions and consider all religious beliefs equivalent. It is obvious that it can not be accepted as a subject of Religious Culture and Moral Education but become a religious education if the syllabus used in teaching is based on a particular religious understanding. Indeed, pursuant to the detections reached by European Court of Human Rigts and found sufficient enough to judge on our decision it has been concluded that the subject of Religious Culture and Moral Education is not taught objectively, rationally or in a pluralistic understanding way, in our country.</p> <p>In conclusion, though it is defined as obligatory to teach Religious Culture and Moral Education in the 24th article of the Constitution and the teaching provided at primary and secondary schools is called as Religious Culture and Moral Education, there is no contradiction to law to make the respective subject obligatory with its present content since it is obvious that it can not be considered as teaching Religious Culture and Moral Education because of the content and religious education is only dependant on the person's own request or request by legal representantive for the juniors.</p>							
19	3	6	Direction	2007/905	31/03/2008-2352	Union	8
<p>Concerning that there is no contradiction to law in the second article of regulations regarding amandments in bylaw of passing a grade level and examination in secondary schools which abolishes discretionary right so as to prevent subjective opinions by teachers in giving the term grades at secondary schools.</p>							
20	7	10	Atatürk R.P. and Atatürk N.	2008/3883	24/09/2008- 3863	Association	8
<p>Concerning that there is an inconsistency with the constitution, the fundamental principles and rules of National Education and the laws used as a basis for the bylaw at issue, notwithstanding the fact that it was an obligation to have an "Atatürk corner" at schools in the applied regulations before the bylaw of private schools under Ministry of National Education but this bylaw and the one at issue has been repealed and there is no clause in recent regulations mentioning about the obligation of "Atatürk corner".</p> <p>The request for suspension of execution about the application of removing the obligation of having an "Atatürk corner by the bylaw of private schools under Ministry of National Education has been accepted.</p>							
21	13	16	Parent-School Cooperation	2009/5232	7/5/2009- 8026	Parent-School Association	3-Y
<p>Since the dispute is related to debt recievable caused by the contract that parent-school association landed with the other defendant in accordance with the regulations, the defendant association should be accepted to have capacity of hostility.</p>							
22	13	16	Parent-School Cooperation	2009/248	23/5/2011- 4403	Parent-School Association	8
<p>1- Rule makings like bylaw, communique, instruction, circulars and so on, issued as an obligation obviously prescribed by the Law to desribe the implementations of laws should include provisions pursuant to regulation subject and goals.</p> <p>2- Since the circulars at issue have been posted to make regulations related to the practices of corporate taxes about hiring out the canteens, opena areas, lounges and so on at schools and institutions to third parties by parent-school associations, it is not compatible in terms of the subject matter to impose obligations in these circulars for those who hire the above-mentioned places about value-added-tax which contains rules that have completely different payment ways, rules about obligations, levying and accruings. The consequences of administrative operations which have to be legal and possible have been indicated before by the regulations and other regulative actions. The relevant persons have no authority in administrative actions to change operation subject or define them as they wish.</p>							
23	13	16	Parent-School Cooperation	2009	12/06/2009-24	İstanbul	
<p>Concerning the necessity of resolving dispute caused by lunch practice at primary schools by Chamber 8.</p>							
24	11	14	Planning	2009/5547	7.10.2009- 5193	School administration	12
<p>Concerning there is no contradiction to law in the annulment decision given for the necessity of concrete finding by investigating since it is possible to find without an investigation whether the complainant employed as a qualified instructor at Vocational High School is good at her-his job or not.</p>							

The verdicts which display the results of the lawsuits seen on Table 4, the rationales for referring the principles and the requests accepted or rejected are summarized below.

3.1. Brief Summaries of The Results of The Lawsuits in a Chronological Way

This part is obtained from the lawsuit records on the Kazancı içtihat pages. Only abstracts of judgements have been reached by the State Council page. They are listed in Table 4.

1998-Right to Education (4th lawsuit)

The judgement made by the administration has been reversed since the punishment of permanent debarment will deprive the student of the right to education.

1996-Continuity (6th lawsuit)

Annulment action filed by the state officer candidate with a request of being appointed to the university s/he gained right to enter has been rejected.

2000- Education Everywhere (7th lawsuit)

State Council would decide on who will be entitled to open vocational courses with an approval of national education, the foundations, the associations or the municipalities.

2001- Parent-School Cooperation (8th lawsuit)

The annulment action of chamber of merchants and artisans which was opened for requesting to have the right to determine the transport fees of their school services and accepted by administrative court has been dismissed by the State Council.

2004- Atatürk R.P. and Atatürk Nationalism- Secularism (11th lawsuit)

The request for cancellation of the administrative action of not allowing the teacher because she was wearing turban to perform as an administrative person has been rejected.

2004- Atatürk R.P. and Atatürk Nationalism- Secularism (12th lawsuit)

The annulment action by the complainant for the respective decision by administration was fairly given in consistent with public weal and service requirements and has no contradiction to law.

2004- Atatürk R.P. and Atatürk Nationalism- Secularism (13. lawsuit)

The request for cancellation of the administrative action of her/his being appointed to another city due to the teacher's anti-secular action has been rejected.

2005- Equal opportunity (15th lawsuit)

The annulment action by the educational union of increasing high school period to four years on account of the fact that they do not have adequate preparations has been rejected by the State Council.

2006- Atatürk R.P. and Atatürk Nationalism- Secularism (16th lawsuit)

The request of exemption from religious lessons by a parent of alevist student has been recognized.

2007-2009-Parent-school coopertion (17th lawsuit)

The lawsuit opened by a parent of alevist student for the request of exemption from religious lessons has been recognized.

2007- Atatürk R.P. and Atatürk Nationalism- Secularism (18th lawsuit)

The request by a parent of 4th grade student for an exemption from religious lessons and cancellation of the administrative action t has been approved by the State Council.

2007- Direction (19th lawsuit)

The request by the Union for cancellation of the cancellation transaction of the practice to give teachers a discretion right in students' term mark has been rejected.

2008- Atatürk R.P. and Atatürk Nationality- Secularism (20th lawsuit)

The request for suspension of execution about removing the obligation to have an "Atatürk corner" through the regulations on private schools under Ministry of National Education has been recognized.

2009- Parent-school cooperation (21th lawsuit)

In the lawsuit opened for unpaid debts, the Court of Cassation has stated that the association is counterparty in the case according to the contract signed by the counterparts because the hostility at issue is related to demand of debts and reversed the ruling of trial court.

2009- Parent-school cooperation (22th lawsuit)

Since the circulars at issue have been posted to make regulations related to practices of corporate taxes about hiring out the canteens, open areas, lounges and so on at schools and institutions to third parties by parent-school associations, and thus, as it is not compatible in terms of the subject matter to impose obligations in these circulars for those who hire the above-mentioned places about value-added-tax which contains rules that have completely different payment ways, rules about obligations and levying and accruings, the second, third and fourth sections of the third chapter with the title of "Hiring out the canteens, open areas, lounges and so on at schools and institutions to third parties by parent-school associations" in the Circulars on Corporation Income Taxes with serial number 11 have been rescinded.

2009- Planning (24th lawsuit)

Bill of review of the administration has been accepted and the ruling which was appealed by the administration on reversal by administrative court of the dismissal of the qualified instructor by the school administration because of his/her maladaptive behaviours and inefficacy has been reversed by the State Council on account of the fact that the information and documents within the file were sufficient to evaluate the situation of complainant.

4. DISCUSSION and RESULT

The creation of shared values in education across the world began especially after the French Revolution, and later, the Universal Declaration of Human Rights which was adopted by United Nations in 1948 and accepted by the council of ministers of the Republic of Turkey in 1949 has also been the basis of many regulations. Declaration on the Rights of the Child has also been considered in our country, but there are criticisms that the practice is poor (Tural and Karatürk, 1991). Another determinant for educational policy is the constitution, and it is important that the constitution should be consistent and stable. The constitutions that came into force in our country in 1960 and 1982 focused on different aspects of education. While the constitution of 1961 focused on the goals of the priorities of planned development and on the supremacy of the individuals, the 1982 constitution focused on the sanctity of

the state (Tanor, 1999). There are considerations that they differ in terms of secularism. It is believed that Kemalist secularism was combined with the Islamic laicism understanding after the 1982 Constitution (Kaplan, 1999). Basic principles of Turkish national education are among the most important legal regulations that guide the history of education in our country, and our study is based on the opinions on these principles and the reflections of these principles on legislation.

The process of legislating the Fundamental Principles of Turkish National Education, additions, and amendments can be followed from TBMM Library and Archive pages. Congresses of debates about relative principles appear to occupy long working hours and mostly have profound and hard discussions.

Although legislating period was completed in profound discussions; the principles have remained in force through all government-powers since 1973. Twenty six governments, from the 36th to the 61st, worked from 1973 legislation year to 2013 (T.C. Premiership). During the debates in the congresses (TBMM) in 1983, 1997, 2004, and 2009, there appears some additions and changes in some parts of the principles. Eventually, the principles have become a point of criticism and discussion not only in congresses but also in the publications of educational unions and researchers during their practice. In addition, several individuals and organizations have brought lawsuits on the grounds of the principles since the legislation year.

On the other hand, there appears no planning on what methods or techniques will be used to practice principles and supervise the congresses and government programmes (Kaplan, 2002). No system has been developed to assess and evaluate the extend of realization of the principles. Because of these two problems, both the principles themselves and implementation process bring about profound discussions. Discussions on the principles underlying the coursebook writing process can prove that. The coursebooks are criticized that they are problematic in terms of human rights awareness, sardonic to other religions and races, including gender apartheid expressions, not valuing personal liberties, marginalising, ultranationalistic i.e. constantly talk about a potential enemy, glorifying death, and including military nation points, which necessitates a mentality reform (Irzik, 2007).

Even though the principles lead positive expectations in many aspects, researchers emphasize on the troubles in practice.

Although the "principle of generality and equality" of the basic law of national education sets forth that "... no privilege can be granted to any person, family, party or class in education ...", it is believed that this has never been fully realized. It is argued that in practice, the education imbalance between men and women has yet to be solved, that equal socio-economic conditions cannot be achieved at the entrance to the university, and that everyone can not benefit from private schools established through privatization, and thus the generality and equality remain "unrealized". It is believed that "the needs of the individual and the society principle" has not been realized because of giving weight on the policy of privatization in education and insufficient efforts in realizing non-formal education through television. It can be said that the technological accumulation produced by the economical infrastructure of the state has to be transferred to the educational institutions in order to put the "scientific principle" into practice. However, it is stated that the economic breakthrough mentioned in every term of governments and in every Five-Year Development Plans has never been realized and that the place of our country in world science is far behind. It is argued that the principle of "designed" cannot be realized, because there is an accumulation of human-source in many fields of profession while some branches are in need of qualified human power in large quantities (Akdağ, 2001).

The principle of "Nationalism", on the other hand, is one of the determinants of the modernization process of Turkey. Nationalist education concept in the Basic Law of National Education consolidates the fact that the state is the only determining power in the field of education, and provides a basis for the creation of policies appropriate for the centralized structure of the education system. The coursebooks function as one of the application tools of the nationalism principle. The dream of a "monolithic nation vision" and "a classless, non-privileged, united mass" was thought to be possible with the creation of nationalist individuals by the educational institutions (Turgut, 2012). According to Althusser, the most influential institution among the ideological apparatuses is the schools (Althusser, 1991). The principle of nationalism has a strong and widespread basis because it originates from the nationalist ideology, and it can be said that the goals of this principle have been achieved on a large scale, but it is not the case for the other educational principles.

The "Democracy Education" principle included in the Basic Principles of National Education aims to give democracy consciousness to the students. The functioning of the education system depends largely on the teachers who have adapted the system and make contributions to it. Teachers should also be able to have democratic relations within the school in order to pass this consciousness to the students. That managers are warmer to sharing rather than taking over the control might be the idea underlying the participatory management approach, which is often mentioned by teachers and is an important criterion. It can be predicted that the teachers will not be satisfied with the implementation process and the results of the decisions made not jointly but despite them. It can be said that the administrators who make teachers part of the process, and who do not see themselves as bosses in the teacher-manager relationship, but instead adopt the understanding of seeing them as partners or stakeholders and focus on producing collaborative solutions will make the teachers' tasks quite easier (Yılmaz ve Beycioğlu, 2017).

It is important that the teachers should be effective in decision-making and in practice for the application of the principles and the development of measurement tools. The realization of educational principles and the supervision of the results require teachers' efforts and views. Teachers' efforts to improve themselves should be supported. Studies have shown that teachers are interested in in-service training, but they could not benefit from it as much as they wish. Teachers complain that although the Ministry of Education asks their views while in-education plans are being made, later when the programmes are being planned, their views are not taken (Arslan, 2015).

It is obvious that the principle of equity has a significant role in utilizing education. Researches point out that educational reforms cannot have an impact on the success rate of students from different social-economic classes. Despite having not a full equality in educational benefits, it is declared that "equality in utilizing education" composes the undefeasible dimension of the concept and expanding the opportunities in adult life should continue to be major objectives of the equity ideal (Tan, 1987).

Throughout the history of the Republic, governments have shown great similarities in general-universal principles in their educational policies. Moreover, compliance with the Development Plans has been taken base as principle. However, it can be seen that the plan objectives could not be realized in practice. It can be said that many basic policies which have been repeated by the successive governments is the cause for it. This situation reveals the outcome that education problems have yet to be solved, and it is reflected in the Government policies as "repetitions" (Akdağ, 2001). These repetitions are also seen in the national education councils. Furthermore, the decline of the share of investment for education in the budgets is another point of criticism. While its share within the general budget investments increased up to 38.4% in the 1960s, it was reduced to 9.6 % in the 1980s (Baloğlu, 1995, p.49). The downward trend in the investment share has continued, and it has declared to be 8% for 2018.

Reforms for educational democratization made in various years are stated to have been legalized by basic law of national education legislated in 1973 thereunder the Third 5-Year Development Plan. In that point the law seems to be modern, but it is claimed that dissemination and qualitative outcomes by democratic education have become possible yet though the system has democratic method supporters and qualified educators (Dülger, no date).

There are criticisms that there is no planning or continuity but subjectivity in determining the educational policies of the country. There are also arguments that the inequalities in facilities and opportunity determined by income distribution imbalances continue to exist due to the dependent economical structure, the level of quality and quantity of general education has gradually been decreasing, the number of the students who has failed to enter university has continually been increasing, the dilemma and divergence between general and vocational technical education keep existing, inadequacy-inequality in schooling and teacher distribution continues to grow, measures taken in the teachers' training policy are artificial, and private education further deepens the social contradictions (Akdağ, 2001). In addition to these macro evaluations and criticisms, our research is based on the view that the lawsuits by various institutions and individuals at the level of the National Education Basic Principles are each a criticism.

Verdicts of the State Council show frequent reversals for lawsuits to be reviewed. There also appears vagueness about the principles that they were likely to be influenced by different political features of different years. Though it is possible to control principles like right to education over quantitative data, there is no clear or certain tool to implement or control the principles like Nationalism and Secularism. This situation results in bringing this subject to trial. The research points out that administrative and high courts may have different opinions or comments on the subject. In conclusion, legislative, executive and judicial powers can not maintain a common position about the definitions of principles or the way they are executed.

It is seen in Constitutions and Laws that raising individuals in accordance with universal measures and values has been the basic objective. The objectives stated in the Basic Law of National Education are expressed on the basis of Atatürk's Principles and Revolutions. So, it can be said that despite the qualitative differences of the practices in the field of education, the principle of sticking to Atatürk's principles and reforms have always found place for itself in the agenda. Since the basic principles were passed on 14th.06.1973, 29 governments between the 36th and 65th governments and 29 Ministers of Education have served, and except for the changes mentioned above, the principles have been preserved with their basic features.

Parliamentary minutes since 1973 when the fundamental principles of National education were legislated have been examined for additions and amendments on the law. The congresses when the principles were legislated and amended took long working hours and occurred with intensive discussions. It is found that amendments were accepted by direct voting without any objections only in the records of 1983.

The research initially started with an information demand from legal consultancy department of Ministry of National Education but the department stated that they didn't keep records about the lawsuits, thus, wouldn't be able to give information.

There are difficulties in following the lawsuits on the grounds of principles from the pages of the State Council. In January in 2013, a direct search with related articles was made possible but later on they became unavailable by some changes in the website. When it was available, not all cases were

included, though. Kazancı İhtihat pages that were used by lawyers made it possible to continue the research. The two websites are basic and reliable sources on this topic.

The Fundamental Principles and Basic Law of National Education is not found to have been a research topic as a whole before. Therefore, research on the implementation and law itself will provide an opportunity to trace our educational history and evaluation of educational policies.

Occasional additions and amendments on the principles are found to occur in congresses. The continuous search in national education policies results in instability. It can be concluded that due to the lack of a non-political mechanism, insufficient practices and the decisions made for short-term objectives, we are getting further away from the planned goals rather than accomplishing them. Controversial congresses during legislation periods and that it has become a matter in dispute in the courts on person and institutions' sides with its current forms suggest it is a research area. The principles, their implementation, social context influencing and influenced by, changes in principles are all special to the researchers as each an individual field. Educational commissions to be established need to study on definitions, implementation methods and realization assessment tools.

REFERENCES

- Althusser, L. (1991). *İdeoloji ve devletin ideolojik aygıtları*. (Çev. Y.Alp ve M. Özışık). İstanbul: İletişim.
- Arslan, M. (2015). Türkiye milli eğitim sistemindeki değişimler ışığında “hizmet içi eğitim”. İstanbul Aydın Üniversitesi SBE Yayınlanmamış YL Tezi. İstanbul.
- Aydın, M. (1994). *Eğitim yönetimi*. (4. Baskı). Ankara: Hatipoğlu.
- Danıştay. (n.d.). Emsal karar sorgulama. Retrived May, 12, 2012, from www.danistay.gov.tr
- Dülger, İ. (n.d.). Eğitim ana planı: 1996-2011 Bütünleştirilmiş bir reform stratejisini uygulamaya aktarma düzeni. Planlama Dergisi. Retrieved May, 7, 2012, from <http://ekutup.dpt.gov.tr/planlama/42nciyil/dulgeri.pdf>.
- Erdoğan, İ. (2011). *Milli eğitime dair*. (2. Baskı). Ankara: Nobel.
- Erkılıç, T.A. ve Dilbaz, E. (2017).Partilerin bildirgelerinde eğitim yönetimi denetimi ve ekonomisine ilişkin görüşleri. *Anadolu Üniversitesi Eğitim Fakültesi Dergisi (AUJEF)*, 1(2), 1-25.
- Gutek, G. L. (2001). *Eğitime felsefi ve ideolojik yaklaşımlar*. Ankara: Ütopya.
- Hesapçioğlu, M. (1998). *Öğretim ilke ve yöntemleri*. İstanbul: Beta.
- Hesapçioğlu, M. (2004, 30 Nisan). Eğitim nedir?. Cumhuriyet, s. 2.
- İrızık, G. (2007). *Eğitim sistemimizin zihniyet sorunları cumhuriyet, eğitim reformu ve Dewey*. İstanbul: Creative.
- Kaplan, İ. (1999). *Türkiye’de milli eğitim ideolojisi ve siyasal toplumsallaşma üzerinde etkisi*. (2. Baskı). İstanbul: İletişim.
- Kaplan, İ. (2002). *Türkiye’de milli eğitim ideolojisi*. İstanbul: İletişim.
- Kazancı İçtihat Bankası. (n.d). İçtihat bankası. Retrieved October 9, 2013, from <http://www.kazanci.com/kho2/ibb/giris.htm>.
- Kenan, S. (2005). *21. Yüzyılda Türkiye’de öğretmen olmak*. Retrieved November 15, 2013, from <http://goo.gl/QDF2OV>.
- Kenan, S. (2013). Türk eğitim düşüncesi ve deneyiminin dönüm noktaları üzerine bir çözümleme. *Osmanlı Araştırmaları Dergisi*, 41, 1-31.
- MEB Mevzuat. (1973). *Milli eğitim temel kanunu*. Retrieved May 5, 2000, from <http://mevzuat.meb.gov.tr/html/88.html>.
- T.C. Başbakanlık. (n.d.). *Türkiye cumhuriyeti hükümetleri*. Retrieved September 15, 2013, from <http://www.basbakanlik.gov.tr/Forms/pCabinetRoot.aspx>.
- Tan, M. (1987). Eğitsel fırsat eşitliği. *Ankara Üniversitesi Eğitim Bilimleri Fakültesi Dergisi*, 20, 68-89.
- Tanör, B. (1999). *Osmanlı Türk anayasal gelişmeleri*. 4.Baskı, Yapı Kredi: İstanbul.
- TBMM. (n.d.). *Cumhuriyet dönemi meclisleri genel kurul tutanakları*. Retrieved August 14, 2013, from http://www.tbmm.gov.tr/kutuphane/tutanak_sorgu.html.
- Tural, N. ve Karatürk, K. (1991). Eğitim politikası. *Eğitim ve Bilim Dergisi*, 15, 82: 16-24.
- Turğut, S.(2012), Cumhuriyet dönemi Türk modernleşmesi bağlamında milli eğitim ideolojisi ve öğretmen. Ege üniversitesi SBE. Yayınlanmamış YL tezi. İzmir.
- Yılmaz, A. İ. ve Beycioğlu, K. (2017). Okullardaki bürokratik yapıya ilişkin öğretmen görüşleri. *Anadolu Üniversitesi Eğitim Fakültesi Dergisi (AUJEF)*, 1(2),1-23.