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**COMMUNICATION**

**In accordance with Rule 9.2 of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by**

Association for Struggle Against Sexual Violence

**[G.U. v. Turkey](#) (Application No. 16143/10)**

**A. INTRODUCTION**

Since 2014, the Association for Struggle Against Sexual Violence<sup>1</sup> (CŞMD) has aimed to raise awareness about rape culture and sexual and sexualized violence, to organize workshops to make sexual violence more visible, to conduct awareness raising activities for the staff of institutions providing support services, and to change the rape culture and replace it with a culture of consent.

In Turkey, survivors of sexual violence<sup>2</sup> are unable to access the support they need. Even though there are regulations such as the Turkish Penal Code, Child Protection Law, relevant legislation, internal directives, national action plans, survivors of sexual violence face difficulties in accessing justice. In this document, the current situation regarding sexual abuse against children in Turkey will be presented with the available data, case contents and reports on the subject to be evaluated in the G.U. v Turkey process.

**B. G.U. v TURKEY CASE<sup>3</sup> (Application No. 16143/10)**

The applicant stated that in 2002, when the old Turkish Penal Code was in force, she had been made a victim of crimes under Article 416 - sexual intercourse with a minor, Article 417 - aggravating circumstances, 418/2 - increasing the penalty in case of deterioration of the victim's psychological or physical health, and 430 - abduction of a minor. The applicant complained that the Turkish authorities had failed to investigate these offenses effectively. The applicant questioned whether the State had fulfilled its obligation to investigate and punish

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<sup>1</sup> <https://cinselsiddetlemucadele.org/en/home-english/>

<sup>2</sup> This is the term the association uses instead of victim. This term is considered to empower the subjects. Translated into Turkish from the English word "Survivor".

<sup>3</sup> ECHR press release on the case <https://hudoc.echr.coe.int/eng-press?i=003-5522102-6947169>

these crimes. The new Turkish Penal Code provides for these offenses in Articles 103 and 104 of the Turkish Penal Code.

The domestic courts dismissed her complaint and held that the defendant was not capable of committing this crime due to the report on sexual impotence taken 4 years after the date of the incident and the defendant was acquitted. The applicant's lawyer objected to the relevant report during the trial and pointed out that the period of 4 years was long and variable in terms of sexual capacity.

The ECtHR found a violation of Articles 3 and 8 of the ECHR on account of lack of an effective investigation into the applicant's allegations of rape and sexual assault by her step-father. The judgment criticizes that the national courts did not sufficiently evaluate the victim's testimony and that they should have provided more protection for vulnerable victims, in particular children. It is also noted that the proceedings were protracted and there were delays. The trial lasted a total of 9 years, including the higher court.

In addition, the applicant's lawyer, S. Cengiz from the Izmir Bar Association was also interviewed for this communication. In the interview, the lawyer stated that the most important issue in the *G.U. v. Turkey* process is the burden of proof in such cases and that even if the proof is ensured, retrial of the perpetrators is not possible.

### **C. CURRENT SITUATION ON SEXUAL VIOLENCE IN TURKEY**

This section of the report presents available statistics on the current situation regarding the crimes of sexual abuse and sexual intercourse with minors.

As transparent and disaggregated data on these cases is not made available to the public by the state authorities in Turkey, statistics were obtained from reports prepared by civil society organisations working in this field.

#### **C.1. Relevant Legal framework**

In the Turkish Penal Code, sexual violence against children is addressed in two articles. These are Article 103 on sexual abuse of children and Article 104 on sexual relations with a minor. Article 103 covers acts committed against children who have not reached the age of 15 or who have reached the age of 15 but have not developed the ability to understand the legal meaning and consequences of the act. Article 104, on the other hand, stipulates that persons who have sexual intercourse with children over the age of 15 without force, threat or deception shall be punished. Sexual acts with a child older than 15 constitute sexual abuse only if committed with “the use of force, threat, deception or any other method which affects the willingness” of the victim.

It should be noted that the Lanzarote Committee's first implementation report recommended that Turkey should review their legislation to clearly specify that every child up to 18 years is protected in the context of the basic criminal offence of sexual abuse in the circle of trust.<sup>4</sup> In its' baseline report on Turkey, GREVIO has urged the Turkish authorities to amend their legislation on sexual assault of children older than 15 having due regard to the requirement of the Istanbul Convention to criminalise all forms of non-consensual acts of a sexual nature,

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<sup>4</sup> <https://rm.coe.int/1st-implementation-report-protection-of-children-against-sexual-abuse-/16808ae53f>

including rape; and to conduct studies on the implementation by courts of the criminal provisions regarding sexual violence against girls.<sup>5</sup>

## C.2. Statistics and Data on Child Sexual Abuse Cases

There are no disaggregated and detailed data directly provided by the State on the number of cases brought against individuals under Articles 103 and 104, the outcome of these cases and the trial practices. Judicial statistics are published under the Directorate of Judicial Registry and Statistics, but it is not sufficient to provide a full image of the current situation based on this data<sup>6</sup>. The 93rd session of the United Nations Committee on the Rights of the Child<sup>7</sup> also highlighted the issue of lack of data, reminding Turkey of its obligation to disclose data.

According to the GREVIO Baseline report on Turkey, 9% of women have been exposed to childhood sexual abuse before the age of 15 and refers to low levels of reporting of sexual violence in general.

Nevertheless, some data regarding the number of sexual abuse cases in Turkey is available. For example, according to the [2022 Justice Statistics](#), the number of child sexual abuse cases filed in Turkey has increased by 33 percent in 2022 compared to 2021<sup>8</sup>. Media reports indicate that children's rights advocates have been calling for better sex abuse prevention for years<sup>9</sup>.

Other media reports corroborate the fact that sexual crimes against children rampant in Turkey. For example:

- Daily BirGün [reported](#) that a total of 59,284 children have been subjected to sexual abuse between 2014 and 2017<sup>10</sup>, citing a study by the Turkish Statistical Institute (TÜİK).
- According to a report by the Human Rights Association's (İHD) Istanbul chapter, some 440,000 girls under the age of 18 have given birth between 2005 - 2021. The Birth Statistics of the Turkish Statistical Institute (TÜİK) showed that a total of 7,190 children gave birth in 2021<sup>11</sup>.
- In one hospital under the Mersin University's Forensic Medicine Department in southern Turkey, 1,360 cases of child sexual abuse were processed, faculty member Dr Ebru Yaşat Aksay found in her studies. Dr Aksay's study showed that 81 percent of abused children were girls, while the average age for the victims was 13. Abuse most frequently occurred in domestic environments, with 63.5 percent of children being subjected to sexual abuse at home.

## C.3. Data regarding judicial proceedings on child sexual abuse

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<sup>5</sup> <https://rm.coe.int/eng-grevio-report-turquie/16808e5283>

<sup>6</sup> Justice Statistics <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>

<sup>7</sup> [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FTUR%2FCO%2F4-5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FCO%2FTUR%2FCO%2F4-5&Lang=en)

<sup>8</sup> <https://www.duvarenglish.com/number-of-child-sexual-abuse-cases-increases-by-33-percent-in-2022-in-turkey-news-62129>

<sup>9</sup> <https://www.duvarenglish.com/number-of-child-sexual-abuse-cases-increases-by-33-percent-in-2022-in-turkey-news-62129>

<sup>10</sup> <https://www.birgun.net/haber/bu-sadece-buzdagin-in-gorunen-kismi-bin-360-cocuk-istismara-maruz-birakildi-370731>

<sup>11</sup> <https://www.duvarenglish.com/over-16000-people-convicted-of-child-sex-abuse-last-year-in-turkey-news-60977>

Regarding judicial proceedings concerning children – including the issue of child sexual abuse and how it is being addressed by the authorities, there is also very little data. NGOs prepare reports based on their own field studies, the reports of violence they receive through hotlines, and the experience of lawyers working in the field. These reports do not reveal the whole reality to the extent that a state institution could.

### **Data from the Istanbul Bar Association**

When children enter the justice system, they are represented by a lawyer; if the child does not have a chosen lawyer, a state appointed lawyer is assigned to the child through the existing system called CMK<sup>12</sup> in Turkey. The Child Rights Center of the Istanbul Bar Association<sup>13</sup> has carried out some research on child sexual abuse, by collecting data from the CMK system based on the cases in which lawyers were assigned. This data shows, first of all, the **large number of complaints of child sexual abuse**, which is indicative of a **large number of victims**, all of which who are at risk of undergoing proceedings which are ineffective and which risk to fail taking into account their particular vulnerabilities.

The relevant data collected by the Child Rights' Centre are derived from these assignments. This study, which covers the years 2014-2019 for Istanbul<sup>14</sup>, determined the number of lawyers assigned to child victims of sexual abuse at the police station and prosecutor's office. According to this report:

- Between 2014 and 2019, a total of 10,844 child victims were assigned lawyers during the investigation phase for the crime of child sexual abuse.
- The number of child sexual abuse victims who were assigned a lawyer has doubled between 2014-2017 and 2018-2019.
- Between 2014 and 2019, there was an increase of more than 100% in the number of child victims of abuse who were assigned a lawyer.
- 45% of the child victims who have been assigned a lawyer in the last 6 years are children between the ages of 12 and 15.
- Approximately 80% of child victims of abuse who are assigned a lawyer are girls. Approximately 50% of the female victims of child sexual abuse who are assigned a lawyer include children between the ages of 12 and 15. Approximately 55% of the victimized boys who have been appointed as lawyers for child sexual abuse crimes are children under the age of 12.

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<sup>12</sup> The system that arises from the Turkish Code of Criminal Procedure (CMK) and is legally referred to as the attorneyship is called the "mandatory defense system." In this system, attorneys participate if they agree to be assigned to criminal cases as needed. This system is also referred to as the mandatory defense system. For example, in cases involving minors, children are assigned an attorney through this system, as it is mandatory for children to be represented by an attorney. Both investigative and prosecutorial authorities, as well as individuals giving their statements, can request the appointment of an attorney through the CMK system. In this system, individuals do not pay fees to the attorney.

<sup>13</sup> Istanbul Bar Association Official Website <https://www.istanbulbarosu.org.tr/Home.aspx>

<sup>14</sup> <https://www.istanbulbarosu.org.tr/files/docs/maduravesucasuruklenencocuklar2014-2019.pdf>

- In 2019, lawyers were appointed for 2,562 child victims of child sexual abuse. Approximately 45% of the appointments were made for children between the ages of 12 and 15, and approximately 85% of the child victims were girls.

### **Data from Civil Society Organizations**

Another report on this issue is the monitoring report prepared by the organization UCIM<sup>15</sup> in 2021, which includes 92 child sexual abuse cases.<sup>16</sup> The data used in the UCIM monitoring study<sup>17</sup> were obtained from 92 court cases in 23 provinces (Adana, Ağrı, Ankara, Antalya, Batman, Bursa, Çanakkale, Çorum, Diyarbakır, Gaziantep, İstanbul, İzmir, Kayseri, Kocaeli, Konya, Mardin, Mersin, Muğla, Ordu, Sakarya, Şanlıurfa, Van and Yalova) between February and July 2023, and news reports on child abuse during the same period. With regard to the findings on protection and assistance to children who are victims of sexual abuse, the report states that, on the basis of the cases monitored, the following can be concluded that:

- The minimum age of the victim in abuse cases was 2 years. 46.3% of the abuse cases involved children aged 5-10 years.
- Children were abused in a variety of settings, including at home, in educational institutions, on the street, in neighboring houses or in shopping malls; only 4% of the perpetrators were unknown to the children.
- 45% of the children were threatened before or after the abuse. Children who were blackmailed, threatened and intimidated were unable to report such incidents and were exposed to repeated abuse. As for the duration of the abuse, 52% of the children were systematically victimized for years.

### **Data Disclosed by Government Agencies**

According to the data published by TURKSTAT<sup>18,19</sup> there were 259106 children brought to security units<sup>20</sup> as victims in 2022. Of the 259106 children who came to security units as victims, 13.7% of them were victims of sexual crimes<sup>21</sup>. Information on the continuation of court files or judicial processes to which children brought to security units are parties was not shared.

The available data in judicial statistics<sup>22</sup> indicate that the percentage of sexual abuse crimes in total crimes increased from 0.6% in 2013 to 0.8% in 2020, which includes child sexual

<sup>15</sup> <https://www.ucim.org.tr/>

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FTUR%2F49406&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCRC%2FNGO%2FTUR%2F49406&Lang=en)

<sup>17</sup> For Monitoring Report: <https://www.ucim.org.tr/detay/1126/cinsel-istismara-maruz-birakilan-cocuklara-yonelik-hak-ihlallerini-izleme-raporu-en.html>

<sup>18</sup> Turkish Statistical Institute is a research institution associated with the Ministry of Treasury and Finance of the Republic of Turkey. <https://www.tuik.gov.tr/>

<sup>19</sup> Statistics on children brought to or arriving at security units <https://data.tuik.gov.tr/Bulten/Index?p=Güvenlik-Birimine-Gelen-veya-Getirilen-Cocuk-Istatistikleri-2022-49662>

<sup>20</sup> Institutions aimed at ensuring public safety, such as police stations, gendarmerie. In Turkey, the reporting of each criminal case is initially made to the security forces according to the service region, either to the police or the gendarmerie. The first responders at the scene are the security forces. When individuals wish to make a complaint, they usually go to or are taken to the police station. The situation is the same for children, but in cases of child sexual abuse, if there is a Child Advocacy Center in their city, children are taken to these centers by the police after their visit to the police station.

<sup>21</sup> In 2020, 12.2% of the 150,615 cases referred to security services were victims of sexual crimes.

<sup>22</sup> Justice Statistics <https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adalet-istatistikleri-yayin-arsivi>

abuse cases. At the same time, the percentage of convictions increased from 18.1% in 2013 to 22.7% in 2020, while the percentage of cases resulting in convictions decreased from 56.5% to 53.6%. This indicates an increase in the number of cases, but a decrease in the percentage of convictions. More comprehensive information was not available and disaggregated data is not available.

#### C.4. Shortcomings in investigations into child sexual abuse

According to academic research carried out in 2022, a paper entitled “*Sexual Abuse of Children in Turkey: Psychiatric Evaluation of 1785 Cases*”<sup>23</sup>, **victims are not referred to psychological evaluations.** Doctors from the Department of Forensic Medicine argue that the fact that victims are not referred to psychological evaluation reduces the support for treatment and rehabilitation. Therefore, amendments making psychological evaluation compulsory for all victims of sexual crimes, both children and adults, are needed.

Another study published in 2022, *A retrospective investigation of child sexual abuse cases*<sup>24</sup>, argues that although services are provided to protect children, there are still issues that need improvement: Turkey’s national legislation is still not in full compliance with international standards, official statistics are not up-to-date, the lack of a national database for CSA (child sexual abuse) and negligence, the lack of any national action plan for the sexual abuse and sexual exploitation of children, and a serious lack of data on the number of children victimized by different types of sexual abuse.

In the last 10 years, some legal changes have been made to prevent secondary victimization of children in court cases related to sexual abuse.<sup>25</sup> However, despite these improved judicial procedures, judicial practices in sexual abuse cases have not yet been standardized throughout the country. As an example of this situation, **suitable facilities for taking the statements of children are not available in every city.** Child Advocacy Centers are technical facilities established for children to provide their statements in cases of sexual abuse. However, currently, these centers have not been opened in every city across the country. To minimize the trauma experienced by children, lawyers handling cases involving children are taking them to nearby cities if these centers are not available in the city where the case is being heard. This situation highlights the need for monitoring and reporting on sexual abuse cases.

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<sup>23</sup> <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9466628/>

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[https://www.researchgate.net/publication/362733592\\_A\\_retrospective\\_investigation\\_of\\_child\\_sexual\\_abuse\\_cases](https://www.researchgate.net/publication/362733592_A_retrospective_investigation_of_child_sexual_abuse_cases)

<sup>25</sup> These changes can be summarized as follows: While not present in every major city, a requirement has been introduced for children, particularly in cases of sexual abuse, to provide their statements in Child Observation Centers established within state research hospitals in Turkey. For instance, there are currently three such centers in Istanbul. Additionally, specialized interview rooms have been established in every courthouse not only for cases of sexual abuse but also for vulnerable groups to facilitate the collection of children's statements. However, a challenge arises from the insufficient number of these centers and rooms, and the lack of access to such facilities outside major cities. Furthermore, there is no standardized professional training process for individuals working in these centers. Another issue is that, despite a child providing their statement in a Child Observation Center, court judges or prosecutors, who may lack expertise in the matter, attempt to take the child's statement. There is a lack of standardized regulations regarding these arrangements.

Another article from 2021, entitled *Quality of Victim Statement in Child Sexual Abuse in Turkey*<sup>26</sup>, aims to identify difficulties encountered during the entire trial in CSA cases, to determine the auditability of taking a child's statement, which is the basis of the judicial decision, and to evaluate the effectiveness of the principles set by the Supreme Court, which oversees the local court decision.. The author identifies **difficulties in gathering evidence, apprehending, and prosecuting the perpetrator**. She states also that “the trial is often based on the contradiction of the suspect's and the child's statements”. Regarding one studies case, the author notes “*It was determined that the trial was continued on abstract allegations, the Supreme Court's approval of the decision of the local court was based on “the slander of a person who wants to harm another person over the sexuality of a minor is contrary to the usual flow of life.” Furthermore, the reason was suggestive of subjective interpretations rather than material truths.*”.

Another study on child sexual abuse in Turkey entitled “*Case-based surveillance study in judicial districts in Turkey*<sup>27</sup>: *Child sexual abuse sample from four provinces*” finds that: “*Investigation of case files in this study revealed that **the documentation of multiple variables in the files was suboptimal in Turkey**. Although crime-related variables were recorded in a systematic way, **variables such as demographics of the victims, the perpetrators, and non-offending family members were minimally recorded**. Systematic recording of children's education, behavioural and psychological problems, employment status, marital status, and familial demographic information would allow all professions presiding over the criminal court to recognize possible risk factors to the victim and the family in the long term.*”. The study also remarks “*The **extensive amount of missing data in court files** was another limitation of this study*” and that “*most of the medical records documenting children's health evaluations were not found in the files*”.

In the media, the ineffectiveness of investigations into child sexual abuse was highlighted by the high-profile case of H.G.K.<sup>28</sup>, which concerns a girl who was “married” at 6 and sexually abused for years afterward. The case was reported on by the media, which stated that: “*Despite a doctor's report suspecting the marriage of a minor in 2012 and the opening of an investigation by the prosecutor's office, several irregularities stalled the progress of the case.*”<sup>29</sup>. Prosecutors remained inactive with regard to her complaints for two years, until the case was reported in the media.

In another case<sup>30</sup>, concerning the sexual abuse of two children aged 7 and 10, a court ruled that the defendants can be released with judiciary control, due to “conflicts in testimonies and the fact that all evidence in the case was properly collected.”

### **Interviews conducted with with lawyers from Women and Children First Association**

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<sup>26</sup> <https://www.tandfonline.com/doi/abs/10.1080/10538712.2021.2014611>

<sup>27</sup> <https://pam.arel.edu.tr/wp-content/uploads/2022/07/Case%E2%80%90based-surveillance-study-in-judicial-districts-in-Turkey-Child-sexual-abuse-sample-from-four-provinces.pdf>

<sup>28</sup> [https://www.lemonde.fr/en/international/article/2022/12/28/turkey-forced-marriage-of-six-year-old-girl-revives-debate-on-religious-sects\\_6009428\\_4.html](https://www.lemonde.fr/en/international/article/2022/12/28/turkey-forced-marriage-of-six-year-old-girl-revives-debate-on-religious-sects_6009428_4.html)

<sup>29</sup> <https://www.duvarenglish.com/turkish-education-ministry-confesses-negligence-in-horrific-child-abuse-case-news-61766>

<sup>30</sup> <https://www.dailysabah.com/turkey/verdict-in-child-abuse-case-draws-outrage-in-turkey/news>

Interviews regarding the lack of effective investigation and impunity were conducted with lawyers from Women and Children First Association<sup>31</sup> and with lawyers who independently follow sexual abuse cases. In these interviews, information about the sexual abuse cases in which the lawyers were involved or followed up on behalf of their organizations was asked and case information was obtained. In order to protect the personal data of children, the court information of these cases was not included<sup>32</sup>.

The cases for which information was received are from Erzurum, Istanbul, Van, Ağrı, Konya, Şanlıurfa, and they have been initiated between 2016-2022. Of the cases to be transferred, 2 have been completed and 8 are pending<sup>33</sup>.

The total number of abused children in the Erzurum and Van cases is 30. The Erzurum case concerns sexual abuse acts perpetrated by teachers of a religious/ Qur'an course. Lawyers reported that the main perpetrators were not prosecuted and their crimes were covered up and that the authorities had failed to take investigative steps to include perpetrators in the criminal investigation in order to protect teachers in the Quranic school. As a result, only a 20-year-old individual working in cleaning duties was singled out as the sole perpetrator, and the case was pursued against this person, but not against any of the teachers.

There are reports that similar cases of sexual abuse continued in Erzurum in 2022 due to an unsupervised Qur'an course.<sup>34</sup> According to the lawyers, the investigation phase was not carried out effectively in any of the cases. The importance of an effective investigation is that there is no missing evidence of the crime when the cases reach the court stage. For this reason, in Turkish Criminal Law, prosecutors are obliged to collect all the evidence both *ex officio* and as pointed out by the parties involved in the case. In particular, among the evidence collected, issues such as the statements of the suspect and the victim, witness statements, examination of the crime scene, and preservation of the evidence at the crime scene, if any, in accordance with the law are important.

Lawyers interviewed explicitly stated that often **statements of witnesses who can provide evidence of the crime and who have witnessed the crime are not usually taken by prosecutors** in the investigation files. s, the prosecutor does not take the statements of these individuals.

In the event that the prosecutor's office receives a report or complaint that a crime has been committed, it must start investigating the incident in order to quickly decide whether to open a public case through judicial law enforcement officers or directly. At this stage, evidence should be collected quickly and the decision on whether to file a public case should be evaluated. In the case in Erzurum, for example, it took the prosecutor's office 2.5 months to open the investigation. Lawyers stated that this was sufficient time for evidence to be suppressed.

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<sup>31</sup> Due to the fact that there is no website access, the association's Instagram account <https://www.instagram.com/oncecocuklarvekadınlarderneği/>

<sup>32</sup> This section contains information referring to a total of 10 sexual abuse cases. The information gathered from the cases was collected through interviews with lawyers. Lawyers also shared their own observations on the processes.

<sup>33</sup> The perpetrators were teachers at the boarding school in 2 of the cases, teachers at the religion course in 1 case, neighbors in 1 case, and relatives such as fathers, uncles and cousins in 6 cases. 80% of the children in this research were subjected to abuse by someone they knew. In 3 of the cases, more than one child was abused.

<sup>34</sup> **Second scandal** in Erzurum <https://t24.com.tr/haber/erzurum-daki-ikinci-skandal-yine-denetimsiz-kuran-kursu-yine-cocuk-istismari,1037951>



There is a lack of effective investigations to collect evidence without delay after a complaint or denunciation is filed, and for these types of crimes, the statements of the parties should be taken without delay.

### **Shortcomings in the child interview process**

It is important for the judicial process and for child victims to be able to give testimonies while being protected from secondary trauma that the Forensic Interview Rooms<sup>35</sup> opened by the Forensic Support and Victims' Rights Department and used in courthouses in Turkey for taking testimonies from survivors (in these rooms testimonies are taken in the presence of experts) - are used more frequently by the Public Prosecutor's Office, especially during the investigation phase. These rooms can be used by prosecutors and judges ex officio and by lawyers upon request on behalf of their clients.

The general procedure of taking children's statements or collecting evidence in terms of conducting an effective investigation can be seen in the sexual abuse case in Istanbul. Within the framework of the investigation initiated by the Chief Public Prosecutor's Office, although the statements of the victimized children were taken at the investigation stage, the court committee decided that "*the statements of the victims should be taken again in the presence of our committee, considering that it is important to reach the material truth and the observation of the court*". Although Article 236/2 of the Turkish Code of Criminal Procedure gives the court discretionary power to prevent the rehearing of child victims, the court did not make use of this provision. Child victims were heard in court in a way that caused secondary trauma. The main problem here is that the perpetrator and the child come face to face and the child victim of sexual abuse is forced to describe the acts to which he/she was subjected in a courtroom full of adults. In this situation, it is clear that the child cannot give a sound testimony. In addition, judges and prosecutors are not professionally equipped to take testimony from child victims of sexual abuse.

The actions in the other Istanbul case in were reported by the lawyers as follows: the victim's statement was taken at the Child Monitoring Center during the investigation phase. However, the child whose statement was taken was 4 years old. At the Child Monitoring Center, the statement was taken without taking into account the victim's young age. Although Article 5 of the Regulation on Forensic Interview Rooms, which is another regulation on this issue, emphasizes that the process should be carried out "taking into account the age, gender and developmental characteristics", in the relevant case, the trial was incomplete and the perpetrator was acquitted because the child's statement was not taken with methods appropriate to his/her age and development<sup>36</sup>.

Especially when it comes to children, it is necessary to take children's statements in sexual abuse cases only once and to protect children from secondary trauma<sup>37</sup>. There is more than one piece of legislation and structure in the country regarding this regulation, but the provisions of

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<sup>35</sup> What are forensic interview rooms? <https://magdur.adalet.gov.tr/Home/SayfaDetay/agonedir>

<sup>36</sup> For instance, according to experts in the field, a 4-year-old child may express themselves more effectively regarding sexual abuse not through verbal communication but by using toys or items commonly employed in art therapy. This is because there is a significant difference in communication skills between an 11-year-old child and a 4-year-old child.

<sup>37</sup> Child Monitoring Centers (CMCs) were established within state hospitals in order to minimize the secondary traumatization of children who have been sexually abused and to ensure that forensic and medical procedures are carried out in a single center consisting of people trained in this field. For an example of a hospital: <https://behcetuzch.saglik.gov.tr/TR-770738/cocuk-izlem-merkezi.html>

this legislation are not applied in all cases. In addition, Child Monitoring Centers for taking statements from children are not available in every city.<sup>38</sup>

In addition, a recent Council of Europe report entitled “*Barnahus: a European journey Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member states*”<sup>39</sup> also reports on Turkey with regard to shortcomings in procedural rules and safeguards, as well as Bilateral collaboration in investigations.

### **Barriers to Children's Access to Justice**

Lawyers reported that children face difficulties in accessing justice, especially in cases of sexual violence in family settings due to social-cultural barriers. It was emphasized that the reasons for this are that the family lives in a remote areas, lack of knowledge about the procedure, the risk of stigmatization, not speaking Turkish, and the need of family members to hide the incident for fear of the family breaking up. Another finding is that in cases of sexual abuse that take place within the family, perpetrators are treated with more leniency than those outside of the family.

CNN Türk news anchor Büşra Sanaym in her book 'To Give Birth to Her Brother/Sister' reveals the landscape of incest in Turkey by talking to people from incest survivors to families, sociologists to theologians, lawyers to educators, psychologists to forensic experts. The book includes the opinions of lawyers, the experiences of victims, and issues related to domestic sexual abuse in Turkey and sheds light on how the risk of stigmatisation affects children's access to justice in such cases.<sup>40</sup>

It was also noted that one of the barriers to access to justice is poverty. The issue of poverty is particularly relevant when the abuse is perpetrated by the father or another male breadwinner, as there is concern in the family that reporting the perpetrator would leave the entire family homeless and financially vulnerable. Lawyers also reported that cases involving girls and boys are investigated differently and that cases are closed quickly when the victims are boys.

### **Confidentiality of Hearings**

In all cases for which information was provided, hearings were not closed in order to protect children's personal data and privacy. In one case in Istanbul, due to the fact that the victims were children, the request made by the attorneys for the hearing to be closed was only implemented in the hearing where the children were heard, but not during other court sessions. In cases where children were parties, the principle of confidentiality was not fully implemented at all stages of the proceedings. In some cases, judges without specific training in child-related matters had directly questioned the child if they were brought to the court.

### **Intervention of the Ministry of Family in Sexual Abuse Cases**

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<sup>38</sup> Not every city has a Child Monitoring Center. <https://www.birgun.net/haber/31-kentte-cocuk-izlem-merkezi-yok-cocuklar-nasil-anlatacak-350464>

<sup>39</sup> <https://rm.coe.int/barnahus-a-european-journey-mapping-study-on-multidisciplinary-and-int/1680acc3c3>

<sup>40</sup> <https://www.dr.com.tr/Kitap/Kardesini-Dogurmak-Turkiyede-Enses-Clz/Arastirma-Tarih/Sosyoloji/urunno=0001745839001>

It is challenging to monitor the impact of the Ministry of the Family in child sexual abuse cases. There is no publicly available data on sexual abuse cases in which the ministry is involved or the nature of the ministry's influence on the outcome of the cases.

Out of the 10 cases which were the subject of the interviews, the Ministry of Family Affairs intervened in 6 of them. However, this intervention takes place upon the court's *ex officio* notification to the ministry or upon the parties' requests to the ministry. According to the interviewed lawyers, the lawyer representatives of the Ministry of Family have a symbolic role in these proceedings, but they do not provide effective support for the trial; for instance, ministry lawyers do not present detailed defenses for the children.

According to the 2021 official statistics (data which does not include disaggregated content such as age, gender, disability status, socio-economic level), the total number of cases filed under Articles 103 and 104 of the Turkish Penal Code was 71,000. In addition, according to the data of TÜİK, there are 32,000 children taken to security units who are victims of sexual abuse. The Ministry of the Family cannot intervene in all these cases.

Finally, the recommendations of the sexual abuse report, which was submitted to the Sexual Abuse Investigation Commission of the Grand National Assembly of Turkey in 2016, were not followed up on.<sup>41</sup> In 2023, the report was declared null and void by a motion submitted through the Sexual Abuse Investigation Commission.<sup>42</sup>

In light of all this, the impact of the ministry's involvement in these cases on sexual abuse cases cannot be monitored.

### **Training of magistrates and other relevant professionals**

The inappropriate training of magistrates on child sexual abuse and vulnerable victims is also touched upon in the reporting by Rudaw media outlet on: “Child sex abuse in Turkey sparks debate on best prevention”<sup>43</sup>, which reports:

*“Children who do come forward have to relive the trauma repeatedly in police stations and courts when **questioned by untrained, insensitive officials**. Selmin Cansu Demir, a lawyer and children's rights advocate, says victims often feel "ostracized, labeled" and are exhausted by court cases that take years.”*

*“Demir argues that child sexual abuse is too often **left open to the interpretation of judges and prosecutors**. The Turkish penal code's Article 103 calls "all sexual behavior" toward a child under 15 - the age of consent - sexual abuse, with higher sentences if the child is under 12. In practice, however, Demir said judges often look for physical contact as the basis of sexual abuse and suspects get lesser sentences if a judge considers acts like exposing oneself "harassment." A case against a 25-year-old man in Istanbul accused of exposing himself to an 8-year-old girl was dropped in February after a disagreement between two courts on whether his behavior constituted sexual abuse or harassment. Even when there is contact, **sentencing***

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<sup>41</sup> <https://tbmm.gov.tr/Denetim/Meclis-Arastirmasi-Komisyonu-Detay/f72877d2-143a-037b-e050-007f01005610>

<sup>42</sup> <https://tbmm.gov.tr/Denetim/Meclis-Arastirmasi-Komisyonu-Detay/f72877d2-144e-037b-e050-007f01005610>

<sup>43</sup> <https://www.rudaw.net/english/middleeast/turkey/05032018-amp>

*is based on a scale that some rights workers consider arbitrary. Demir said if a sex act is "sudden and interrupted," the suspect may receive a lesser sentence. According to a report by IMDAT, an association working to prevent child abuse, a 32-year-old man accused of raping a 14-year-old boy with a mental disability was charged with a lower sentence in 2016 for having ejaculated prematurely. The law is also problematic in its protection of children above 15."*

In June 2023, the Committee on the Rights of the Child also published the concluding remarks in respect of Turkey and called on Turkey to: *"establish accessible, confidential and child-friendly mechanisms to facilitate and promote the mandatory reporting of violence against children, including by **strengthening the capacity of relevant professionals, inter alia, social workers and teachers, to recognize and effectively respond to such incidents, including sexual exploitation and abuse**".*<sup>44</sup>

### **Other relevant aspects**

With regard to all 10 cases, interviewed lawyers reported that the provisions of the Lanzarote Convention, the jurisprudence of the ECtHR, the decisions of the Constitutional Court regarding child sexual abuse, the UN Convention on the Rights of the Child and the Child Protection Law No. 5395 were not applied or referred to in the case files during the trial or decision phase.

Regarding the length of proceedings, proceedings and investigations related to child sexual abuse take an unreasonable amount of long time. For example, among the cases relevant in the interviews, the case in Ağrı concerns (which sexual abuse in family settings) started in 2016 and ended in June 2022. The perpetrator was sentenced in this case, but the biggest problem in sexual abuse cases is that children are not protected in the judicial system during the proceedings. During the extensive six-year proceedings, no measures were taken to prevent children from being traumatized during the trial.

The lawyers also stated that the cases with a shorter duration are the ones that are reflected in the public and news. They stated that the reason for this is to influence public opinion and to ensure that the cases are closed immediately and the incident is forgotten.

### **C.5 . Impunity in Child Sexual Abuse Cases**

Reflecting on recent trends in a media article, Senem Gözel, a psychologist and founder of the Trauma and Recovery Association (*Travma ve İyileşme Derneği*), states<sup>45</sup> that **frequent acquittal decisions handed down in child abuse trials** and the government's [2021 withdrawal](#) from the İstanbul Convention, have both been detrimental to creating a safe environment for children. *"This increase [in cases] is not surprising because we see the government is not doing any serious work against child abuse,"* Gözel told Turkey recap. *"In addition to [lax policies], we occasionally witness statements from state officials that justify child abuse."*

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<sup>44</sup>

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPPRiCAqHkb7yhstBt%2FqjEIA0q0nwgJWSCd%2BeXugKb9TCBaVOxBwWZpCKfZDfyWYnYw5t8HpqRS9Yx4fTAH44RUgXSYLO6pwLc9jOUam9oahqMB6R5VYEOquge>

<sup>45</sup> <https://turkeyrecap.substack.com/p/why-are-child-abuse-cases-rising>

Ezgi Koman, a child development specialist and co-founder at the FISA Child Rights Center (*FİSA Çocuk Hakları Derneği*), describes impunity for child sex abuse as a kind of regime, explains that the state policies are not able to protect them: “Current laws are not child-centric. In many judicial processes, a system that defends the perpetrator, not the child, still persists (...) The consent of the child can still be questioned, or a disabled child can be asked 'why he/she did not shout' during sexual abuse.”<sup>46</sup>

Journalist Mustafa Hoş, who reports on child abuse cases in sects and institutions affiliated with religious congregations, explained that education policies as well as unchecked sect dynamics leave children unprotected and can pave the way for cases of child abuse. Furthermore, some groups in Turkey have started targeting the [Lanzarote Convention](#).

According to the Protect Project<sup>47</sup> addressing Child Sexual Exploitation in Turkey:

- There is an increase of 29 percent in child sexual exploitation cases.
- According to the figures reflected in the judicial statistics, the highest child sexual exploitation crime numbers are in the Marmara Region and the lowest in the Eastern Anatolia Region. On the contrary, the highest conviction numbers are in the Aegean Region with 60 percent, and the lowest in the Southeastern Anatolia Region with 47%.
- Moreover, the region with the highest number of acquittals was the Eastern Anatolia Region with 27,2 percent. However, these numbers are controversial because the data are based on reports; it is well known that the number of unreported and hidden cases is overmuch. The number of victim girls is considerably higher than that of boys, even though boys are also subjected to exploitation.
- In May 2020, Istanbul, Izmir, Diyarbakir, and Gaziantep Bar Association had prepared many reports on CSE. According to these reports, the number of lawyers assigned to child sexual exploitation decreased significantly during the epidemic period. The reason for this remarkable diminution is the inability of children to access protective mechanisms.

A relevant report is the impunity situation report prepared by two lawyers from the Human Rights Joint Platform (IHOP) which addresses the impunity for sexual crimes against women and girls.<sup>48</sup> In three of the cases present in the report, the victims are minors. However, two of these cases resulted in acquittal, and in one case, although the case was filed on the basis of sexual abuse, a lesser sentence was given on the basis of the crime of sexual intercourse with a minor.

According to the interviewed lawyers, the characteristics of the perpetrators also play a role in determining their impunity. In case files, not only the physical characteristics of the perpetrators (such as the defense that the perpetrator was impotent, as stated in the *G.U. v Turkey*), but also other arbitrary criteria can be used as grounds for impunity. In the case file in Şanlıurfa, the court of first instance acquitted the step-uncle because there was a romantic relationship between the victimized child and the perpetrator's step-uncle, the victimized child

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<sup>46</sup> <https://turkeyrecap.substack.com/p/why-are-child-abuse-cases-rising>

<sup>47</sup> <https://sites.gold.ac.uk/the-protect-project/child-sexual-exploitation-in-turkey/>

<sup>48</sup> Impunity situation report <http://www.ihop.org.tr/wp-content/uploads/2015/06/CinselSiddetSuclarindaCezas%C4%B1zli%C4%B1k.pdf>

did not file a complaint and the child was over the age of 15. Interviewed lawyers considered that the prosecutor's office described a romantic relationship in the indictment in order to influence the court.

Factors which are correlated to impunity are the perpetrator's social status, the fact that the perpetrator is a well-known figure. The authorities do not understand that anyone can be the perpetrator of this crime; perpetrators are generally known to the children, such as teachers or family members. This information is consistent with rape myths - these myths often portray perpetrators as strangers to the victims - because in the cases encountered, the perpetrators are individuals known to the children or adults and are part of their social circle.

As regards impunity, it is also relevant that, since 2005, draft Bills have been submitted every few years to Parliament during the legislative debates foreseeing **amnesty for child abuse perpetrators on the condition that the perpetrator marries the victim**. Such attempts raised concern from UNICEF<sup>49</sup> and also from the Lanzarote Committee.

According to the Jam News report on Child Sex Abuse in Turkey<sup>50</sup>, many lawyers in Turkey believe that, instead of toughening up punishments, the government should make more of an effort to protect children from violence: “The main thing that needs to be done is to ensure that existing laws work,” [says a member](#) of the Juvenile Bar Association, attorney Gazal Bayram.”. In addition, Jam News reported that “Relying on registered cases alone, at least 27,000 underage children are forced into marriage on a yearly basis. **A total of 45 per cent of all investigations into cases of sexual violence against minors are not brought to punishment.** “. Sociologist Emrah Kirimsoy, quoted in the report, stated in the context of child rapes and murders, that over 100,000 children have gone missing in Turkey over the past 8 years.

#### D. CONCLUSIONS AND RECOMMENDATIONS

The main problem regarding sexual abuse of minors is that despite repeated violations and lawsuits, no child protection policy and action plan has been developed by state institutions regarding this type of crime. Another problem is the lack of access to data that would clearly determine the extent of impunity for sexual abuse of minors in Turkey. Having in mind the information set out above, we kindly ask that the Committee to consider examining this case under the enhanced procedure and to request the Turkish authorities to:

- Request that the authorities provide an official apology to the applicant for the failure to carry out an effective investigation in her case.
- Collect and make available statistics on how many complaints for CSA have been made, how many *ex officio* investigations have been initiated and how many of these accusations and complaints have reached the judicial stage in the last 5 years in Turkey under Article 103/sexual abuse and Article 104/sexual intercourse with a minor of the Turkish Penal Code, including the numbers of convictions and acquittals and the types of sentences.

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<sup>49</sup> <https://www.unicef.org/eca/press-releases/statement-turkeys-draft-bill-sexual-abuse>

<sup>50</sup> <https://jam-news.net/sexual-violence-against-children-in-turkey/>

- Conduct a thorough analysis as to how the existing provisions are applied in court practice<sup>51</sup>.
- Indicate on what measures have been taken by the Ministry of Justice to ensure effectiveness of investigations into child sexual abuse and develop an action plan to ensure effective investigations in such cases.
- Take measures to ensure that proceedings on child sexual abuse are conducted as expeditiously as possible and that evidence is collected and statements are taken without delay once a complaint or denunciation is filed.
- Take measures to ensure that child sexual abuse victims give testimonies in a manner which takes into consideration their vulnerabilities, by using forensic interview rooms and taking testimonies in the presence of experts.
- Conduct sustained capacity building and training efforts for judges, prosecutors, court psychologists and social workers on child sexual abuse cases.
- Start monitoring a certain number of child sexual abuse case files, in the form of a pilot project, from the date of the complaint or denunciation until the final decision is made, and report on these files while ensuring the confidentiality of the information.
- Disclose how many legal or administrative actions have been taken against prosecutors for not conducting effective investigations in sexual abuse cases.

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<sup>51</sup> Matching data gathered by the CMCs with the outcomes of prosecution, including a qualitative analysis of court judgments, would provide valuable insights into the efficiency of the legal mechanisms to protect children against sexual abuse. Such an analysis would furthermore serve the purpose of filling the gap regarding data collection in cases of sexual violence against children.