

EVALUATION OF TURKISH JUVENILE CRIMINAL LAW IN THE CONTEXT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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Türkiye has ratified many international conventions regarding child rights and has regulated most, if not all, situations on the subject by law. However, it is obvious that there are many incomplete legal regulations and that the State does not fulfill many of its duties in daily life. Children cannot be adequately protected due to the statistical studies conducted in this field, the scandalous cases reported almost every week, and the negligence of official institutions in their duties. Many children are killed, severe acts of violence are committed against children by parents and teachers, both at home and in schools, children are subjected to sexual abuse at home and at school, in dormitories or nurseries, and the ages of the victim children are often very low. In addition, significant violations include the use of narcotics at very young ages, the abduction of children from their parents or siblings to prevent contact, the neglect of compulsory medical examinations and vaccinations, the failure to find missing children, and the failure to protect children involved in crimes, whether perpetrators or victims. In Türkiye, these violations against children preoccupy national courts and also supranational courts, and the number of cases is increasing day by day.

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1 Introduction

In order to accurately identify the developments and problems in this regard, it is necessary to look not only at legal regulations, but also at international agreements and legal policies of supranational institutions.

According to Article 10 of the International Covenant on Economic, Social and Cultural Rights¹ (ICESCR); States parties to the ICESCR shall provide the broadest possible protection and assistance to children while they remain responsible for their care and education. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment at work is harmful to their morals or health, or dangerous to life or likely to hamper their normal development, and should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law. Child labor is a violation of fundamental children's rights and a serious threat to children's health, education, development, and well-being. TURKSTAT Official Statistics show that at least 720 thousand children, that is, 4.4% of the child population, are working in Türkiye. Approximately half (45.5%) of working children, including those working on the streets, are in the service sector. 30.8% work in agriculture. 23.7% work in industrial manufacturing, especially in small and medium-sized businesses. Various studies show that child labor is also common among refugees. The leading causes of child labor in Türkiye include child poverty, deficiencies in social protection, and the informal economy. Approximately one-third (30%) of employment in Turkey is in the informal sector, and therefore, ensuring full compliance with children's rights is not easy.

According to Article 3 of the UN Convention on the Rights of the Child² (CRC) of 20 November 1989, the best interests of the child shall be the primary consideration in all activities concerning children carried out by public or private social welfare

¹ International Covenant on Economic, Social And Cultural Rights (ICESCR), General Assembly resolution 2200A (XXI), 16 December 1966 Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed: 29 July 2025).

² Convention on the Rights of the Child (CRC), General Assembly resolution 44/25, 20 November 1989. Retrieved from: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed: 29 July 2025).

institutions, courts, administrative authorities or legislative bodies. On the other hand, according to Article 14 of the Council of Europe Convention on Biomedicine³ (Oviedo Convention), the use of artificial insemination techniques to select the sex of the unborn child will be avoided, except in the case of preventing a severe hereditary disorder related to sex. However, in legal regulations, the welfare of children is generally not taken into account as a priority, and no legal regulation has been made to prohibit the misuse of artificial fertilization methods and tools to determine the sex of children selectively. There is also a problem in putting the relevant rules into practice. For example, in addition, although there is no medical necessity in Türkiye, boys are circumcised due to the religious beliefs and wishes of their families. Although there is no treatment in Türkiye, it is problematic to take heel-prick blood from newborn babies to diagnose genetic diseases. Although there is no medical necessity in Türkiye, vaccinating children is problematic.

In addition, Article 6 of the CRC contains the following regulation:

"(1) States Parties recognize that every child has the inherent right to life. (2) States Parties shall ensure to the maximum extent possible the survival and development of the child."

However, in daily life, in multiple pregnancies, after the legal abortion period has passed, other fetuses, other than the selected fetus are curetted in the womb, contrary to the law. Although this is a crime, the judicial authorities are not interested in the issue. Likewise, Türkiye has made a reservation to Article 20 of the Oviedo Convention, based on the erroneous article in the old Article 5 of the organ transplantation law dated 1979. For this reason, those under the age of eighteen cannot donate organs or tissues to save the life of their siblings. This ban causes many children to die because organ or tissue transplantation cannot be performed. There is no legal basis for bone marrow transplantation between younger siblings, and it is done illegally. On the other hand, contrary to the second paragraph of Article 20 and Article 18 of the Oviedo Convention, there is no provision prohibiting experimentation on embryos in Türkiye. Although this behavior was intended to be prohibited by a regulation dated 2011, this approach does not provide any protection against the obligation that prohibitions on human rights (such as

³ Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (ETS No. 164) (Oviedo Convention). Retrieved from: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=164> (28 July 2025).

Freedom of Science and Art) should be made only by law, according to Article 13 of the Turkish Constitution.⁴

2 Turkish Criminal Procedure Code

Article 12 of the CRC introduced the following regulation:

"(1) States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

This provision is regulated under Turkish law, specifically in the Turkish Criminal Procedure Code (T - CPC).⁵ It states that individuals who, due to their young age, mental illness, or intellectual disability, are not capable of understanding the significance of the right to refrain from testifying, may be heard as witnesses only with the consent of their legal representatives. If the legal representative is a suspect or a defendant, he cannot decide whether these persons should refrain (T – CPC, Article 45(2)).

3 Turkish Criminal Code

Although specific provisions of the international agreements mentioned above are compatible with domestic Turkish law, others are not. The following section will first outline the relevant articles of the Turkish Penal Code⁶ (T – PC), followed by a discussion of recent examples of their implementation in practice.

Children who were under the age of twelve at the time of committing the act have no criminal liability. They will not be punished, but child-specific safety measures may be applied. Those children who were twelve years old but not fifteen years old

⁴ Constitution of the Republic of Turkey, retrieved from: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf (accessed: 28 July 2025).

⁵ Turkish Criminal Procedure Code (T - CPC) (Ceza Muhkemesikanunu). Retrieved from: https://sherloc.unodc.org/cld/uploads/res/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf (accessed: 27 July 2025).

⁶ Turkish Penal Code (T – PC) (Türk Ceza Kanunu). Retrieved from: <https://www.wipo.int/wipolex/en/legislation/details/15936> (accessed: 27 July 2025).

at the time of committing the act cannot be punished if they cannot perceive the legal meaning and consequences of the act they committed, or if their ability to direct their behavior is not sufficiently developed. However, safety precautions specific to these children are applied. If the person has the ability to perceive the legal meaning and consequences of the act he has committed and to direct his behavior in relation to this act, the penalties to be given to these people will be mitigated to a certain extent. The penalties imposed on people who were fifteen years old at the time of the crime but not eighteen years old are reduced more than the above (T - PC, Article 31).

4 Child Protection Law

A person who has not reached the age of eighteen is a child, even if they become an adult at an earlier age. The investigation about the child is carried out personally by the public prosecutor in charge of the juvenile office. A social worker may be present with the child during the taking of the child's statement or other procedures regarding the child. When deemed necessary, the public prosecutor may request the juvenile judge to implement protective and supportive measures for the child (Child Protection law⁷, Article 3/1-a and 15). Detained children are kept in the juvenile unit of the police. Where the police do not have a children's unit, children are kept separately from detained adults (Article 16).

If children commit crimes together with adults, investigation and prosecution are carried out separately. In this case, although the necessary precautions are taken for the children, if the court deems it necessary, it may suspend the trial of the child until the outcome of the case in the general court. If it is deemed necessary for the cases to be carried out together, a decision to join them may be made in the general courts at any stage of the trial, provided that the courts find it appropriate. In this case, the combined cases are heard in general courts (Child Protection law, Article 17). Chains, handcuffs, and similar devices cannot be placed on children. However, in cases of necessity, law enforcement can take the necessary precautions to prevent the child from escaping and any danger that may arise to the life or physical integrity of the child or others. (Article 18) An arrest warrant cannot be issued for children under the age of fifteen for acts that require a prison sentence not exceeding five years

⁷ Child Protection Law (T- CPL), retrieved from: <https://www.lawsturkey.com/law/juvenile-protection-law-5395> (accessed: 27 July 2025).

(Child Protection law, Article 21). The juvenile court consists of a single judge. There is no public prosecutor present at hearings held in juvenile courts. In juvenile high criminal courts, there is a president and sufficient members, and the court convenes with a president and two members (Child Protection law, Article 25). Appointments are made to the courts, preferably among judges and public prosecutors who specialize in child law and are trained in child psychology and social work. In these appointments, priority is given to those who are willing and those who have previously held these positions (Child Protection law, Article 28).

There are serious problems in surrendering the child and establishing a personal relationship with the child, and parents resort to violence, child abduction, or acts of violence. Both parties commit crimes with a sense of revenge against each other during or after the divorce case or during the separation decision process, and use their children as weapons. The child is worn out mentally and physically. Parents who forget their duties towards their children create various injustices by taking advantage of the poor functioning of the judicial authorities and seeing the child as property that belongs only to them. In order to prevent these abuses, laws are constantly changing, and by protecting the rights of the child, efforts are made to both protect the child and establish a relationship between the parent and the child. Both laws and actual practices are inadequate, and the child is constantly harmed throughout this process. The fact that divorce cases last for decades leads to many crimes being committed against both the child and the parents, and many other damages to the parents' private lives. With the latest Article 39 of the law numbered 7343 dated 24.11.2021, an addition to the T - CPL (such as Articles 41A and 41D) was made, and the emergence of new problems was tried to be suppressed to a certain extent. The important part of this new law can be summarized as follows:

»Decisions or injunctions issued by family courts regarding the delivery of a child or establishing a personal relationship with a child are carried out in accordance with the provisions of this Part by the legal support and victim services directorates established by the Ministry of Justice, based on the best interests of the child. In order to carry out the judgments and precautionary decisions, upon the request of the directorate, a list of officials is created by the governorships, including the experts specified in the fifth paragraph, working in public institutions and organizations. If these experts are not available in sufficient numbers, teachers are also included in the list (Child Protection Law Article 41 / A). Procedures regarding the execution of writs or injunctions regarding the delivery of a child and establishing personal contact with the child are carried out in the delivery places determined by the directorate. For delivery procedures, upon the request of the directorate, governorships and municipalities determine suitable delivery locations, or they are created; The vehicle is allocated and the driver is assigned. Public institutions and organizations and municipalities are obliged to provide all kinds of support to the directorate

in determining, creating and furnishing delivery venues, ensuring the security of these venues and providing delivery services (Child Protection Law Article 41 / D).

5 Examples from Judicial Practices

Children's rights are violated in Türkiye on the issues mentioned above, not rarely, but very often. Almost every week, we witness another case in which the State not only fails to protect children (and women) adequately, but also fails to bring to light the case after the crimes are committed, and the perpetrators are not punished appropriately. Below, just the end Examples are shown of events that took place over a few years and that we became aware of mostly through the extraordinary efforts of the media.

5.1 Narin Güran Incident

The murder case of 8-year-old Narin Güran, who disappeared from the village where she lived with her family on 21 August, 2024 in Diyarbakır, and whose lifeless body was found 19 days later, was concluded about a month ago. There are many ambiguities, contradictions, and gaps in the final decision and its justification. The defendants filed an appeal against the decision. The lower court will conduct a re-examination. Although the dead child's mother, older brother, uncle, and a person they knew from the village were found guilty, it was not clear why and by whom the child was killed, and who helped. In addition to a series of forensic and police errors, social factors, the silence of all village people, many political discourses and statements in the press prevented the cause and main perpetrators of the incident from being revealed. Only the body was not found for about a month, even though it was a few kilometers away from where the child was killed and was searched with many tools and methods. By the time the body was discovered floating on the surface of the water, several weeks later, most of the evidence had already been lost. During the months-long investigation, many evidence investigations were not carried out or were carried out so late that nothing could be found. Tragically, during the course of the investigation, numerous other suspicious child deaths, within the same family and in the same village, were discovered by chance. Despite the passage of time, no tangible evidence was uncovered, and the suspicions of murder could not be conclusively ruled out.⁸

⁸ Merkezi, 2025.

5.2 Baby Sila Incident

A 2-year-old baby named Sila, who was sexually abused in Tekirdağ, died. Baby named Sila was raped and beaten many times. The baby's mother stated that she understood sexual abuse from her baby's diaper, but kept silent so that no one would find out. The abuse was discovered at the hospital. Five persons, including the baby's mother, were arrested regarding the incident. Mother B.Y., who lives in Malkara district, stated that her daughter Sila did not wake up and she took her to Malkara State Hospital. During the examination, the baby was taken to Tekirdağ Dr. with a diagnosis of brain hemorrhage and suspected sexual abuse. The police were informed. The baby was taken to intensive care and intubated after brain surgery. Within the scope of the investigation, B.Y. (Sila's mother), her cohabiting partner S.Ö., and their neighbors K.A., his 13-year-old son K.A., and 14-year-old G.K were taken into custody. The suspects were subsequently placed under arrest by a judicial order.⁹ K.A., the father of K.A., one of the children dragged into crime. After the detention review process, he was released on condition of judicial control by the Criminal Court of Peace. Sila baby's 5-year-old brother A.Y. was also taken under state protection. Tekirdağ Bar Association President Gürcün stated that it was determined by the forensic medicine report that the 2-year-old baby girl, who was brought to the hospital due to assault and treated in intensive care, was sexually abused. Baby Sila was kept under treatment for a month at Tekirdağ Dr. İsmail Fehmi Cumaloğlu died at City Hospital on 7 October, 2024.¹⁰

In the concrete incident, a lawsuit was filed against the mother B.Y. for the crimes of "Failure to Report the Crime", "Intentional Homicide through Negligence", "Destroying, Concealing and Altering Criminal Evidence". A lawsuit was filed also against S.Ö., the mothers's cohabiting partner, for "Failure to Report the Crime". An indictment was issued against neighbor K.A. for the crimes of "Qualified Sexual Abuse" and "Depriving a Child of Liberty for Sexual Purposes by Using Force".¹¹ The father of the baby, who was arrested after the incident, was found dead in the prison where he was held. It was claimed that the arrested father committed suicide in prison.¹²

⁹ Sputnik Türkiye, 2024.

¹⁰ Kadem, 2024.

¹¹ Merkezi, 2024.

¹² Köklü, 2024.

5.3 The Rape of a Nine-Month-Old Baby by the Father

Türkiye mourned baby Sila, who lost her life due to sexual abuse, as another case of abuse news emerged. According to media reports, a mother and father in Çerkezköy district of Tekirdağ were arrested for allegedly sexually abusing their 9-month-old baby. It was learned that this incident came to light when the mother shared the video recording of the harassment by the person she lived with. According to media reports, a mother in Veliköy District shared a video recording of her 9-month-old baby. When it was reported to the police that a person sexually abused her 9-month-old baby, the Çerkezköy Chief Public Prosecutor's Office launched an investigation into the incident. The baby's mother and father were detained as suspects.¹³

5.4 Newborn Babies Care Center - Newborn Crime Gang Case

In the indictment prepared against 47 defendants, 22 of whom are detained (including five doctors, three nurses, five healthcare workers), who allegedly acted together with people working at the 112 Emergency Call Center in Istanbul, referred baby emergency patients to the neonatal units of private hospitals with which they had previously agreed, causing their deaths and making unfair profits.¹⁴ The trial regarding the "newborn gang", which is described as the most significant health scandal seen in Türkiye recently, started on 18 November, 2024, in Istanbul. On 3 December, the court issued an arrest warrant for 10 more defendants. Thus, the number of detained defendants increased to 32.¹⁵ Istanbul Financial Crimes Fighting Branch Directorate teams, in the operation carried out within the scope of the investigation carried out under the coordination of Büyükçekmece Chief Public Prosecutor's Office, for the crimes of "establishing an organization for the purpose of committing a crime", "qualified fraud", "bribery", "committing intentional murder with negligent behavior" and "forgery of official documents". Doctor İ.G., one of the defendants in the Newborn Gang case, committed suicide by cutting his wrists in the prison where he was detained.¹⁶ The case is still pending.

¹³ Haberler.com, 2024.

¹⁴ BBC News Türkçe, 2024a.

¹⁵ BBC News Türkçe, 2024b.

¹⁶ Merkezi, 2025.

5.5 The Case of a Young Child's Death due to Drug Use

A 15-year-old boy was found dead in an abandoned building in Arnavutköy, Istanbul. One of the three people detained regarding the death of the child, whose grave was opened and an autopsy was performed, was arrested. According to the information obtained, 15-year-old Ş.G. left home by taking pocket money from his father. Witnesses reported that certain individuals provided him with drugs and subsequently left him in an abandoned building when he fell ill. One of the suspects, T.A., took Ş.G. to his house to bathe him after he fell sick. When Ş.G. could not be awakened, T.A. and another friend, U.D., brought him to the front of an abandoned building. Although they alerted medical teams, first aid was administered at the scene.

Ş.G., who was taken to the hospital, could not be saved and died. Residents of the neighborhood stated that there has been an increase in young people using drugs recently in the area where the incident took place, and asked for help from the official authorities. The father of the dead child, Ş.G.,¹⁷ stated that on the day of the incident, after taking 400 TL from him, his son was taken to someone else's house, where the owner of the house and his two friends made his son drink drugs, and after his son was forced to consume drugs, he was thrown onto the street by his friends and left to die. After the child's body was buried, his father suspected something and applied to the prosecutor's office again. Thereupon, the prosecutor's office decided to exhume the body again and perform an autopsy. The judicial process is still ongoing.

When this is evaluated together with the findings that drug use has decreased to very young ages in Türkiye in recent years and has become very widespread among students in middle school or high school, it reveals that the problem has reached a much more serious level. According to studies conducted among young people in Türkiye, the reported lifetime prevalence rates are approximately 4% for marijuana use, 4% for volatile substance use, and between 2% and 2.5% for Ecstasy use. Substance addiction in children and young people, usually between the ages of 12 and 18, and experimenting with alcohol or other substances increases with age.¹⁸ In addition, the following data taken from different sources will help to understand the

¹⁷ İstanbul Ses Gazetesi, 2024; Milliyet, 2020.

¹⁸ NP İstanbul Hastanesi, n.d.

problem better. According to the Türkiye Drug Report published by the Ministry of Internal Affairs in 2007, it was determined that the age of first use for inhalants was 11. For marijuana and ecstasy, the average age of first use was 16 and 17, respectively. In a study conducted among high school students, the rate of alcohol use in the past 12 months was found to be 35%, marijuana use 3%, volatile substance use 2%, and use of other substances 1%. In a study conducted 21 years ago in 2004 by another research group and with the participation of 3.483 high school students in the Istanbul sample, the prevalence of substance use among students was: 5.9% for volatile substances, 5.8% for marijuana, 4.4% for flunitrazepam, 3.7% for benzodiazepines, ecstasy 3.1% and 1.6% for heroin. According to the results of the report published by the Türkiye Drug and Drug Addiction Monitoring Center (TUBİM) in 2013, the rate of those who tried any drug, including marijuana, at least once (lifetime prevalence of substance use) was found to be 1.5% in the 15-16 age group. While the report does not provide new data on drug use in schools and among the young population, it is stated that only 5% to 8% of problematic drug users in Türkiye can access treatment and receive inpatient treatment. In another study conducted by a different group in 2006, it was determined that 86.9% of the children who applied to the addiction center were polysubstance users.¹⁹

5.6 Case of Violence Involving Teachers or Peers

Research results looking at the prevalence of peer bullying show that the rate of students who bully peers varies between 1% and 49.5%, the rate of students who are bullied varies between 5.5% and 56.5%, and the rate of students who both bully and are exposed to bullying varies between 1% and 10.34%. Teachers also widely use violence against students, and judicial and administrative authorities cover up the incident and generally do not punish the perpetrators.²⁰ Violence between peers appears in four different ways: physical, verbal, social, and cyber. These examples show that the duty assigned to the State regarding the protection of children from violence in Articles 6, 12, 15, 19, 26, 28, and 29 of the United Nations CRC has not been adequately fulfilled.

¹⁹ Baysan, Arabaci & Dikec, 2017, pp. 136-137.

²⁰ IMDAT, 2021, p. 11, 31.

5.7 Incidents Where People Were Killed and Their Bodies Destroyed After Sexual Assault

Similar events are encountered several times every week in the Turkish press. What is most concerning is that judicial authorities and the general public view see these cases as a reflection of growing societal desensitization and apathy. Because such incidents occur frequently and are often left unresolved, they become part of the so-called 'black numbers' of crime. These are cases that are never fully brought to light or officially recorded: 1.5-year-old E., whose body was found dismembered in a forested area; 6-year-old M., who his mother killed because she found out about his forbidden love; 8-year-old A., who went out to collect candy during Ramadan Feast and was killed after sexual abuse by her neighbors; siblings and their friends, who have not been found for 6 years; Miraç Çiçek, who has not been found for 4 years, and many others. How do these children disappear?²¹

Data on the causes of death of 2,467 children, excluding the 178 missing children featured on the news sites in question between 2005 and 2019, are as follows: additionally, according to the research conducted by experts on various press news, 2,645 child death news were reported between 2005 and 2019. According to media reports in Türkiye between 2005 and 2019, 30.0% of the dead or missing children were between the ages of 12 and 18; 49.3% were boys, and the majority (24.2%) died due to neglect. It was determined that the highest number of children's deaths occurred in 2018. Of 2,467 causes of child death in the year in question, regardless of age, the most common cause of death in the general group is neglect, followed by drowning and traffic accidents. In childhood deaths in Türkiye, the number of studies based on quantitative data on cases where the cause of death cannot be determined is insufficient. According to limited research, deaths between the ages of 0-1 in Türkiye are mostly due to pathological causes (74.0%), followed by murder (13.0%), accidents (9.0%), and negligence (2.0%). The majority of deaths between the ages of 1-7 occur due to accidents (71.0%), followed by pathological causes (17.0%). For example, according to a study conducted in the eastern region of the country (Elazığ province), 95 of 178 forensic cases (53.3%) were male, 83 of them were male, in a study examining forensic death cases between the ages of 0-18 that occurred in Elazığ and its surroundings between 2001 and 2007 (46.6%) are girls.

²¹ Hurriyet, 2024.

92.1% of these cases occurred due to unnatural causes of death. When the reasons in question are examined, the first place is accident (64.6%), the second place is suicide (18.5%), and the third place is murder (8.4%). The majority of children who died between 2005 and 2019 (24.2%) were due to negligence (neglect due to children's access to weapons; deprivation of basic needs such as shelter and access to food; mandatory checks by authorities such as manholes that need to be closed or doors that are not firmly mounted, etc. accidents outside the home, preventable domestic accidents, traffic accidents caused by children driving, followed by drowning (15.95%) and traffic accidents. It was observed that it was followed by an accident (12.9%). 6.7% (n=178) of these children are missing children.²²

5.8 Vaccine Rejection Cases

After the COVID-19 pandemic, it seems that the material has become unclear in the drug trial phase, especially among the public in Türkiye, about whether there is a vaccine or not. Since there is no supplement or other option for non-vaccine material, the government has granted emergency use permission to the material that is still in the experimental phase, as if it were a vaccine. This has led people, especially children, to be afraid of getting vaccinated as a result of possible side effects. The vaccines that patients do not want to be examined for are not only COVID-19 or similar diseases, but also treatment interventions taken from the newborn baby's heel for analysis or other childhood vaccines. Apart from the reasons mentioned above, the decrease in the level of education in the society and the incomplete or inaccurate social media information that people have acquired through individual efforts, as well as the lack of trust in vaccine studies, medical standards, relevant institutions and official institutional statements about side effects in Türkiye, have also been factors in people's change in this approach.

The questions people constantly ask on this subject are: should we be suspicious of vaccinations given to children from birth? Not only ordinary citizens, but also doctors and even lawyers are not sufficiently informed about the legal situation regarding compulsory vaccinations or medical interventions given to newborn babies for the purpose of preventing or diagnosing possible diseases. Reasons for vaccine refusal (n=92): i) thinking that the ingredients are harmful (46.7%); ii)

²² Erden et al., 2021, pp. 175 - 177.

inability to pay for paid vaccines (46.7%); iii) religious belief (thinking it is a sin) (22.8%); iv) not believing that the vaccine is helpful/necessary (22.8%); v) fear that other diseases may arise due to vaccines in the future (20.7%); vi) think that vaccines are produced by pharmaceutical companies for financial purposes (14.1%); other (17.4%).²³

A critical issue in this field is the unlawful prevention of heel-prick blood collection from newborns by parents—and in some cases, even by court decisions. Following families who oppose vaccinations, there is a growing trend of parents refusing heel-prick blood tests, which are essential for early diagnosis and treatment, based on beliefs that are entirely disconnected from science or rooted in personal or religious ideologies.²⁴ Although it is necessary and required by law to prevent many risky diseases, parents reject it due to their religious or superstitious views, and despite the explicit legal provision, the courts do not make the necessary decisions quickly and in the legally required manner. Recently, a court, contrary to the express provisions of the law and due to rumors among the public and religious beliefs of a person without scientific medical education, appointed a person as an expert who did not see this medical intervention and blood analysis on site, and the report he received illegally endangered the life of a baby. This decision was not finalized as the ministries of health and family participated in the case as interveners and objected to the court decision in the higher court. Currently, while this case is expected to be completed, the life risk for the baby continues. The case may take time. The court did not ensure medical intervention by issuing an injunction without waiting for the end of the case or by removing the parent's custody (just like in cases where Jehovah's Witnesses do not want blood transfusions to their children). In addition to setting an example of the State's violation of its duty to protect the child, this wrong attitude is contrary to both medical science and domestic law.²⁵ The issue has become a problem so frequently in recent years that several cases have been brought before the Turkish Constitutional Court through the individual appeal law, requiring the Constitutional Court to decide to resolve the issue in accordance with the law.²⁶

²³ Bozkurut, 2014.

²⁴ Ersan, 2023.

²⁵ See Saltik, 2024; Satil, 2023; Haberturk, 2022.

²⁶ Krş. AYM, 19.12.2023, *Uğur Ali Naki Yüreğicalı Başvurusu*, Başvuru No: 2020/22948; AYM, 29.06.2016, *Muhammed Ali Bayram Başvurusu*, Bireysel Başvuru: 2014/4077.

5.9 Cases of Child Abduction or Prevention of Contact Between Parent and Child

Regardless of whether both parents are Turkish citizens or only one of them is a Turkish citizen, when there are domestic problems or one of the spouses files for divorce, one of the frequently used methods is to kidnap the child from the other spouse, hide it, take it abroad, or hide it somewhere else and not show to the other spouse. As a matter of fact, Türkiye has been ruled on numerous occasions by the European Court of Human Rights that the failure of separated parents to have regular contact with their children, the abduction of children, and that this is a violation of both the welfare of the children and the parents' right to contact their children.²⁷

In fact, there are cases where not only the parents have contact with the child, but also the siblings are prevented from seeing each other due to the parents' obstruction and the State's failure to do what is necessary. Türkiye was also convicted on this issue by the European Court of Human Rights.²⁸

However, as the European Court of Human Rights has rightly determined,²⁹ the best interests of the child also include the child's development in a healthy environment. If contact with the family significantly affects the best interests of the child, the State must take measures to protect the child. Despite the State taking the necessary precautions, if a child abduction or children are prevented from meeting with their parents or siblings occurs, the official authorities must do what is required in a short time to solve the problem. In such cases, divorce usually takes many years, and the spouses live or work abroad. The problem should be approached with both criminal law and family law norms, and enforcement law and international law norms should be applied meticulously in order to implement court decisions properly.

²⁷ For some of the many decisions of the European Court of Human Rights against Türkiye, see *Önüş v. Türkiye*, app. no. 42981/04, 13 October 2009; *Anel v. Türkiye*, app. no. 28, 514/04, 17 February 2009; *Eskinazi and Chelouche v. Türkiye*, app. no. 14600/05, 6 December 2005; *Sophia Gudrin Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003; *Cengiz Kılıç v. Türkiye*, app. no. 16192/06, 6 December 2011; *Kuşcuoğlu v. Türkiye*, app. no. 59765/00, 3 November 2011; *Küçük v. Türkiye and Switzerland*, app. no. 33353/06, 17 May 2011; *İlker Ensar Uyanık v. Türkiye*, app. no. 60328/09, 3 May 2012.

²⁸ *Mustafa and Armağan Akin v. Türkiye*, app. no. 32659/06, 6 April 2010; *Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003; Giray, 2015, pp. 173-201.

²⁹ *Hansen v. Türkiye*, app. no. 36141/97, 23 September 2003.

These cases frequently occur outside Türkiye, and the issue is being resolved with the help of international law mechanisms as well as national courts. Many European countries have often been convicted on this issue by the European Court of Human Rights.³⁰ Undoubtedly, the fact that some States neglect their obligations regarding the protection of children is not an excuse for Türkiye or other countries. It is necessary to fight this problem internationally, and states should not act in a biased manner and should always decide in favor of the parent, who is their citizen.

The norms establishing this obligation of protection are aimed at safeguarding the child's welfare and best interests, which must remain a primary consideration.

6 Brief Assessments and Recommendations

Apart from the interim findings mentioned above, while examining the relevant problem, I would also like to touch upon the following problems and suggestions. Although Türkiye has ratified many international conventions and partially made legal regulations, children's rights are not protected in daily life, and many different types of children's rights are violated with increasing violence and number day by day. Without proper implementation and enforcement, international agreements and legal norms fail to function as effective protective laws and amount to nothing more than symbolic declarations, so-called 'paper tigers'. Not only the State, but also family members, especially close relatives, treat the child as an object, and since it is known that legal liability mechanisms do not work, every private or public institution or person contributes to the continuation of the violations and their effects, instead of preventing these violations or punishing the perpetrators. As the Turkish Constitutional Court rightly determined in a decision, part of the child's high interest is the child's development in a healthy environment. If contact with the family significantly affects the child's high interests, the State must take measures to protect the child.³¹

One of the important boundaries/barriers to parental custody is the best interests of the child. For this reason, the circumcision of boys or girls should be prohibited by law. Beatings, physical or psychological sanctions, cannot be accepted as a means or method within the framework of the parents' right to discipline and educate the

³⁰ For summaries and evaluations of convictions given in many different countries, see C & B Hukuk Bürosu, n.d.

³¹ See AYM, 09.03.2016, *Serpil Toros İtirazı*, Bireysel Başvuru Nr. 2013/6382.

child. The parents' power to protect the child and their rights does not preclude seeking their opinion on important actions or transactions.

A child born or adopted through artificial insemination has the right to know the birth mother and/or father. This right should be regulated and protected by national laws. The prohibition on the removal of organs or tissues from minors or children under 18 years of age in order to save the lives of their siblings violates, firstly, the best interests of the child whose life was saved by the transplantation of the organ or tissue and, secondly, against the best interests of the child who donated the organ or tissue.

How can we decide if there is more than one child in a family and if their wants or needs are in conflict? The wishes and advantages of the parents do not play a role. No attempt should be made to balance or harmonize the children's interests. Each child's custody and relationship with the parent, or in the best interests, should be considered separately. It is a fundamental guiding principle that leaves the judge wide discretion. However, it should be considered according to the circumstances of each specific child. Other guiding principles in favor of the child (such as stability, continuity, relationship with parents, caregiver regardless of gender, and opinion of the child) should also not be ignored.

The sharing of erotic or sex images/films of children by families or relatives is a big problem in Germany and Switzerland. The first examples were also in Türkiye. The problematic area that is ignored in Türkiye is that parents share all kinds of photos and personal information about their children on social media. This violates the principle of the best interests of the child. Although creating pornographic images of children or sharing them with others constitutes the crime of obscenity in Article 227 of the T - PC, this crime is a crime with a limited scope, mostly for the fight against child pornography. However, no regulation punishes or prevents parents' violation of children's personal rights via social media. The family's right to custody does not give the family the right to treat the child as an object. The aim that should not be overlooked here is to impose a duty to serve the best interest of the child.

The number of young girls married in Türkiye was 11.000 in 2022. This number was higher in previous years. The most striking statistic on this subject is that women under the age of 15 gave birth to 355 children in 2011. Reasons for child and/or

forced marriages, social factors such as lack of education, feudal life (Custom, Tribe), misinterpretation of religious information, effect of domestic violence, economic poverty, daughters' parents receiving bride price as if they were selling their children, harassment or rape, or an outdated sense of morality may be shown. These need to be eliminated with the help of other social disciplines and prevented through criminal law.³² However, in Türkiye, where there are more than 10 million refugees, the number of child marriages and the number of children becoming pregnant and having children is increasing. Polygamy is widespread among refugees. The legal age for marriage in Türkiye is 18. However, when children turn 17, they can marry with the permission of their families or legal guardians. Children aged 16 and over can get married with special permission from the court, in exceptional cases, and provided that there is a vital reason. Although sexual intercourse with people under the age of 18 is a crime, in judicial practice, if a religious marriage is held, it is treated as if it were a legitimate marriage.

Sometimes, the concept of 'awareness of injustice' in the last paragraph of Article 30 of the T - PC is misused, and the parties in such marriages are acquitted in criminal proceedings. Moreover, in most of these marriages, children marry not because they want children, but because their parents force them into marriage. On the other hand, although Article 104 of the T - PC criminalizes sexual intercourse between the ages of 15 and 18, this crime is subject to complaint. People who marry under family pressure do not complain, or the complaint is later withdrawn, and the case is dropped. This criminal law article can be used especially to popularize non-official (State) religious marriages with impunity. Although the age of marriage is gradually increasing today, child marriage is still a problem in Türkiye. This situation is a reflection of gender inequality that reinforces gender stereotypes against girls and hinders their education, jeopardizes their health, and exposes them to the risk of violence and poverty.³³

One of the new problems in this area is the sale of children on social media. People suffering from economic difficulties sell their unborn children as well as their born children. Social media is used as a tool here. Nowadays, the sale of babies made after illegitimate relationships through 'adopted baby' sites has again become the choice of families experiencing financial difficulties. For example, a mother in Kırıkkale

³² Kadem, 2014.

³³ UNICEF, n.d.; Akkus İlgezdi, n.d.

bargained for her 55-day-old baby girl by posting on her website as if she were selling a 'car' for 100.000 TL. Another mother announced that she had a 40-day-old baby and would give her baby to someone she trusted for a fee. A 23-year-old mother in Antalya sold her baby girl, who is 30 days away from birth, online for 110.000 TL. The woman, who shared the baby's doctor's check-ups and ultrasound photos, also put her unborn baby up for sale. At the same time, one family in Izmir said that they bought the baby from a university student by paying 45.000 TL. Another family admitted that they went to the Southeast two years ago and took a two-month-old baby. The crime of human trafficking is not a crime that fully meets this action. Here, the crime of changing the family line (Turkish - PC, Article 231) and sometimes forgery of documents (Turkish - PC, Article 204 *et seq.*) may be involved.³⁴ These actions must be regulated as independent crimes, and these actions must be prevented by making provisions in criminal law and the law regulating the internet and social media. Cyber investigation opportunities must be developed. Both these acts and child pornography are mostly carried out using the internet as a tool, and the lack of legislation in this area must be eliminated.

State child care centers in Türkiye are reported to have extremely poor conditions and fail to provide adequate protection in terms of shelter, safety, and education for children. The adoption agency is also widespread and does not function well. The foster family institution, which has been put into practice in recent years, has not been implemented with the required efficiency for either citizens or refugee children. A similar problem occurs when children under a certain age stay in prison with their incarcerated mothers, and there are very negative conditions in terms of the child's education, training, and socialization. For these reasons, state institutions need to be developed in this respect, as in modern countries, and foster motherhood and adoption institutions need to be encouraged and supervised. Even after the check, you sometimes have to change foster parents. If new foster parents are better suited to providing for the needs of a child, a change of foster family can be ordered, according to the BVerfG, because the child's well-being takes precedence over other interests. If new foster parents can respond better to a child's needs than the previous ones, the family change can be arranged in the best interests of the child. The German Federal Constitutional Court³⁵ rightly does not see this as a violation of fundamental family rights. The same practice should also be in Türkiye.

³⁴ See Ihmez, 2024.

³⁵ See BVerfG, 28.08.2023, Az.b1 BvR 1088/23.

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