

# THE RIGHTS OF CHILDREN IN TURKISH CRIMINAL LAW

AHMET ÇAĞRI YILMAZ

Yeditepe University, Faculty of Law, Istanbul, Turkey  
cagri.yilmaz@yeditepe.edu.tr

Family is the most important factor in child development. In the early stages, children emulate their parents and learn from their behavior without questioning and accepting them as unquestionable truths. If a child's propensity for unlawful behavior goes unnoticed, it can have a lasting impact and potentially affect the community in the future. As this behavior pattern carries the possibility of turning into criminal activity in the future, the sanctions should be tailored accordingly. This study aims to investigate children's rights within the scope of Turkish Criminal Law in conjunction with international and national agreements in the field of law. The existing studies are insufficient, and as children are to shape our future, progressing children's rights should always be a priority.

DOI  
[https://doi.org/  
10.18690/um.pf.4.2024.11](https://doi.org/10.18690/um.pf.4.2024.11)

ISBN  
978-961-286-855-0

**Keywords:**

best interest of the child,  
convention on children's  
rights,  
restorative justice  
approach,  
right of the child,  
juvenile criminal law



University of Maribor Press

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ISBN  
978-961-286-855-0

**Ključne besede:**  
najboljša korist otroka,  
konvencija o otrokovih  
pravicah,  
restorativna pravičnosti,  
otrokove pravice,  
kazensko pravo za  
mladoletnike

# PRAVICE OTROK V TURŠKEM KAZENSKEM PRAVU

AHMET ÇAĞRI YILMAZ

Yeditepe University, Faculty of Law, Carigrad, Turčija  
[cagri.yilmaz@yeditepe.edu.tr](mailto:cagri.yilmaz@yeditepe.edu.tr)

Družina je najpomembnejši dejavnik otrokovega razvoja. V zgodnjih fazah otroci posnemajo svoje starše in se učijo iz njihovega vedenja, ne da bi jih spraševali, in jih sprejemajo kot nedvomne resnice. Če otrokova nagnjenost k nezakonitemu vedenju ostane neopažena, lahko ima to dolgoročne posledice in potencialno vpliva na skupnost v prihodnosti. Ker ta vzorec vedenja prinaša možnost prehoda v kriminalno dejavnost v prihodnosti, bi morale biti sankcije temu ustrezno prilagojene. Ta študija si prizadeva raziskati pravice otrok v okviru turškega kazenskega prava v povezavi z mednarodnimi in nacionalnimi sporazumi na področju prava. Obstoječe študije so nezadostne, in ker so otroci tisti, ki bodo oblikovali našo prihodnost, bi napredek otrokovih pravic vedno moral biti prednostna naloga.



Univerzitetna založba  
Univerze v Mariboru

## **1 Introduction**

In today's modern society, children are increasingly influenced by digital data, and due to their incompetence in distinguishing right from wrong, they can be more vulnerable. While the importance of the family is crucial for a child's healthy development within society, protecting a child's inherent rights and prioritizing their interests will shape the future of the society in which they live. Children with undeveloped cognitive and evaluative abilities are defenseless against the data bombardment of social media without any filters. Ensuring legal security for children who must continue to exist in this vulnerable environment is imperative.

In today's society, where digital data has such a profound impact on humanity, the effective protection of children should be controlled not only on a national level but also through international regulations (Temiz, 2023, p. 246). Children's rights encompass all legal rules that have been established to enable a child to develop in a mentally, physically, emotionally, and morally respected environment (Akyüz, 2018, p. 6). The most important regulation within this scope is the Convention on the Rights of the Child (1989). According to this convention, everyone under the age of 18 is considered a child, except for cases of early adulthood determined by laws. This convention secures the rights of children primarily as children and subsequently as human beings (Serozan, 2005, p. 8). By establishing children's rights, it has been demonstrated that individuals have distinct rights simply because they are children and that, like adults, they have inalienable rights. Referred to by some authors as the "Magna Carta" of children's rights, this convention has elevated children's rights to the forefront of society (Serozan, 2005, p. 49; Temiz, 2023, p. 246).

In cases where the best interests of a child conflict with the legal system due to actual events, different regulations should be introduced for children compared to adults (Kontacı, 2020, p. 1707). In other words, all sanctions applied to children should be proportionate to the circumstances in which they find themselves. Children who commit offenses should be protected within the framework of "juvenile justice", and the penalties for their crimes should either make them not liable or, if they are held responsible, be different from and lighter than those applied to adults. Therefore, provisions related to children differ from those for adults in many countries (Dönmezer & Yenisey, 1998, p. 420). Per international legal norms, the children's best interests should be prioritized, and penalties for a child's wrongdoing

should be proportionate to the environment and conditions in which the offense occurred (Akyüz, 2013, p. 1017).

When examining the innovations introduced by the Child Protection Law No. 5395, enacted in Turkey on 03.07.2005, it is observed that there are regulations such as the absence of a prosecutor during the trial, the prohibition of handcuffing children, the possibility of postponing the initiation of public prosecution, the non-arrest of children under the age of 15 for offenses punishable by up to five years, the establishment of child units in law enforcement and prosecutor's offices, and the appointment of social workers.

## **2 Fundamental principles governing Criminal law**

With the developments in the field of children's rights, the juvenile justice system has transitioned from a punitive justice approach to a restorative justice approach. In 2010, the Council of Europe prepared the "Guidelines for Child-Friendly Justice", which promoted the effective implementation of alternative dispute resolution methods for children (Council of Europe, 2010, pp. 17–19).

The restorative justice approach is more focused on addressing future issues than past behavior (Uluğtekin, 2004, p. 38). According to article 5 of the Beijing Rules, the procedures to be applied to children in conflict with the law should be proportionate to both the offense and the conditions of the child offender. Article 11 of the United Nations Minimum Standard Rules for the Administration of Juvenile Justice states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration". Various efforts should be made to facilitate the resolution of child delinquency outside the judicial mechanism, such as community programs, temporary supervision and guidance, and restitution for the damage caused to victims (Council of Europe, 1987, p. 1).

The recommendation Rec(2003)20 on "Juvenile Delinquents on Probation" highlights that the main objectives of the juvenile justice system are the prevention of reoffending by the child, the protection of the interests of the victim and society,

and the reintegration of the child into society after committing an offense (Council of Europe, 1987, p. 1).

Fail-victim mediation, community service, and group conferences are among the most commonly used restorative justice programs for children (Kontacı, 2020, p. 1727). However, article 253, Paragraph 4 of Law No. 5271 on Criminal Procedure stipulates, "If the suspect, victim, or person harmed by the crime is not of legal age, the mediation proposal shall be made to their legal representatives". The Court of Cassation has considered offering mediation to children without considering their age as a reason to invalidate the process (Yargıtay 13. CD, 03.03.2016, 2015/2032 E. 2016/3593 K.). In our opinion, not offering mediation to a child of an age who can comprehend and understand the relevant matter and even continuing the process without seeking the child's opinion does not align with the restorative justice concept. Furthermore, concerning the child's rights, determining the matter through out-of-court methods, or in other words, diversion, is at the prosecutor's discretion. However, it is expected that both parties should request this from the prosecutor (Yenisey, 2007, p. 16).

### **3 International conventions signed by Türkiye**

The first steps in regulating children's rights were taken by Jules Le Jeune in 1894. Le Jeune proposed the establishment of the International Organization for the Protection of Children, and in 1911, a meeting was held in Paris to discuss this issue (İnan, 1995, p. 95). In 1910, the International Extradition Committee convened in Washington to discuss whether children who committed crimes should be subjected to the same judicial provisions as adults and how regulations should be made, but the meeting ended without a conclusive result (Şensoy, 1949, p. 162). In 1913, the First International Brussels Congress was initiated, leading to the establishment of the "International Bureau for the Protection of Children". In this context, Korczak elaborated thoroughly on children's rights in his book *"How to Love a Child"*, published in 1919. Subsequently, in 1917, the Children's Rights Declaration was published in Russia (Gören, 2012, p. 48).

In 1920, the "International Child Welfare Organization" was established to meet the essential needs of children affected by war, and in 1924, the "Declaration of the Rights of the Child (Geneva Declaration)" was published to enable this organization

to achieve its goals (İnan, 1995, p. 96–97). Both the 1924 Geneva Declaration on the Rights of the Child and the 1948 International Union of Child Welfare, now known as the International Child and Youth Welfare Federation, laid the groundwork for future conventions related to children's rights (Ballar, 1998, p. 36).

The 1924 Geneva Declaration on the Rights of the Child protected children's rights in specific areas; however, just like with human rights, no comprehensive and binding work was conducted like the Universal Declaration of Human Rights. The declaration clearly emphasized the child's best interests with the statement: "Mankind owes the best it has to give to the child." In our view, both the Geneva Declaration and the UN Convention on the Rights of the Child lack the power of enforcement, so the progress has been limited to the intentions of the signatory states, as seen during World War II. In November 1959, the United Nations Declaration on the Rights of the Child was proclaimed. Within the framework of the declaration, it was stated that children should not be discriminated against, that children should be given the opportunity to develop themselves, that they should be granted identity and citizenship, that their social security rights should be regulated, that discrimination based on religion and race should not be allowed, that they should be protected from neglect and abuse, that their families, raised with love should support them, and that their care responsibilities should be fulfilled.

The Convention on the Rights of the Child is based on the 1924 Geneva Declaration on the Rights of the Child and the 1959 United Nations Declaration on the Rights of the Child. It is important to note that among the initial signatories of the declaration in 1928 was Mustafa Kemal Atatürk, the founder of the Republic of Turkey (Müftüoğlu, 1993, p. 344).

The European Convention on the Exercise of Children's Rights was signed in Strasbourg on January 25, 1996, and by Turkey on June 9, 1999, and came into effect on February 1, 2001. This convention focuses on the child's best interests, allowing children under the age of 18 to have both the right to be informed and the right to express their views in family disputes.

The main principle of the Convention on the Rights of the Child is the prioritization of the best interests of the child. In the second and third parts of the convention, the rules for teaching and complying with the rights expressed in the convention by

the signatory states are laid out. Article 1 of the Convention on the Rights of the Child states: "For this Convention, a child means every human being below the age of eighteen years." When examining the convention, it is seen that the framework is based on the International Human Rights Convention and the Universal Declaration of Human Rights, emphasizing the family's duty to provide assistance and protection to the child and the child's rights without discrimination. Although the convention specifies that the childhood period extends up to the age of 18, if states lower the age of majority through their regulations, this will not violate the convention. This convention ensures that children have the right to participate in decisions made about them and express their opinions on matters concerning their future. Additionally, it mandates that the child's best interests must be considered when making decisions about children. In the United Kingdom, it has been argued that this principle contradicts legislation regulating physical abuse within the family if it remains at a certain level (Alston & Gilmour, 1996, p. 45).

In addition, Turkey has reserved the right to interpret articles 17, 29, and 30 of the Convention on the Rights of the Child in accordance with the Constitution of the Republic of Turkey and the 1923 Treaty of Lausanne (Başbakanlık Sosyal Hizmetler ve Çocuk Esirgeme Kurumu, 2001, p. 60). The reservation placed on article 17, paragraph 4 of the Convention states:

*"State Parties, ...encourage the mass media to have particular regard to the linguistic needs of children who belong to a minority group or are indigenous."*

Moreover, the reservation in article 29(3) reads,

*"In states where there is a considerable number of people of the same cultural, linguistic, religious or ethnic background as the child, the right of the child to preserve his or her cultural identity, language values, religious beliefs, and to use his or her language should be respected."*

The reservation placed on article 30 states:

*"In states in which there exist ethnic, religious, or linguistic minorities or persons of indigenous origin, a child who is a member of such a minority or is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her religion, or to use his or her language."*

The reason for these reservations is the fact that Turkey does not officially recognize minorities other than those defined by the Treaty of Lausanne. The minorities in Turkey are considered to be non-Muslim Turkish citizens under the Treaty of Lausanne.

In conclusion, the international agreements related to the regulation of child rights in international law are as follows (Kobat, 2009, p. 11–12): "Convention on the Rights of the Child, European Convention on the Exercise of Children's Rights, Convention on the Elimination of All Forms of Discrimination against Women and Children, Convention on the Minimum Age for Admission to Employment in Seafaring, Convention on the Return of Minors, Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations towards Children, Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, European Convention on the Adoption of Children, Convention on the Establishment of Paternity, Adoption of Children of Unwed Parents, Convention on the Recognition and Enforcement of Decisions on Custody of Children, Convention on the Abolition and Immediate Action for the Worst Forms of Child Labor, ILO Convention No. 138 on Minimum Age for Admission to Employment, Memorandum of Understanding between UNICEF and the Government of Turkey."

When examining the studies conducted in Turkey, it is observed that the Turkish Declaration of the Rights of the Child was adopted in 1963. When the Turkish Declaration of the Rights of the Child dated 1963 is examined, it is regulated in articles as follows:

*"1. Good care, proper upbringing, and suitable education for the child, as well as receiving attention, love, and assistance everywhere, is the right of every Turkish child. Every official and private institution and citizen is obliged to recognize this right and realize it with the means at hand. Priority is given to the rescue of the child in distress. 2. No child under the age of 16 can be deprived of formal education and made to work in private jobs. It cannot be exploited in any way. 3. Every parent is obliged to take care of his child and to educate him in the best possible way with knowledge and skill. In cases where the parents are inadequate, the responsibility falls to the first-degree close relatives of the child and the state. 4. After primary education, technical and agricultural training courses are opened for those who do not continue their education or are unable to continue. The Ministry of National Education, the Mayorship, and the mukhtars are responsible for opening these courses and for the children to benefit from these courses. 5. It is the duty of the state along with parents to heal disabled and maladjusted children, to rescue children facing difficulty in life, and to raise them to be successful and strong enough to make a living for themselves in a profession suitable for their conditions. 6. Laws regarding the protection of children should primarily be prepared and enacted and implemented without delay".*



As can be seen in this declaration, it not only addresses the responsibilities of parents but also emphasizes the supervision of the child by the state. The Convention on the Rights of the Child, dated November 20, 1989, was signed by Turkey on September 14, 1990, and it came into force on January 27, 1995.

#### 4 Principle of the best interests of the child

In Dede Korkut Stories in Turkish literature, a child is considered an individual regardless of age (Yalçın & Şengül, 2004, p. 210). It is observed that in Göktürk, Hun, and Uyghur states, children were raised by their families without gender discrimination (Akyüz, 2010, p. 48). Article 6, paragraph 1-b of the Turkish Penal Code states:

*“The term ‘child’ means a person who has not yet reached the age of eighteen.”*

In addition, according to article 3, paragraph 1-a of Law No. 5395 on the Protection of Children,

*“The term ‘child’ means a person who has not yet reached the age of eighteen, even if they are considered legally adult.”*

As for the age limit for criminal liability, it is 7 for Bangladesh, Ireland, Jordan, Lebanon, Syria, and Sudan; 8 for Scotland and Sri Lanka; 9 for the Philippines and Iraq; 10 for New Zealand and the UK; 12 for Korea and Canada; 13 for France, Poland, and Algeria; 14 for Germany, Italy, Japan, and Russia; 15 for Norway, Sweden, and Finland; 16 for Azerbaijan, Cuba, Spain, and Portugal; and 18 for Belgium (Tekin & Ünver, 2005, p. 488).

The principle of the best interests of the child, which focuses on the child's needs and rights to achieve their best interests, aims to prioritize the child's viewpoint in decisions made regarding the child. Although this principle is not defined in the Convention on the Rights of the Child, it has become a widely used concept in international law as a result of the Child Rights Declaration adopted by the League of Nations in 1924. While the term "best interests of the child" is used in English, the French text uses the term "*l'intérêt supérieur de l'enfant*" which translates to "the higher interests of the child." The term "child's best interests" is considered a concept that can best protect the child's interests in all legal proceedings.

In Turkish legal doctrine, the term “*çocuğun üstün yararı*” or “*çocuğun yüksek yararı*” (the best interests of the child) is generally used. The term "best interest" corresponds to the Turkish legal concept of “*üstün çıkar*” (superior interest), and when there is a conflict of interests, "law" or "just cause" should prevail. For this reason, the term “*yüksek yarar*” (high interest) has been preferred throughout this study (Kurt, 2016, p. 111). In our opinion, the principle of the child's best interests is the most important principle to be applied in any legal issue concerning the child. In other words, when there is a conflict between the child's interests and the rights of adults, a legal rule that serves the child's interest should be applied by siding with the child. In this context, article 3 of the Convention on the Rights of the Child states:

*“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration”.*

In the preamble of the Constitution of the Republic of Turkey, it is stated:

*“Every Turkish citizen has, from birth, the right to live in accordance with the principles of the national culture, civilization, and the rule of law, under the guarantee of the fundamental liberties, justice, equality, and peace, as envisaged in the Constitution, and in a manner to ensure the welfare of society as a whole.”*

This provides the possibility for social rights to be interpreted within the framework of the principle of equality. Furthermore, in accordance with article 10 of the Constitution of the Republic of Turkey,

*“State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings. Measures for children, elderly citizens, disabled, widows and orphans, veterans, and martyrs' relatives shall not be regarded as a violation of the principle of equality”* (Öden, 2003, p. 157).

Article 41 of the Constitution of the Republic of Turkey states:

*“Every child has the right to protection and care, to have a good upbringing, to receive education and to lead a life in comfort and security, in the family, society, and the state, in a manner to conform with national moral values. The state takes measures to ensure the protection of the child from all forms of neglect, abuse, cruelty, ill-treatment, and oppression, as well as social neglect and moral corruption. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration.”*

Thus, although the Constitution does not explicitly mention the best interests of the child, the indirect reference to the child's best interests obligates compliance with this principle in all actions involving children.

In conclusion, the principle of the best interests of the child is a paramount principle to be taken into account when making decisions about children. When assessing the child's welfare, it is crucial to consider both the child's immediate and long-term interests while also considering society's values and norms. In making decisions regarding children, the welfare of a child should be the primary consideration, and this principle should guide all legal actions involving children (Grassinger, 2009, p. 59).

Based on the explanations provided above, in our opinion, while considering the child's best interests, it is essential to consider the values and beliefs of society, ensuring that the child is not harmed in the future. For instance, according to article 4 of the Mexican Constitution, it is emphasized that the state must consider the best interests of the child in its actions. Similarly, in article 42/A of the Irish Constitution, it is stated that in all circumstances, the "paramount consideration" should be given to the child's best interests. In the famous "McGrath Case" the judge emphasized that the well-being of the child includes not only physical well-being but also their religious, moral, and emotional well-being. Furthermore, the importance of love and affection to be provided to the child should not be overlooked (*McGrath v. United States*, 1980).

For example, following a decision by the European Court of Human Rights regarding child victims, the local court concluded that a girl, who was a victim of abuse by her father with custody rights after a divorce, was indeed a victim. In 2016, the father was found guilty of injuring his daughter (*M. and M. v. Croatia*, 2020). In Belgium, the 1874 Insurance Act was amended in 2014 to prevent access restrictions to the courts for children on insurance-related matters. It ensured that the three-year limitation period for actions relating to insurance policies could not be enforced against children until they reached the age of majority. Furthermore, the new law required that any amount payable to a child as a result of an insurance agreement be deposited in a blocked account and kept there until the child reaches the age of majority (*Stagno v. Belgium*, 2014).

In the Czech Republic, the Code of Civil Procedure introduced special proceedings for international child abduction cases. As a result, a specialized court was designated for return proceedings, and local courts were given the authority to make temporary arrangements for the child's return conditions and for the complainant to have contact with the child, and a six-week time limit was established for the court to make a final decision. Mediation was also emphasized in parental disputes. In cases of international child abduction disputes, the International Legal Protection Unit for Children appoints an informal mediator. The appointed mediator seeks the most effective way to resolve the family crisis resulting from international child abduction (*Czechia v. Macready*, 2012).

The right of the children to express their views must always be protected (*Godelli v. Italy*, 2012). Every child should be able to express their thoughts and opinions freely. In this regard, the United Nations Committee on the Rights of the Child recommends that signatory states, in light of articles 12, 13, and 15 of the Convention, make efforts to promote the active participation of children in family, school, and social life and involve them in decisions that affect them. To enable children to exercise their right to express their views, there is a need to raise awareness and sensitivity among families and the general public, as well as among professionals working with children, and to provide training to these individuals to encourage children to express their views and to give proper weight to the views of children.

The Convention has not set any age limit for children to express their views freely, yet it is only expressed as having the "capacity to form views". Within the framework of the Convention, the necessity of children's participation in determining policies, including state policies, the effective implementation of complaint mechanisms that children can use, ensuring that children express their views within the family and that these views are taken seriously, creating media opportunities for children to convey their opinions, allowing children to freely express their views in disciplinary offenses that they may experience during their school years, etc., have been generally regulated (Efe, 2008, p. 14).

The Constitutional Court has stated that *the "best interests of the child and the child's relationship with their parents should only be prevented in extraordinary and exceptional circumstances"* (*Serpil Toros v. Turkey*, 2016), and that "the protection and development

of the child's material and moral well-being are among the child's best interests" (*B.B. v. Turkey*, 2018).

## 5 Right of the child to participate in decisions

In the scope of this principle, it should not be disregarded that younger children may express their views through play, art, and drawings. Accordingly, a child's expressions should be evaluated and considered according to their age (Convention on the Rights of the Child, 2009, pp. 6–7). The right of a child to participate in decisions is enshrined in article 17 of the Constitution of the Turkish Republic under the heading "Right to Life, Integrity of Material and Spiritual Entity", where it states:

*"Everyone has the right to life and the right to protect and develop his material and spiritual entity",*

article 20 under the heading "Privacy of Private Life", where it states: "Everyone has the right to request the respect for their private and family life. Privacy of private and family life shall not be violated", and article 8 of the ECHR under the heading "Respect for Private and Family Life", where it states: "Everyone has the right to respect for their private and family life."

The right of the child to participate in decisions can be found explicitly in the Swiss Civil Code. The Swiss Civil Code attaches importance to the "freedom proportionate to the child's development within the organization of their life" and "obtaining their opinion on sensitive matters" in cases where the child lacks legal capacity (Gören, 2012, p. 80). According to article 22 of the Belgian Constitution, every child has the right to express their views on any matter concerning themselves and have their opinions taken into account based on their age and maturity. Pursuant to Chapter 6 article 2 of the Finnish Constitution, the opinions of children must be considered according to their level of development. In the Polish Constitution, it is explicitly stated that priority should be given to the child's views, reflecting the significance of children's rights in the legal field. The Polish Constitution, which places the highest importance on children's views among constitutional regulations allowing children to participate in decisions, creates a different value compared to other countries' constitutions (Algan, 2021, p. 586). In the case of *Mubilanžila Mayeka and Kaniki Mitunya v. Belgium*, the European Court of Human Rights stated that the deportation and repatriation of a child to the Republic of the Congo, without consulting the child

and without proper legal representation, violated "family life" as defined in article 8 of the Convention (*Mubilanzila Mayeka and Kaniki Mitunya v. Belgium*, 2007).

Likewise, article 308 of the Turkish Civil Code states:

*"The person to be adopted must be at least eighteen years younger than the adopter. A minor with discernment cannot be adopted without their consent."*

Article 339 of the same code emphasizes that parents allow the child to organize their life according to their maturity, considering the child's thoughts as much as possible in important matters. In the Child Protection Law, article 4(1)(d) specifies the "participation of the child and their family in the decision-making process" while ensuring that they are informed.

Moreover, when it comes to children from minority groups and immigrant children who are at risk within society, it is essential to ensure that their statements are taken correctly, especially if they are at risk of sexual abuse or violence by other children who have committed offenses (*M. and M. v. Croatia*, 2015). According to the European Court of Human Rights (ECtHR), children's views can be expressed independently while giving due consideration to their age and maturity. Conversely, the ECtHR has ruled that the views of a 12-year-old child regarding their treatment in a psychiatric ward cannot be taken into account (*Nielsen v. Denmark*, 1988). Children's opinions are important not only when they are suspects or defendants but also when they are victims of a crime. Turkish Penal Code article 104 states:

*"A person, who engages in sexual intercourse with a child and who is at least fifteen years old with the use of force, threats, or deceit, shall be sentenced to imprisonment for a term of two to five years upon a complaint."*

In cases of sexual intercourse with a minor, the preference for filing a complaint lies with the legal representative, not the child. This situation raises challenges in terms of children's direct participation rights. In our opinion, especially in cases where the child's will contradicts that of the legal representative, the child's right to express their opinion should take precedence.

## 6 Principle of equality

To protect vulnerable children from external influences within the scope of article 14 of the European Convention on Human Rights, attention should be paid to the principle of equality (Arnardottir, 2017, p. 157). The concept of equality is grouped as "equality before the law", "equal protection of the laws", "non-discrimination", and "equal rights" (Algan, 2021, p. 503). According to the Constitutional Court, the concept of equality does not mean being equal to everyone in every situation without any objective and rational basis. In the *Aziz Turhan* case, the Constitutional Court interpreted the concept of equality as "not treating individuals in the same situation differently without any objective and rational basis" (*Aziz Turhan v. Turkey*, 2012).

Regarding discrimination, it may be observed that article 10 of the Constitution and article 14 of the ECHR do not define the concept of equality. The ECtHR, through the *Rumor v. Italy* case, explicitly highlighted that children should be under the special protection of the state (*Rumor v. Italy*, 2014). Similarly, the *Tarakbel v. Switzerland* case stated that refugee children could be in a vulnerable situation (*Tarakbel v. Switzerland*, 2014). The absence of proportionality between the means used and the aim pursued with ECtHR jurisprudence is considered discrimination if there is no rational reason for the difference between the actions or sanctions, in other words, if there is an unjustifiable difference between them (*Rasmussen v. Denmark*, 1984). According to the Constitutional Court, for discrimination to be claimed, it must be proven that

*"there is a difference between the treatment of the complainant and that of others in a similar situation, and that this difference is not based on a legitimate reason but is based solely on a discriminatory reason such as race, color, gender, religion, language"*

supported by reasonable evidence (*Kamil Çakır v. Turkey*, 2013). In the *Hüseyin Müniüklü* case, the Constitutional Court stated that to claim discrimination,

*"it is necessary to prove that there is a difference between the treatment of the complainant and that of others in a similar situation, and that this difference is not based on a legitimate reason but is based solely on a discriminatory reason such as race, color, language, religion, gender, and that this fact must be supported by reasonable evidence"* (*Hüseyin Müniüklü v. Turkey*, 2017).

The case of *Enver Şabin v. Turkey* is an example of an ECtHR decision where a university administration's rejection of a request for continued education as a person with a disability was considered a violation of the right to education and peaceful living (*Enver Şabin v. Turkey*, 2018).

## 7 Conclusion

The first juvenile court was established in Chicago, USA, in 1899, and it was followed by the UK, France, Germany, and Italy (Yavuzer, 2009, p. 280). In Turkey, the Ministry of Justice conducted its initial study in 1945, followed by a draft law in 1952. In 1965, a draft law regarding the establishment, duties, and trial procedures of juvenile courts was prepared (Günel, 1965, p. 338). In this context, the Juvenile Court Law for juvenile trials came into effect in 1982 and was put into practice in 1987, aiming to create a difference in the judicial system (Acar & Çoban, 2015, p.).

We believe that the field of Juvenile Criminal Law needs to be regulated with a restorative justice approach. Therefore, it is essential to have a separate legal system for children and specific rules of procedure that only apply to juvenile cases. In cases of children who have been led into crime, the primary duty of the state is to reintegrate the child into society and prevent them from reoffending. Consequently, judges and prosecutors should pay attention to these aspects while making decisions.

The juvenile justice system should involve child-specific practices, ensuring that their best interests are protected in all circumstances, even in stages where the law is applied. In Turkey's Criminal Law system, the same crimes that apply to adults also apply to children.

Juvenile correctional facilities should not be located in remote areas, enabling as much interaction as possible with society. Conditions of confinement should be more flexible for juveniles with no history of recidivism. Furthermore, juvenile offenders should be subject to different procedures depending on the nature of the offense, and the Mediation Institution in Criminal Law should be used as effectively as possible. For instance, for first-time child offenders, reintegration into society without entering correctional facilities should be achieved through mediation. Additionally, it is clear that the principle of the child's best interests is not adequately applied within the Turkish legal system under the restorative justice approach.



Therefore, the child's best interests should take precedence, and the balance of benefits between the parties and the child should be considered with a child-centered approach, leading to the reorganization of the mediation institution.

The child's past experiences should be carefully assessed by expert pedagogues when determining suitable measures. All decisions made by the courts should be meticulously deliberated, keeping in mind that the child, from the outset of their life, may carry the stigma of being a "delinquent". The courts should not disregard the child's history and circumstances during the decision-making process.

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