

DETENTION OF CHILDREN IN TURKEY: SOUNDS GOOD DOESN'T WORK

HALE AKDAĞ

Antalya Bilim Üniversitesi, Hukuk Fakültesi, Antalya, Turkey
akdaghale@gmail.com

This paper will examine the juvenile justice system in Turkey. First criminal capacity of children and courts exclusively established for children will be explored. Then types of detention before conviction, special provisions for children and institutions that children deprived of their liberty will be sent to will be explained. Since the physical conditions of these institutions differ greatly, their affects on children can also vary. Convicted children are normally being held in institutions that offer a certain amount of liberty, but since remand needs to prevent jailbreaks, children who were not convicted cannot be reasonable held in this kind of institutions. This creates an unfair treatment between children who were convicted and those whose trial is still continuing, putting the children on trial at a disadvantage. This paper will offer some solutions to balance the rights of the child and the aim of criminal procedure to reach the material truth.

DOI
[https://doi.org/
10.18690/um.pf.4.2024.8](https://doi.org/10.18690/um.pf.4.2024.8)

ISBN
978-961-286-855-0

Keywords:
rights of the child,
child penitentiary
institutions,
remand,
juvenile justice,
rehabilitation



University of Maribor Press

DOI
[https://doi.org/
10.18690/um.pf.4.2024.8](https://doi.org/10.18690/um.pf.4.2024.8)

ISBN
978-961-286-855-0

Ključne besede:
otrokove pravice,
ustanova za mladoletne
kaznjence,
pripor,
mladoletniško pravosodje,
rehabilitacija

PRISILNO PRIDRŽANJE OTROK V TURČIJI: ZVENI DOBRO, A NE DELUJE

HALE AKDAĞ

Antalya Bilim Üniversitesi, Hukuk Fakültesi, Antalya, Turçija
akdaghale@gmail.com

V prispevku avtorica preučuje mladoletniški pravosodni sistem v Turčiji. Najprej razišče kazensko sposobnost otrok in sodišča, ki so izključno vzpostavljena za otroke. Nato so pojasnjeni tipi pripora pred obsodbo, posebne določbe za otroke in institucije, v katere so otroci, ki jim je odvzeta prostost, poslani. Ker se fizični pogoji teh ustanov zelo razlikujejo, se lahko njihov vpliv na otroke prav tako razlikuje. Obsojeni otroci so običajno nastanjeni v ustanovah, ki ponujajo določeno mero svobode, vendar pa ker pripor mora preprečiti ubežnike, otroci, ki niso bili obsojeni, ne morejo biti razumno nastanjeni v takšnih ustanovah. To ustvarja nepravilno obravnavo med otroki, ki so bili obsojeni, in tistimi, katerih sojenje še poteka, kar slednje otroke postavlja v neugoden položaj. Prispevek ponuja nekaj rešitev za uravnoteženje pravic otroka in dosego cilja kazenskega postopka, da se doseže materialna resnica.



Univerzitetna založba
Univerze v Mariboru

1 Introduction

United Nations Convention on the Rights of the Child¹ is undoubtedly among the most widely accepted and influential documents regarding children's rights. Actually, The Convention is the most widely ratified human rights treaty in history. (Congressional Research Service, 2015, p. 2). The Convention provides us guidelines to evaluate our legal systems, helps us to compare them with various countries and, enables improvements that were tested and proved successful.

The Convention provides guidelines regarding children who “alleged as, accused of, or recognized as having infringed the penal law” in article 40 and who are deprived of their liberty in article 37. Since this paper aims to evaluate the situation of children mentioned in article 40 who are deprived of their liberty in Turkey, first the requirements of The Convention regarding this issue should be emphasized.

- There should be a minimum age for criminal liability.
- Child's deprivation of liberty should be a measure of last resort.
- Child's deprivation of liberty should be for the shortest period of time possible.
- Child should be separated from adults during the deprivation of liberty.
- There should be laws, procedures, authorities and institutions specifically applicable to children.
- Child should be treated in a manner that is consistent with his/her age and the fact that his/her reintegration into society is desirable.

Turkish criminal law system is in compliance with these guidelines on paper. But there are some issues that must be addressed and they constitute the main focus of this paper. To correctly determine these problems, first we need to answer some questions regarding the Turkish criminal justice system and its institutions.

We will first answer the “Who can be the subject of adjudication?” question and explore criminal capacity in Turkish law. Then we will answer the “By whom the adjudication process will proceed?” question and briefly explain the court system for children. Afterwards we will answer the “Under which circumstances children

¹ Will be cited as “The Convention” hereinafter.

can be deprived of their liberty without a conviction?” question and briefly explain the detention types in Turkish criminal justice system. Our last question will be “Where the detention would be enforced?” and we will explore the penitentiary institutions for children.

After answering these questions and providing an outline of the juvenile justice system in Turkey, we can address the issues in application and hopefully offer some viable solutions.

2 Criminal Capacity of Children

Turkish Criminal Code divides children into three groups; under the age of 12, between ages 12 to 14, age 15 and above. (*Turkish Criminal Code*, 2004, article 31) These age groups are important not only for criminal liability, but also for rules of detention and enforcement of prison sentences.

Children who are 11 years of age or younger do not have criminal capacity. Which means even when they commit an act that is regulated as a crime, they cannot be put on trial. Even if an 11-year-old child is highly intelligent and is able to understand everything as well as an adult, the outcome would not change (Dönmez, 2020, p. 73). Only security measures (which are the same as protective and supportive measures for children who are in need of protection) can be applied to these children. Which inevitably means they cannot be deprived of their liberty under any circumstances and are outside the scope of this paper. In fact, a public prosecutor expressed that they do not even question these children, lest it might be harmful for the children (Kaya, 2021, p. 137).

Criminal capacity of children who are between the ages of 12 to 14 must be assessed in each individual case. Criminal capacity consists of two abilities: to understand the legal significance and consequences of the act, to choose the course of action. For criminal capacity a child must possess both these abilities; if even one is beyond the child's capabilities then he/she does not have criminal capacity. It is important to note that evaluation should be made in regards to the specific crime committed. (Dönmez, 2020, p. 79) For example, whereas a child might have criminal capacity for murder, the same child might not have criminal capacity for defamation (Kaya, 2021, p. 179).

Children between ages 12-14 can be put on trial and the court will declare a verdict about them even when they lack criminal capacity. If the court decides the child on trial committed the crime but lacks criminal capacity, the verdict must be “no grounds for punishment for lack of culpability” and an appropriate security measure must be decided about the child (Akbulut, 2013, p. 553). This means until the final decision regarding criminal capacity is reached, these children can be subjected to all forms of detention described below.

Children between ages 12-14 that have criminal capacity can be imprisoned if they are found guilty, but their sentence will be mitigated. This regulation is criticized for not being in par with the Convention’s regulation that states that any kind of deprivation of liberty must be seen as a last resort. (*Convention on the Rights of the Child*, 1989, article 37/b) It is stated that courts should be able to choose between punishment and security measures. But the word of law explicitly states these children will be punished with imprisonment if the act they committed requires it (Akbulut, 2013, p. 554).

According to “Bylaw About Procedures and Principles Regarding the Application of Child Protection Act”² the right to decide whether these children have criminal capacity or not exclusively belongs to the court. (*Bylaw About Procedures and Principles Regarding the Application of Child Protection Act*, 2006, article 20/3) But both a social investigation report and an opinion from a forensic medicine expert, a psychiatrist or if necessary a specialist physician must be obtained before the assessment is made. (*Bylaw About Procedures and Principles Regarding the Application of Child Protection Act*, 2006, article 20/3-4) All these must be taken into consideration during the assessment of criminal capacity. If the child is under suspicion of various crimes, courts should obtain separate reports and opinions for each of these crimes. Likewise, courts should ask for evaluations regarding aggravating circumstances separately (Kaya, 2021, p. 179). This is especially important because as will be explained below; children of certain age can only be remanded for crimes that require heavier prison sentences. It is possible for the punishment of a crime to be under this limit, making remand impossible; whereas aggravating circumstances might raise the prison sentence thus enabling remand.

² Will be cited as “The Bylaw” hereinafter. For full text in Turkish: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=10885&MevzuatTur=7&MevzuatTertip=5> (20 February 2024).

Children who are 15 or above have criminal capacity. Their prison sentences will also be mitigated, but to a lesser extent than younger children.

Which age group child belongs to will be determined by his/her age when the crime was committed. Child's age during trial will not be taken into consideration while criminal capacity is being assessed (Akbulut, 2013, p. 549).

3 Courts for Children

In accordance with The Convention, children who “alleged as, accused of, or recognized as having infringed the penal law” will stand trial in specialized courts. (*Convention on the Rights of the Child*, 1989, article 40/3) There are two types of courts in Turkish criminal justice system for children; Juvenile (Criminal) Courts (JCC) and Juvenile Criminal Courts for Serious Offences (CSO).

According to The Child Protection Act³ crimes under the jurisdiction of CSOs are explicitly stated in the relative code and JCCs have jurisdiction over all other criminal cases, along with all civil cases.

The Act states that, CSOs will have jurisdiction over cases regarding crimes that fall under the jurisdiction of Criminal Courts for Serious Offences. (*The Child Protection Act*, 2005, article 26/2) Jurisdiction of these courts are regulated in “The Code About the Establishment, Duties and Authorities of the First Degree Courts and Regional Courts”. According to this code, crimes of robbery, extortion, counterfeiting official documents, qualified theft by deception, bankruptcy by deception; with the exemption of some articles offences against state security, offences against the constitutional order and its functioning, offences against national defense, offences against state confidentiality and espionage; crimes regulated in the Anti-Terrorism Law no. 3713; crimes whose punishment can be imprisonment for more than 10 years, life and aggravated life sentences fall in the jurisdiction of these courts (*The Code About the Establishment, Duties and Authorities of the First Degree Courts and Regional Courts*, 2004, art. 12).

³ Will be cited as “The Act” hereinafter. For full text in Turkish: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5395&MevzuatTur=1&MevzuatTertip=5> (20 February 2024).

All criminal cases not stated above will be under the jurisdiction of JCCs.

4 Detention of Children

There are three types of detention in Turkish Criminal Procedure Code⁴: Arrest by police, detention by the order of public prosecutor and remand, which is the pre-trial detention by court order. The applicability of these measures is different for children of varying age groups. The Bylaw contains regulations about these measures. It should be noted that, in criminal procedure mostly the age when the procedural process takes place is important; not the age when the act was committed (Akbulut, 2013, p. 560). But there are some regulations that are applicable on the basis of age when act was committed.

4.1 Arrest by Police

Arrest by police (or anyone) happens when someone is caught red-handed while committing a crime. (*Turkish Criminal Procedure Code*, 2004, article 90) The Bylaw cites relevant articles of “Bylaw of Arrest, Detention and Taking the Statement”⁵ regarding children. (*Bylaw About Procedures and Principles Regarding the Application of Child Protection Act*, 2006, article 5/9).

Bylaw of Detention has an article that holds the title “Special provision regarding children” and in this article, children are divided into two age groups; under 12 and between 12-17. Children who were under the age of 12 (sc. 11 and younger) while the act was committed cannot be detained. Even if they are caught red-handed, they must be set free right after their identification. (*Bylaw of Arrest, Detention and Taking the Statement*, 2005, article 19/a) This is a proper regulation; since children of this age group does not have criminal capacity and cannot be punished, they should also not be in contact with criminal procedure officials (Akbulut, 2013, p. 574). It is impossible for these children to face any punishment that limits their freedom, therefore they should not be subjected to any measure that does so.

⁴ Will be cited as “The Code” hereinafter. For full text in Turkish: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5271&MevzuatTur=1&MevzuatTertip=5> (20 February 2024).

⁵ Will be cited as “Bylaw of Detention” hereinafter. For full text in Turkish: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=8197&MevzuatTur=7&MevzuatTertip=5> (20 February 2024).

In paragraph (b) of the aforementioned article, it is explicitly stated that But children that are or above 12 years of age can be arrested in accordance with article 90 of the Code (*Bylaw of Arrest, Detention and Taking the Statement*, 2005, article 19/b). These children will be sent to the public prosecutor's office immediately and their relatives and lawyer will be notified.

4.2 Detention by the Order of Public Prosecutor

People who are arrested as described above will be sent to the public prosecutor. Public prosecutor can either set the said person free, or issue an order of detention. (*Turkish Criminal Procedure Code*, 2004, article 91) Children below 12 cannot be subjected to detention, because detention is a form of measure that must follow arrest (Akbulut, 2013, p. 578).

Children that are or older than 12 years old can be detained, but in accordance with The Convention (*Convention on the Rights of the Child*, 1989, article 37/c) they must be held separate from adults. These children will be held in the Child Unit of Law Enforcement, and if this unit does not exist where the child was detained, they will still be separated from adults that are under detention (*The Child Protection Act*, 2005, article 16; *Bylaw About Procedures and Principles Regarding the Application of Child Protection Act*, 2006, article 6).

Detention cannot exceed 24 hours, and the additional time absolutely necessary to send the person to the judge or court closest to the place where arrest took place. The 24-hour clock starts with the arrest made by the police, and the necessary duration cannot exceed 12 hours. All in all, the time period someone can be subjected to detention cannot exceed 36 hours after arrest (*Turkish Criminal Procedure Code*, 2004, article 91). This period is the same for children.

4.3 Remand

Remand is the measure that causes the main issue this paper will be addressing. Remand is the deprivation of liberty with a court order, but without a conviction and is strictly regulated with The Code.

Remand has two main material conditions; evidence that amounts to probable cause and existence of cause for remand. Two causes for remand are flight risk and risk of evidence and/or witness tampering. (*Turkish Criminal Procedure Code*, 2004, article 100) In addition to these, remand must be proportionate to the expected punishment of the verdict and restricted liberty must be insufficient (Ünver & Hakeri, 2023, p. 373). If the punishment of the crime is only judicial fine or imprisonment not more than two years, then suspect cannot be remanded.

Remand durations differ in accordance with the severity of the crime. If the crime falls in the jurisdiction of the criminal court that oversees serious offences, the remand duration is up to two years plus an additional up to three years under inevitable circumstances. In all other cases remand duration is up to one year, plus an additional up to six months under inevitable circumstances.

Children under twelve years of age cannot be subjected to remand, as they cannot be subjected to detention in any form. Older children are divided into two age groups regarding remand; under the age of 15 and between 15-17 years of age.

Children younger than 15 (sc. between 12-14 years of age) can only be remanded if the crime they are suspected of requires a prison sentence of over five years (*The Child Protection Act*, 2005, article 21; *Bylaw About Procedures and Principles Regarding the Application of Child Protection Act*, 2006, article 11). The Code also limits the regular duration of remand for these children. If the child was under 15 when he/she committed the crime, remand cannot exceed half of the regular duration (*Turkish Criminal Procedure Code*, 2004, article 102/5). Which is one year plus 1.5 years for crimes under the jurisdiction of the severe courts and; 6 months plus 3 months in other cases.

There are no special regulations regarding conditions of remand for children who are 15 or older, but the duration is shorter. If the child was or over 15, remand duration is $\frac{3}{4}$ of the adults'. Which is 1.5 years plus 2.25 years for crimes under the jurisdiction of the severe courts and; 9 months plus 4.5 months in other cases.

The main problem remand causes is the fact that these children are kept in closed penitentiary institutions. And as can be seen, the duration of these deprivations of liberty can be too long to ignore the issue. The issue can be discussed better after explaining the penal institutions for children.

5 Penal Institutions for Children

Children are always kept separate from adults. There are two types of institutions exclusively for children; child education homes (CEH) and closed prisons for children (CPC). Unfortunately, these institutions are not established countrywide.

5.1 Closed Penitentiary Institutions

CPCs are regulated in article 11 of “The Code About the Enforcement of Punishments or Security Measures”.⁶ CPCs are institutions that have safeguards against jailbreak, along with internal and external guards. Children who are remanded or sent from CEHs for disciplinary or other reasons are held in these institutions. If there is no CPC where the child will be held, he/she is kept in a separate section of the closed prisons. Unfortunately, half of the children in penal institutions are located as such. Especially sending girls to a section of the women’s closed prisons ceased being an exemption and became the regular process (Duman, 2022, p. 377).

In Turkey there are only 9 CPCs located in; Ankara (Sincan), İstanbul (Maltepe), Samsun (Kavak), Tekirdağ (Çorlu), Mersin (Tarsus), İzmir, Kayseri, Diyarbakır, Hatay.

Closed penitentiary institutions’ separate sections for children differ. In some, children have to share common places with adults, which hinders with their development. In others, they have relatively specialized schedules which is better but still not sufficient because the places are not designed for children (Gündüz, 2022, p. 513).

Children in CPCs are already ripped off from their normal lives and isolated. The fact that institutions are only established in certain cities enhances this isolation by making visitations more difficult. It is stated that during COVID-19 pandemic, with the travel and activity restrictions, isolation of these children became even more severe (Duman, 2022, p. 371).

⁶ Will be cited as “Code of Enforcement” hereinafter. For full text in Turkish: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5275&MevzuatTur=1&MevzuatTertip=5> (20 February 2024).

5.2 Child Education Homes

CEHs are the main institutions prison sentences of convicted children will be carried out (Doğan, 2018, p. 198). Convicted children should be sent to one of the four CEHs after the verdict is finalized. The verdict becomes final, by either being approved in or not being taken to a higher court.

Convicted children serve their finalized prison sentences in CEHs. These institutions' main aims are to enable children's education, vocation and re-integration. There are no safeguards against prison break or external guards. The security of the institution is the responsibility of the internal guards. If a child turns 18 while continuing an education program inside or outside of the institution, they might be let to remain in the CEH until they turn 21 for the completion of education. As mentioned above, only children who are remanded are kept in closed institutions. Children can also be sent to closed institutions for disciplinary (or other) reasons (*The Code About the Enforcement of Punishments or Security Measures*, 2004, article 15).

Children in CEHs will go to school like other children and return to CEH after school. There are no guards to make sure they don't escape during their time outside.

Unfortunately, there are only 4 CEHs in Turkey and the number of child convicts exceeds their capacity. These CEHs are located in Ankara, İstanbul, İzmir and Elazığ. Ankara CEH has single rooms and having 144 rooms, has the capacity to accommodate 144 children. Elazığ CEH has 6 wards and can accommodate 108 children. İstanbul CEH's website does not contain information regarding capacity and living quarters. But when contacted, they stated that children have single rooms and the capacity is 144 children like Ankara. If the capacity is exceeded, they accommodate young people over 18, three in a room. İzmir CEH also has no information on its website regarding physical conditions.⁷ But when contacted the CEH in Urla, they said they have three units designed like dorm rooms that can accommodate a maximum of 30 children. But this 30 spots were never filled and they accommodated 27-28 children at most.

⁷ These institutions have websites that give information about physical facilities or contact numbers. But for privacy concerns, they don't contain an address. For further information, the websites of Ankara, Elazığ, İstanbul and İzmir CEHs are as follows: <https://ankarace.adalet.gov.tr/hakkimizda> (10 December 2023); <https://elazigce.adalet.gov.tr/kurumumuz-hakkinda> (10 December 2023); <https://istanbulce.adalet.gov.tr/kurum-hakkinda> (10 December 2023); <https://urlace.adalet.gov.tr/> (10 December 2023).

Since the main aim of these institutions are education and re-integration into society, physical conditions are important. Penitentiary institutions' architectural design also bears a significance; for example, ward system is an obstacle in rehabilitation. (Gündüz, 2022, p. 506) In this regard, Ankara and İstanbul CEHs can be said to have the best conditions with single rooms, followed by İzmir with 10 person “dorm rooms” and at last Elazığ with a ward system.

All in all, the total capacity of the 4 CEHs in Turkey is 426, which is not enough to accommodate all the convicted children. The number of convicted children got into penitentiary institutions and their age when admitted in the institution according to official statistics is as follows:

	2016	2017	2018	2019	2020	2021	2022
12-14 year old	42	80	53	44	36	38	79
15-17 year old	1016	1661	1518	1121	913	961	1294

According to the same statistics, as of 31st of December 2022 there are 200 children between the ages of 12-14 and 2306 children between the ages of 15-17 in penitentiary institutions as convicts and remanded combined. Even though remanded children are kept in closed penitentiary institutions, the capacity of CEHs are not nearly enough to accommodate 1373 children who were convicted and admitted to penitentiary institutions in 2022 alone (T.C. Adalet Bakanlığı Adli Sicil ve İstatistik Genel Müdürlüğü, 2023, p. 5 and 9).

Children in CEHs can be sent to a closed penitentiary institution for disciplinary or other reasons (*The Code About the Enforcement of Punishments or Security Measures*, 2004, article 11). While disciplinary reasons are made concrete by the Code of Enforcement, the wording “other reasons” leave an undesirable flexibility, whose use by the officials will be discussed below.

5.3 Disciplinary Reasons to Send Child to Closed Penitentiary Institution

Disciplinary reasons are regulated in article 46 paragraph 8 of the Code of Enforcement. A child can only be sent to a closed institution if he/she committed the acts in this paragraph. After the first act, child will be sent to the closed institution

for 6 months. After this, if an act in the same paragraph is committed again he/she will be sent for 1 year. Child can be sent to the closed institution because of consecutive acts only once. So, the maximum duration a child in CEH can be sent to a closed penitentiary institution is 1 year and 6 months.

Aforementioned acts are:

Causing aggravated bodily harm; causing or attempting to bodily injury with any kind of deadly tool, weapon or explosive; confining someone against their will; hindering duties of the officers in the institution via threats or coercion; completed or attempted prison break; intentional arson or attempted arson of the institution and/or its properties or causing them heavy damage; inciting detainees against administration, causing or attempting riot; murder or attempted murder; committing, attempting to or incite to sexual assault, abuse and harassment; torture officers or other children or make others commit this torture.

As can be seen, acts that will cause a child be send to closed institutions are quite severe. Even if a child commits murder, he/she can be sent to a closed institution for a maximum duration of 6 months. If the child commits a second murder, he/she can be sent back for a maximum duration of 1 year. After this period, the child cannot be sent back to the closed institution even if he/she commits murder for a third time. But if the child is remanded for one of these murders, then he/she will be send to a closed institution and can be kept there until the maximum duration for remand passes.

5.4 Remand for Another Crime

Children in CEHs might commit crimes inside or outside the institution. Unlike closed institutions, CEHs are not designed to keep children away from the outside world. Therefore, if they commit another crime while serving their prison sentence in a CEH; and the causes of remand are met for this crime; they might be remanded and send to a closed institution.

At first glance, it might seem unreasonable to remand someone who was already convicted and is serving a prison sentence. But the structure of CEHs might make this unavoidable. If the child is suspected to carry a risk of evidence and/or witness

tampering, restricting his/her liberty might be necessary to protect witnesses and to ensure criminal procedure to function properly. This will be discussed in length below.

6 Issues Caused by the System and Application

Convicted children are serving their sentences in CEHs. These children are living in a relatively comfortable environment without any safeguards against prison break, which is important for their psychological well-being. As stated above, most of these children have separate, single rooms. Even ones that do not have single rooms share living quarters with a lesser number of people who are close to their own age. The facilities they are in are designed exclusively for children, enabling them to access both academic and vocational education, along with various recreational activities. For example, Ankara CEH has one indoor sports facility; one football, two basketball, two volleyball courts; one library; eight hobby rooms and; additional educational and recreational spaces.

But children who are merely under suspicion stay in institutions that profoundly limits their liberties. According to official statistics, as of 31.03.2022 the total number of child convicts (between ages 12-18) that are in penitentiary institutions is 670, whereas the same number for remanded children is 1406. (Ceza ve Tevkifevleri Genel Müdürlüğü, 2022, p. 2) This means number of children in closed institutions would be more than double of the ones in CEHs, even if all the convicted children were serving their sentences in CEHs, which is unfortunately far from the truth as will be discussed below.

Regarding remanded children; restricting liberties to a greater extent as a measure and giving some of it back after conviction may seem utterly unreasonable at first glance. But it has a logic behind.

As stated above there are two causes for remand; risk of flight and risk of evidence/witness tampering. While the former of those two should never be the reason for remanding children, the latter can be.

A child should never be remanded because of flight risk; because after the finalized conviction he/she will be held in an institution that has no safeguards to prevent prison break. Remand after the verdict of the first degree court poses an even greater absurdity in these cases.

Criminal courts sometimes remand the accused along with the prison sentence, lest they will commit a flight after the verdict (Özbek, Doğan & Bacaksız, 2023, p. 272). Even more alarmingly, The Constitutional Court wrongfully decided that the maximum duration for remand does not apply after this verdict, because the accused is no longer under mere suspicion, but there is a court order stating that he/she is guilty (Ünver & Hakeri, 2023, p. 389).

Considering the already long durations of remand, along with this decision and the situation of children whose verdict was not yet finalized; the need for a special provision regarding remand of children becomes obvious.

If the cause for remand is witness/evidence tempering, it becomes understandable to detain the child in an institution that aims to prevent jailbreak. For, if the child is continued to stay in a CEH, it is possible for him/her to temper evidence and return to the institution as if nothing happened. But regarding flight risk and remand after the not-finalized verdict, an amendment is necessary. The proposed content of these amendments will be discussed in detail in the conclusion.

Unfortunately, the inequalities do not only effect remanded children. Although the codes explicitly states that children will serve their prison sentence in CEHs, most of the convicted children cannot access them. The aforementioned “other reasons” regulation in article 11 of Code of Enforcement is used in a way to deny children transfer to CEHs.

On paper, when a child’s verdict is finalized he/she should be send to the closest CEH. Unfortunately, contacted enforcement official stated that practice proceeds differently. Since transfer is the right of the child and there are no regulations for convicted children to stay in the closed institutions, the transfer documents are written. But right after them, the Ministry of Justice issues a document stating that the child should remain in the closed institution for “security reasons” and the transfer is stopped. Since “security reasons” are conceived as indisputable, the child stays in the closed institution he/she was in. So children who were in cities where CEHs are established can benefit from them, but children from other cities, especially the ones that are far away, are rarely transferred to CEHs.

Although there are several practical issues, there are no data on violations. Among the reasons of this shortage are; the unawareness of children, their inability to contact outside world and lack of independent monitoring (Civil Society in the Penal System Association, 2022, p.11).

7 Conclusion

Children in closed institutions face challenges other than being detained. They are isolated and more than half of them have to survive in institutions that were designed for adults. Some even have to mingle with them, which makes rehabilitation and education extremely difficult and inefficient.

It is obvious that more CEHs should be established since the existing ones' capacities are not sufficient to accommodate the number of convicted children. But other than physical insufficiencies, there are some amendments that can secure the children's rights.

First, the relative codes should explicitly state that a child can only be remanded if he/she carries the risk of evidence and/or witness tampering; but can never be remanded because of flight risk.

Second, it can be codified that the child should be released immediately if all evidence was obtained and all witnesses were heard.

Third, it should be codified that if a child is to be remanded after the verdict, he/she will be held in a CEH and not in a closed institution. As explained above, The Constitutional Court said that the base cause of remand changes after the not-finalized verdict. Therefore, limiting the cause for remand to evidence/witness tampering might not be sufficient to protect children's rights; they might still be remanded after the verdict of the court. If it cannot be ensured that they will not be remanded; enabling these children to go to CEHs will offer a better protection. Since a verdict means all relevant evidence and witnesses were already assessed by the court; and since the children will be sent to institutions that have no safeguards against prison break after the verdict is finalized; keeping them in closed institutions can have no logical basis under these circumstances.

Last, the “other reasons” mentioned in article 11 of the Code of Enforcement should be repealed or concretized. The differences between CEHs and CPCs (or even worse, other closed penitentiary institutions) are too great. Therefore, deciding where children will serve their sentences cannot be left to the discretion of the administration. On one hand, regardless of their shortcomings, we have institutions that secure most of children’s rights protected by international treaties; that enable children to better themselves both academically and psychologically, in an environment that was designed specifically with that aim in mind. On the other hand, we simply have prisons.

CEHs are solid steps towards treating convicted children with dignity and should be made available to as much children as possible. The propositions of this paper might provide a larger number of children to access these facilities’ benefits and have a better chance at rehabilitation.

References

- Akbulut, B. (2013). Ceza Mevzuatında Çocuk ve Çocukların Yakalanması, Gözaltına Alınması. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi Özel Sayı Prof. Dr. Nur Centel’e Armağan*, 19(2), pp. 541–586.
- Ceza ve Tevkifevleri Genel Müdürlüğü (2022) *Ceza İnfaz Kurumlarında Bulunan Tutuklu ve Hükümlülerin Yaş Gruplarına Göre Dağılımları*. Retrieved from <https://cte.adalet.gov.tr/Resimler/Dokuman/istatistik/istatistik-4.pdf> (10 December 2023).
- Civil Society in the Penal System Association (2022) *Juvenile Prisoners: Conditions of Imprisonment and Execution Procedures*. Retrieved from https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FTUR%2F49392&Lang=en (14 February 2024).
- Congressional Research Service. (2015.) *The United Nations Convention on the Rights of the Child*. Retrieved from <https://crsreports.congress.gov/product/pdf/R/R40484/25> (10 December 2023).
- Doğan, R. (2018). *Ceza ve Ceza Muhakemesi Hukukunda Çocuk Ceza Adalet Sistemi Uluslararası Boyut ve Çocuklara Özgü Hükümler*. Ankara: Ütopya Yayınevi.
- Dönmez, B. (2020). *Çocuk Yargılaması Ceza Muhakemesi Hukukunda Çocuklara Özel Soruşturma ve Kovuşturma Kuralları*. Ankara: Seçkin Yayıncılık.
- Duman, E. (2022). Mahpus Çocuklar. In Yalçın, T. (ed.), *Çocuk Yazıları* (pp. 339–381). Ankara: Savaş Yayınevi.
- Gündüz, N. (2022). Çocuk Ceza İnfaz Kurumları. In Yalçın, T. (ed.), *Çocuk Yazıları* (pp. 483–529). Ankara: Savaş Yayınevi.
- Kaya, S. M. (2021). *Uygulamada Çocuk Yargılaması: İstanbul Anadolu Adliyesi Çocuk Mahkemelerinde Dosya İncelemesi*. İstanbul: On İki Levha Yayıncılık.
- Özbek, V. Ö., Doğan, K. & Bacaksız, P. (2023). *Ceza Muhakemesi Hukuku*. Ankara: Seçkin Yayıncılık.
- T.C. Adalet Bakanlığı Adli Sicil ve İstatistik Genel Müdürlüğü. (2023.) *Ceza İnfaz Kurumu İstatistikleri*. Retrieved from <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/22082023163504Haber%20B%C3%99>

BClteni%202022%20Birle%C5%9Ftirilmi%C5%9F%20(22.05.2023).pdf (10 December 2023).

Ünver, Y. & Hakeri, H. (2023). *Cezza Muhakemesi Hukuku*. Ankara: Adalet Yayınevi.