



**ALTERNATIVE (SHADOW) REPORT TO THE COMMITTEE AGAINST TORTURE
CONCERNING THE REVIEW OF TURKEY'S FIFTH PERIODIC REPORT**

**PREPARED BY THE ASSOCIATION FOR STRUGGLE AGAINST SEXUAL
VIOLENCE**

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About the Association for Struggle Against Sexual Violence

Since 2014, the Association for Struggle Against Sexual Violence¹ (CŞMD) has been working to raise awareness about rape culture and sexual/sexualized violence, organize workshops to make sexual violence more visible, organize capacity building activities for staff of institutions that provide support services, and change rape culture and replace it with a culture of consent. In addition, it produces evidence-based reports at the national and international levels on issues that arise at the national level and that constitute violations of human rights in the area of sexual violence.

About the Report

The focus of this report is on the fulfillment of Turkey's obligations under the Convention against Torture in cases of crimes of sexual violence. In the report, articles 2, 4, 10, 13, 14 and 16 of the Convention are highlighted by the Association for Struggle Against Sexual Violence and Turkey's obligations in the implementation of the Convention are examined in detail. As part of this analysis, the measures taken in the Fethiye case were categorized according to the Convention's articles. This article-by-article analysis was followed by an assessment of the factors associated with torture and the consequences of torture in the light of the general patterns that occur in trials concerning crimes of sexual violence. At the end of the report, the demands and recommendations in this regard are included. This report uses the term "survivor" instead of "victim".²

Given this structure, the following table of contents is provided for ease of reading:

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

² Instead of victim, this is the term used by the Association. This term is seen as empowering. However, due to the legal nature of the report, the term victim is also used in order to clarify the processes. See also "To identify a person who experienced sexual violence as "victim" or "survivor" primarily depends on the preference/self-identification of the concerned individual. UN staff should be respectful of these choices. The context in which the term is used may vary. For example, the term "victim" is regularly used when indicating that a person has been subjected to a violation of international law or a crime. The term is broad in that victims of sexual violence are those individuals who directly experienced the violence as well as those who were indirectly affected (for example, children born of CRSV). The term "survivor" is more commonly used in connection with the healing process of an individual who experienced sexual violence as it implies agency and resiliency. There is no United Nations wide agreement on the use of one term or the other. Both terms can be used simultaneously and interchangeably." United Nations Preventing and Responding to Conflict-Related Sexual Violence, p.5

ABBREVIATIONS

CŞMD - Cinsel Şiddetle Mücadele Derneđi (Association for Struggle Against Sexual Violence)

CRSV - Conflict-Related Sexual Violence (Çatışma ile İlişkili Cinsel Şiddet)

CEDAW - Convention on the Elimination of All Forms of Discrimination Against Women

(Kadına Karşı Her Türlü Ayrımcılıđın Ortadan Kaldırılması Sözleşmesi)

ECtHR - European Court of Human Rights (Avrupa İnsan Hakları Mahkemesi)

UN - United Nations (Birleşmiş Milletler)

TPC - Turkish Penal Code (Türk Ceza Kanunu)

CSO- Civil Society Organizations (Sivil Toplum Örgütleri)

CAT- Committee Against Torture (İşkenceye Karşı Komite)

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I. Executive Summary

Survivors of sexual violence in Turkey do not have access to the support they need. Even though there are regulations in place such as the Turkish Penal Code, internal directives and national action plans, survivors of sexual violence still face difficulties in accessing justice. The case files are the most basic manifestation of the difficulty in accessing justice. Therefore, the more than decade-long sexual violence case, known as the Fethiye case, has been researched and reported in detail by the Association in order to show the structural violence in judicial practices in Turkey. The practices described in this report are not isolated incidents; they are common across most sexual violence cases in Turkey, many of which have resulted in impunity.

The Fethiye case, which spans over a decade and represents a significant legal struggle, reveals important systemic problems in the way sexual violence cases are handled within the legal framework in Turkey. This case not only highlights the protracted legal challenges that survivors of sexual violence often face, but also serves as a critical study of the sexist, discriminatory, stigmatizing, impunity-seeking, "victim-blaming" practices in the legal system, the structural violence perpetrated by the courts, the inadequacy of support systems, the lack of training for public personnel regarding sexual violence, and the direct influence of societal beliefs on court decisions.

This case, which arose on 26.06.2007 in a spa in the coastal town of Fethiye, involves multiple acts of sexual assault³ that were first reported to the judiciary 17 years ago. B.A., a survivor, went to this spa with her boyfriend M.K.. She was offered peach juice which was spiked with a drug to make her immobile. After drinking the peach juice, B.A. (hereafter referred to as "the survivor") went up to her hotel room and fell asleep. She began to remember the violence she was subjected to in fragments 6-7 months after it happened. The total number of perpetrators in this case is 9, including children. Although one of the perpetrators was reported to the Prosecutor's Office, the necessary investigation was not conducted and this perpetrator was not included as a suspect. The trial was conducted with a total of 8 perpetrators, 6 adults and 2 children. The fact that the perpetrators did not fit the typology of rape myths⁴, that they were all respected people and had status in society, and that they included public officials, was cited as a situation that reduced the credibility of the survivor during the course of the case. The case file clearly shows that the perpetrators knew each other to varying degrees of intimacy. In spite of the seriousness of the allegations, the judicial process has taken more than 10 years without any effective investigation or collection of evidence.

³ In technical terms, "sexual assault", as defined in Article 102 of the Turkish Penal Code, encompasses any form of violating another person's physical integrity through sexual conduct, including the insertion of an organ or object into the body. It's important to note that rape falls under this offense category as well as other sexual conduct not reaching to this level.

⁴ What are rape myths? See: <https://www.ourresilience.org/what-you-need-to-know/myths-and-facts/> In the specific case of this incident, the society in general thinks that the perpetrators of rape are strangers, uneducated people, people without status, etc., as these myths suggest.

All accused were acquitted following the trial. The case was referred to the Constitutional Court, which ruled in 2022, almost 14 years after the event, that the prosecution carried out an incomplete investigation and that the prohibition of ill-treatment under Article 17 of the Constitution of the Republic of Turkey had been violated with respect to the applicant

The fact that crimes of sexual violence are not included in the definition of torture or cruel, inhuman or degrading treatment, and are not properly criminalized, results in the State not fulfilling its obligations under the commitment to prevent torture, and either the case is closed without reaching the trial stage, or the cases that have been opened result in impunity or the inability of the victim to access adequate reparation. Based on the articles of the Convention and the events of the Fethiye case, an analysis of the problems and shortcomings in this regard is presented to the Committee.

II. Definition of Torture (Article 1)

Article 1 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵ defines torture as *"any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."* Sexual violence, on the other hand, can be seen as a form of torture arising from power and hierarchies, where sexuality is used as a means of punishment: *"Sexual violence defines all types of acts, behaviors and interventions, including attempts and threats related to sexuality, perpetrated by the person(s) without obtaining consent, by constructing consent or in situations where consent cannot be obtained."*⁶ Acts or behaviors that use sexuality as a tool or target a person's gender, sexual identity, sexual orientation, sex, or gender expression where consent is lacking, unsolicited, unwanted, actualized, attempted, or threatened. Intimidation, blackmail, and other forms of threatening behavior that constitute sexual violence are also included in this definition. This act can also be a violation of the physical and/or sexual integrity of a person. Examples include interventions that threaten sexual health, denial of access to medicines and services related to reproductive health, and forced gender reassignment. Consent cannot be obtained if the person is under the influence of alcohol or drugs, if the person is physically or mentally/spiritually incapable of giving consent, if the person's resistance is weakened by drugs, etc., if the person is a child (under the age of 18), if the subject is an animal." According to these definitions, rape is both a crime against humanity and torture because the acts and consequences of committing this crime seriously harm human dignity, bodily integrity and mental health. According to statistics, the fact that women are more often subjected to sexual violence in order to intimidate, humiliate and control a group of people, because it targets a group (women) because of their gender, is defined in the Civil Code and Article 216/2 of the Turkish Penal Code (TPC) in national legislation, and in the United Nations Universal Declaration of

⁵ In the remainder of this report, it will be referred to as the "Agreement".

⁶ This is the definition used by the association submitting the report to define sexual violence. As national legislation defines sexual violence only as the crime of sexual assault, this limited definition is insufficient.

Human Rights, Article 14 of the International Convention on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in international law. The Committee against Torture generally considers rape as torture; or cruel, inhuman or degrading treatment; or punishment.⁷ Rape and other forms of sexual violence are considered within the scope of torture as acts that cause physical and psychological suffering. Article 1 of the United Nations Convention against Torture, which defines torture and other cruel, inhuman or degrading treatment or punishment, provides a legal definition of such acts, while Article 4 imposes an obligation to criminalize torture. On the other hand, since rape is not explicitly recognized as a form of torture in domestic law for the reasons mentioned above, the perpetrators of torture remained unpunished at the beginning of the trial process in the case selected for reporting due to lack of due diligence, lack of effective investigation, lack of collection of evidence, concealment of evidence, prejudices of the court that this crime could not be committed by these perpetrators due to the profiles of the perpetrators, and the long duration of the trial.

In the Turkish Penal Code No. 5237, sexual/sexualized violence is regulated under the titles of Sexual Assault, Sexual Harassment, Sexual Abuse of Children and Sexual Relationship with a Minor in Articles 102, 103, 104 and 105 of the relevant law. This report is based on the crime of sexual assault against adults within the scope of Article 102. According to Article 102:

“(1) Any person who violates the physical integrity of another person, by means of sexual conduct, shall be sentenced to a penalty of imprisonment for a term of two to ten years, upon the complaint of the victim. If the said sexual behaviour ceases at the level of sexual importunity, the term of imprisonment shall be from two years to five years.

(2) Where the act is committed by means of inserting an organ, or other object, into the body, the offender shall be punished with a term of imprisonment no less than twelve years. If the act is committed against the offender’s spouse, conducting an investigation and prosecution shall be subject to a complaint by the victim. (...)”

The Turkish Penal Code No. 5237 was enacted in 2005. Article 102 establishes a number of aggravated circumstances. Among them, the expression "sexual assault in such a way as to harm the physical and mental health of the victim" was amended in 2014 and removed from the text of the article.

III. The obligation to prevent torture (Article 2)

Article 2 defines the State's obligation to prevent torture. It imposes a broad responsibility on States Parties to prevent torture, stating that "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction." In this context, the fact that the Fethiye case lasted 14 years, the acquittal of the defendants after the trial and the denial of access to justice for the survivors is a violation under Article 2.

⁷ See: Rape As a Form of Torture: The experience of the committee against Torture-Gaer, Felice.
<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/Others/204-gaer-general.pdf>

Patterns of neglect and violence that were clearly visible to the judicial and administrative authorities emerged throughout the process of the Fethiye case. What is meant by these patterns is that the acts of structural violence in this case that have manifested themselves in other cases of sexual violence. These are patterns of rape myths that are fundamentally victim-blaming and that are oriented towards the inherent innocence of the male perpetrators. Examples include judicial bias, especially in cases where the perpetrators have a direct relationship with the survivor; judicial perpetuation of rape myths due to this bias; judicial and societal beliefs that sexual violence is perpetrated by strangers; lack of a culture of consent in bilateral relationships and in the justice system; lack of physical evidence on survivors' bodies or undermining their credibility by their silence at the time of the incident, survivors being forced to recount the violence they were subjected to repeatedly in courtrooms during the trial process, the belief that survivors' lack of reaction during sexual assault indicates their consent to the sexual assault, lawyers' arguments that perpetrators would not commit such crimes because of their status, and the judiciary's questioning and suspicious attitude towards survivors.⁸

IV. The obligation to criminalize torture (Article 4)

As noted above, the trial in this case lasted 14 years; the date of the first allegation of the crime was 17 years before the date of the report. Article 4 of the Convention requires States Parties to criminalize torture. In this context, the failure to classify rape, as it was committed with a certain intensity and manner in this case, as torture or ill-treatment indicates that this obligation has not been fulfilled. It is possible to do this within the scope of article 94, which regulates the crime of torture, or article 96, which regulates the crime of cruelty, or by adding an aggravating circumstance to article 104, which regulates the crime of sexual assault. As a result of this shortcoming, in the specific case, a woman was subjected to sexual assault by more than one person, the case file was not finalized or evidence was not collected for 14 years, the crime of torture was not taken seriously or the crime of torture was not investigated effectively. This

⁸ Here are some incidents and news coverage of such patterns:

1. Question from the judge to the complainant woman: S.E., a resident physician at a state hospital, sexually assaulted H.Z., a nurse working at the same hospital. During the hearing of a lawsuit filed for sexual assault, the complainant woman was asked by the judge whether she shouted during the sexual assault. Didn't you shout during the sexual assault?

<https://bianet.org/haber/hakimden-musteki-kadina-cinsel-saldiri-sirasinda-bagirdin-mi-288728> ,

2. Question from the judge to the complainant: Why didn't you scream during the sexual assault?

<https://toplumsalciinsiyetvehukuk.com/neden-bagirmadin/>

In case no. 2019/484 of Kilis Criminal Court in Kilis, the complainant woman was sexually assaulted by her boyfriend in her own house. The court showed a very biased attitude towards the woman because she had brought her boyfriend to the house. During the testimony of the survivor, the court asked the question, "Why didn't you scream when you were raped? The accused was also acquitted in this case. It is unclear how many legal or administrative actions have been taken against prosecutors for failing to conduct effective investigations in similar cases.

3. In this case, it was revealed through the testimonies of the complainants that the perpetrator, a gynecologist, subjected his female patients who came to his office to various forms of sexual assault. The fact that the perpetrator was a gynecologist and the lawyers of the perpetrator defended that the perpetrator was a respectable man:

One survivor recounts the hearings: "30-40 people came to the hearings. I didn't think that well-known and influential lawyers would defend a perpetrator of sexual assault so vigorously. The hearings were more like an attack on us, because the defendants' lawyers didn't really present a defense. Their argument was that we were trying to smear a successful person. <https://www.indyturk.com/node/208056>

situation resulted in impunity for the persons or institutions involved in torture: the defendants were acquitted, and the persons or institutions that conducted the proceedings were not subjected to any administrative sanctions due to the length of time or the lack of evidence collection. At some point, not recognizing rape as torture, prolonging or ending the trial without considering the survivor's need for justice, and not collecting evidence without delay led to impunity for those involved in torture and violated Article 4 of the Convention.

B.A. filed a complaint against the public prosecutors who had initially issued a decision not to proceed with the prosecution in the Fethiye case, but to no avail. The failure to take administrative action against the prosecutors concerned also constitutes a violation of the obligation to prevent torture.

V. Systemic problems identified in the Fethiye case and the role of Personnel training in the prevention of torture (article 10)

In this context, we would like to emphasize that the "requirement to organize effective training on gender-based violence for law enforcement personnel, judges, lawyers and social workers in direct contact with survivors" has not been met, although the lack of staff training was mentioned in Article 46(d) of the Committee against Torture's 2016 recommendations to Turkey.

The length of legal proceedings in sexual assault cases is detrimental to the psychology of survivors who are forced to relive or recount the trauma of violence over and over again for years. The significance of the Fethiye Case goes beyond its lengthy duration, revealing deep-rooted problems such as the lack of specialized training for judicial officers dealing with sexual violence, social stigma against survivors, and the extensive difficulties in collecting and preserving evidence in sexual assault cases. Since there are no rape crisis centers in Turkey, there is no state-affiliated institution that survivors can consult and ask for evidence to be preserved. These systemic problems deepen the practices of inadequate state mechanisms to address sexual violence and highlight the need for comprehensive legal and social changes.

In this context, the Fethiye case provides an important point of reference for these reforms, which aim to increase the effectiveness, responsiveness and efficiency of the judicial process in dealing with cases of sexual violence in Turkey. The case highlights the urgent need for specialized training for law enforcement and judicial personnel, for improvements in procedural interventions at the investigation and trial stages, and for more support mechanisms for survivors throughout the legal process.

The Fethiye case can be used to better understand the complexities and shortcomings in addressing sexual violence in Turkey. The reason for this complexity is the lack of adequate professional training for judicial personnel. The lack of such training also leads to a lack of uniformity in judicial practice.

As noted above, the lack of gender-sensitive staff training has led to delays in the judicial process, as staff charged with prosecuting sexual assault crimes treat it as any other crime. These delays are often due to bias against survivors on the part of judicial personnel who have not received gender-sensitive training, bias on the part of court members based on the status of the perpetrator,

doubts about the credibility of survivors, victim-blaming, and a lack of prioritization of cases involving sexual violence. In crimes without witnesses, such as sexual assault, the burden of proof on survivors leads to a lack of credibility of survivor testimonies.

VI. Failure to Conduct an Effective Investigation: Incidents Involving Ex Officio Investigation and the Right of Victims to Complain (Articles 12 and 13)

The complainant had the first moment of recollection 6-7 months after the events, and subsequently had the memory of all the events during the course of treatment. After this recollection, she decided to file a lawsuit and started the process. The first application was made by the survivor and her lawyer to the Kemer Gendarmerie Command on March 11, 2008, 8 months after the incident. During this process, the gendarmerie identified the persons and took their statements.

As a result of a complaint to the Fethiye prosecutor's office, within a short period of 3 months and with almost no collection of evidence, a decision of non-prosecution was issued against the suspects. The survivor's lawyers objected to this decision and when the objections were rejected, the case was closed. However, the investigation file was reopened after 2 years by using the extraordinary remedy of reversal in favor of the law.⁹ During the 2-year period until the reopening of the case, the evidence had already been destroyed.

The survivor was referred to the Istanbul Forensic Medicine Institution of the Ministry of Justice by the Public Prosecutor's Office for a psychological examination on the grounds of "sexual assault causing physical and mental harm to the victim", in accordance with Article 102, paragraph 5 of the Turkish Penal Code in force at the time of the incident. After this examination, on 26.03.2008, the 6th Specialized Board submitted its expert opinion to the file with decision number 1320 and the unanimous opinion of 7 forensic experts that "the mental health of the victim has deteriorated as a result of the incident".

On June 19, 2008, the Fethiye Chief Public Prosecutor's Office stated that "it has been established that there is a bond of affection between the complainant and the suspect M.K. Although there is a report from the Forensic Medicine Institution on the deterioration of the complainant's mental health, there is no evidence other than the complainant's abstract claim that the said deterioration is caused by the rape incident alleged by the complainant, the Forensic Medicine Institution is not authorized to decide on this issue, which requires judicial investigation, and no evidence of quality and sufficiency to require the opening of a public case has been obtained". On 04.08.2008, the survivor's lawyers appealed the decision to Muğla 2nd High Criminal Court for the continuation of the investigation on the grounds that an effective investigation was not carried out, that the statements of the suspects were taken at different times, which provided opportunities for evidence

⁹ The extraordinary remedy mentioned here is defined in the Turkish Criminal Procedure Code No. 5271 under the name of reversal in favor of the law. Accordingly, reversal in favor of the law is the application of the Ministry of Justice to the Chief Public Prosecutor's Office of the Court of Cassation with the request of reversal of the judicial decisions and judgments that have become final without being examined by the courts of appeal and cassation, which have the title of superior courts, but which are contrary to the law. When there is no ordinary legal remedy for appealing decisions, court decisions that are found to be contrary to the law are subject to reversal in favor of the law.

tampering and that all the evidence necessary to reveal the truth was not collected. On 17.10.2008, Muğla 2nd Criminal Court rejected the appeal on the grounds that “the decision taken by the prosecutor's office is in accordance with the procedure and the law”.

After this last decision, the survivor’s lawyers applied to the Court of Cassation to cancel the decision and to continue the proceedings. The Court of Cassation found the request justified and overruled the rejected decision on 26.03.2010, stating that "the evidence was sufficient to open a public trial, taking into account the report of the Forensic Medicine Institute". Following the overrule, the Chief Public Prosecutor's Office issued two separate indictments against eight persons, two of whom were children, for qualified sexual assault in such a way as to harm the victim's physical and mental health and deprivation of liberty.

On 26.01.2011, the first hearing of the cases of the children was held at the Fethiye Heavy Penal Court. In this hearing, the survivor testified in the court why she filed her complaint after some time had passed since the incident, that she remembered the actions long after the incident due to traumatic amnesia, that she thought she had been given drugs, the type of which she did not know, to weaken her resistance, and that she started to remember the events after A.N.O., one of the perpetrators, called her on the phone. Since the Fethiye case is important for women's position in the eyes of the law and society, many women's and professional organizations and 20 feminist women lawyers, who acted as advocates for the survivor, participated in the case. While the lawyers were admitted to the hearings with a power of attorney and a certificate of authorization, the court rejected the intervention requests of women's organizations and professional associations that requested to intervene in the case by referring to the M.C. Bulgaria decision with application number 39272/98¹⁰.

After the report submitted to the file on 19.2.2008 by a psychiatrist named A.Ö.M., the expert was heard in court and gave an opinion that the survivor had traumatic amnesia and this opinion was supported by the testimony of the survivor's mother that her daughter did not have any psychological disorder before the incident but that her daughter was psychologically disturbed after the incident.

As a result of the trial, on April 27, 2012, the court unanimously acquitted the defendants on the grounds that "no conclusive and convincing evidence, free of all suspicion, could be obtained other than the victim's abstract allegations". The reason for the acquittal was that the abstract statements of the survivor weren't taken into consideration, the complaint was made after a long period of time, i.e. 8 months after the incident, and the victim's statement contained contradictions regarding the essential elements of the complaint as explained above. The statements of the survivor were found to be "abstract", and contrary to the defendants' defenses, the defendants were acquitted because there was no clear and convincing evidence to convict them.

¹⁰ M.C.v. Bulgaria, No. 39272/98, ECtHR, 2003: This judgment summarizes: Any rigid approach to sexual offenses, such as requiring proof of physical resistance, would risk impunity for certain types of rape and jeopardize the effective protection of the individual's sexual autonomy. Member States' positive obligations under Articles 3 and 8 should be seen as punishing and effectively investigating all forms of non-consensual sexual acts, including in the absence of physical resistance by the victim. Also in this case, the Bulgarian organization Interights was accepted as an intervener in the case.

At the end of the trial, which lasted 2 years after the case was opened, the local court acquitted the defendants despite the survivor's statement, the forensic medical report and other expert reports confirming the incident. It is seen that acts that would fall within the definition of a crime according to Article 4, paragraph 1 of the Convention are not criminalized and contrary to the obligation to “punish” in paragraph 2, the defendants were not punished.

The length of the Fethiye case is indicative of the systemic problems affecting the judicial process in sexual violence cases. Many survivors who are reluctant to seek justice are discouraged from doing so by the length of these proceedings.

a. Practices that impede the investigative process

During this case, more than three years after the survivor's complaint, the hard disk image copies obtained from the computers of the defendant M.K. and the other defendants were sent to the Ankara 8th High Criminal Court for examination, but no data related to the case was found. Given that three years had passed since the defendants' statements were taken, this outcome is not surprising.

Despite the fact that the survivor and her two lawyers went from Istanbul to Fethiye and filed the complaint in person, the suspects were called by cell phone in the evening the day after the day of the complaint and “invited” to testify, and since the accusation of a crime was told to them in this phone call, they were given the opportunity to obscure and destroy evidence. Despite the fact that sufficient clues to locate all suspects and sufficient address and occupational information about some of them were provided in the complaint, some suspects were expected to appear spontaneously at the earliest ten days after the date of the complaint (21.02.2008) without an arrest warrant being issued against them. Considering that lawyers, rights defenders and journalists are taken into custody directly from their homes or workplaces by issuing arrest warrants in cases brought against them, it can be seen that this practice is contradictory. During the investigation phase, despite the request in the complaint petition, the suspects' phone calls were not technically detected and the necessary search and confiscation orders were not immediately requested for the detection of evidence that could be obtained from their computers, and these actions were delayed from 10.03.2008 to 08.04.2023 in order to allow the evidence to be obscured. In an interview with Evrensel Newspaper, one of the lawyers in the case, lawyer Cevriye Aydın stated that the fact that the defendants were called to testify by invitation gave them time to destroy evidence and that their cell phones, computers and other digital materials could not be examined. Since the statements of the suspects were taken on different dates, the suspects were given the opportunity to suppress evidence in favor of each other, and technical evidence such as videos, photographs, phone call records, etc., which could have been obtained if the investigation authority had acted quickly, could not be accessed due to the lack of due diligence in the collection of evidence to support the proof of the crime. In addition to all these delays and omissions, the violation of the right to an effective remedy was also caused by the prosecutor's decision to close the file with a decision of non-prosecution by ignoring the evidence in favor of the complainant and disregarding the report submitted to the file from the Forensic Medicine Institution that the survivor's physical and mental health had deteriorated as insufficient evidence. Moreover, some of the defendants are public officials in Fethiye, a small city in terms of population density. The other defendants are well-known people in the city with strong networks. In this case, it is seen that the defendants used their

position of influence to manipulate the judiciary. This is contrary to Article 13 of the Convention, which states that the survivor's complaint must be promptly and impartially examined by the competent authorities. And the survivor's lawyers are preparing to reopen the case in order to prosecute the public officials who are responsible for the acquittals and the failure of public officials to fulfill their duties.

In this case file, four separate reports from four different institutions were submitted to the file in order to prove the deterioration of mental and physical health in accordance with Article 102/5 of the TPC, which was in force during the trial. Although these reports indicated that the applicant's physical and mental health had deteriorated and that she suffered from post-traumatic stress disorder, and the article of the law explicitly mentions the deterioration of mental and physical health, the acquittal of the defendants constituted another violation of the right to file a complaint by the victims and the failure to initiate an ex officio investigation.

The initial stages of the Fethiye Case have revealed a lack of effective investigation in the investigation process. From the collection of evidence to the questioning of witnesses and perpetrators, there are significant shortcomings in the investigation stages. These problems often stem from incomplete investigations by law enforcement agencies, the failure of investigating prosecutors to call witnesses and suspects to testify without delay, and the lack of specialized training in handling cases of sexual violence, which is critical to ensure that evidence is meticulously collected and preserved. Moreover, the initial response by judicial authorities has often lacked the necessary urgency and rigor, leading to gaps in the evidence that later led the legal process to impunity.

The procedural delays in the Fethiye Case contravened the due diligence standard and underscored the deeper issues of delayed and protracted justice. The frequent postponement of hearings, delays in the issuance of court decisions and the slow pace of judicial review processes, the disbelief of the survivor's and her lawyers' statements and the failure to collect the evidence they point to reflect a systemic disregard for the seriousness and sensitivity of sexual violence cases. These procedural delays are not simply about a lack of due diligence; they represent a fundamental lack of understanding and respect for survivors' rights to be forgotten, access to justice, a life with dignity, and their well-being.

VII. Inadequate Remedy and Reparation for Survivors due to Systematic Patterns of Violence and Neglect (Article 14)

For 15 years, the survivor was unable to access the justice she needed. Although the Forensic Medicine Institution's report stated that the survivor's mental health had deteriorated, the case was opened 3 years after the date of the complaint, the survivor identified 5 suspects out of 12 people, showed the scene of the incident and gave a detailed and unchanged account of the incident at all stages. Although the telephone calls between the survivor and the suspects on the day of the incident were detected during the trial and these detections confirmed the survivor's statements, the fact that these evidences were not taken into consideration during the investigation and trial stages, first by issuing a decision of non-prosecution and closing the ordinary legal remedies with the rejection of the objection, and then by continuing the same attitude and not applying the measures required by law after the case was opened by resorting to the extraordinary legal remedy,

resulted in the violation of the relevant right. Compensation for the damage referred to in Article 14 and access to appropriate rehabilitation were not provided. Instead, the trial process itself became another form of psychological torture.

These systemic problems revealed by Fethiye case call for a critical evaluation of how sexual violence cases are handled in Turkey. The need for reforms is clear, from increasing the efficiency of the judicial process, to improving the training of all personnel involved in such cases, to establishing more robust mechanisms for oversight and accountability of judicial and administrative procedures. For survivors of sexual violence, the pursuit of justice should not be a secondary trauma imposed by the very system that is supposed to protect their rights and dignity.

In order to better understand and address impunity in sexual assault cases, it is recommended that comprehensive data collection and analysis processes be developed. This is critical to understanding at what stages and why cases are not effectively prosecuted.

Turkey consistently fails to share systemic, disaggregated and transparent data. The most recent data shared is from 2021. The reliability of this data is also questionable, as it does not include detailed and disaggregated data. It is not possible to read the process or the shortcomings of the process through these data. A total of 22,517 crimes related to the crime of sexual assault were recorded between 2014 and 2021. Of the crimes committed, 17.7% were sexual assault crimes. Out of the 22,517 crimes, the files of 9,465 cases were closed with a decision not to prosecute, which represents 42%. 9,538 of them were prosecuted. This shows that in half of these cases there was no public trial.

2014: 1,952 incidents, with a conviction rate of 20.9%,
2015: 2,000 incidents, with a conviction rate of 21.2%,
2016: 1,353 incidents, with a conviction rate of 48.5%,
2017: 677 incidents, with a conviction rate of 24.3%,
2018: 218 incidents, with a conviction rate of 7.8%,
2019: 119 incidents, with a conviction rate of 4.3%,
2020: 423 incidents, with a conviction rate of 15.2%,
2021: 2,790 incidents, resulting in a conviction rate of 24.7%.

Based on this, it can be interpreted that the decisions other than convictions are acquittals and deferment of the announcement of the verdict. From this perspective, it is not clear whether the trials have been conducted to ensure that survivors are compensated for their losses. In the absence of transparent and disaggregated data, it is not possible to objectively determine whether survivors have access to justice.

a. Challenges for survivors in terms of access to justice, rehabilitation and support services

Since support system practices are not sufficiently developed in Turkey, survivors do not have access to remedial and empowering systems to address the secondary trauma and victim-blaming they were exposed to during the trial. Mechanisms such as access to public services for trauma recovery, accessible institutions for psychological support, and the removal of news content from

the internet in the context of the right to be forgotten are not actively in place in Turkey. Civil society organizations with limited resources try to provide this in Turkey.¹¹

Looking at the Committee's recommendations to Turkey in 2016, it is unclear how the recommendation in Article 46 (c) "Ensure that all women victims of violence have access to shelters and receive the necessary medical care and psychological support" has been implemented. There are current cases of women's complaints¹² about the shelters provided by the state, such as inadequate and unhealthy shelter conditions, the shelter address being shared by a police officer¹³, yet no action is being taken against the police officer.

VIII. Factors contributing to torture and ill-treatment

a. Analysis of underlying factors contributing to the prevalence of torture: Socio-political, and cultural factors

Spanning over a decade, the Fethiye Case provides an example of the profound psychological, social and legal impact on survivors of sexual violence. The case goes beyond individual suffering to undermine public confidence in the justice system, or the confidence of others seeking justice. For the women, this crime, mediated by the people they trusted most, has made them more concerned about their own safety. The state has thus discriminated and violated the rights of one group. It sent a message to its female citizens that "the state will not protect you". It also has broader implications for social attitudes towards sexual violence in Turkey, in terms of the widespread acceptance of rape culture and myths.

Beyond the individuals directly involved, the social repercussions of the Fethiye case are far-reaching. Survivors are often stigmatized and blamed. Sexual violence undermines social peace and trust, disrupts social cohesion, leads to economic losses, and causes profound changes in social norms and values. Survivors may find their social integration and support networks disrupted by ostracism, loss of relationships and isolation. Moreover, the visibility of such a protracted case can perpetuate harmful myths and stereotypes about sexual violence, such as victim-blaming attitudes, which further reinforce societal barriers to reporting such crimes.

¹¹ One of the issues the association is working on is support systems. A map showing what support systems are and which support systems are accessible in the province of Istanbul has been made available on the Internet. <https://csdestek.org/>

¹² A woman residing in a shelter described the living conditions, stating that the conditions were poor, they were treated as if they were criminals, and when they wanted to file complaints about these conditions, their complaints were ignored. Women's own experiences of shelters: They treat us like we committed a crime. <https://t24.com.tr/haber/kadinlarin-agzindan-siginma-evleri-sanki-suc-islemisiz-gibi-davraniyorlar.849566>

¹³ In a domestic violence case, it was claimed that the address of the shelter where the woman was sent was disclosed to the perpetrator by a police officer who was allegedly a friend of the perpetrator. Normally, the addresses of shelters are confidential and are not shared under any circumstances. No action was taken against the police officer who shared the address of the shelter with the perpetrator. <https://bianet.org/haber/mor-cati-siginmaevi-adreslerini-paylasanlar-hakkinda-islem-yapilmali-225174>

One of the things that contributed to the acquittal in this case was the prejudice against the survivor for going to a leisure centre with a man, which effectively "ascribed consent" to the survivor. The survivor's lawyers appealed the acquittal to the Court of Cassation, and after 3 years, the Court of Cassation upheld the local court's decision.

b. Lack of accountability mechanisms and impunity

Article 12 of the Convention states that "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction". The definition and form of violence in Turkey has changed in recent years. Violence has become a structural form of violence, with lengthy trials and a policy of impunity, rather than physical violence. In the Fethiye case, this structural violence continued from the investigation phase of the case to the prosecution and sentencing phase, and the case ended with the acquittal of the perpetrators. This means that the state failed to fulfill its obligation under Articles 12 and 13 to ensure a fair and timely trial.

When a certain amount of time has passed since the act of violence, almost all survivors of sexual assault are asked "Why are you reporting now?" or "Why didn't you report immediately after the incident and why did you wait? This interrogation, which began during the investigation and prosecution phase, was also the main question posed to the survivor in this case and determined the course of the case. The expectation of the legal system in Turkey, especially in criminal proceedings, is that the person whose right has been violated should immediately apply to the judicial process for the realization of this right. However, it is clear that this ignores the reality of being a woman in Turkey and the impact of sexual assault on women.

In such cases, accountability must be ensured so that the reasons for impunity can be examined in detail. It can be said that the courts are more willing to lead these crimes to impunity because each trial is different in its own way and because sexual violence crimes are mostly witness-less crimes. Due to the lack of transparent and disaggregated data, the data generated only through the reports of civil society organizations and lawyers working in the field of women's rights is insufficient to read and interpret the situation of the whole society. The fact that individual cases that are made public result in quicker and more severe punishments, while the fate of less visible cases is unknown, makes the judicial system more likely to be discredited rather than to ensure justice.¹⁴

IX. Consequences of torture

a. Physical, psychological and social effects on survivors

The psychological effects of the Fethiye Case on the survivors cannot be ignored. The lengthy legal process, combined with the public exposure and stigmatization of being a survivor of sexual violence, can exacerbate the initial trauma. Survivors often experience chronic stress, anxiety, depression and post-traumatic stress disorder (PTSD). For survivors seeking access to justice, the

¹⁴ Does social media provide justice in Turkey? <https://tr.euronews.com/2020/08/19/turkiye-de-adaleti-artik-sosyal-medya-mi-sagliyor> See also: In the online survey titled "Do you trust justice in Turkey?" dated April 2024, 67.7% said "No, I do not trust".

wait leads to a sense of helplessness and mistrust of the system that is supposed to protect them. Moreover, the repeated recounting of the traumatic event in court re-traumatizes survivors, hindering their healing and recovery processes.

On the other hand, defense lawyers have made defenses that serve to undermine the survivor's reputation and credibility before the court rather than revealing the truth of the incident. There is no doubt that every lawyer is obliged to defend his/her own client, but it is a fact known to the public that in Turkey, especially in cases of sexual violence, the parties who undertake the advocacy of the accused make their defenses on the axis of victim blaming rather than the content of the file. It is clear that such defenses, which have no relevance to the trial by requesting that the survivor's mental health be investigated, whether she has taken medication before, whether she had a mental health problem before, are aimed at influencing the attitude of the court rather than revealing the truth.

Another problem, which is repeated at every hearing, is the rejection of requests from women's and professional organizations to participate in the case. In such cases, the participation of non-governmental organizations is necessary to ensure justice. This is both for the protection of the woman, who is the main party in the case, and because the decision to be made may affect women in the whole society.

The survivor was sexually assaulted by several men. In the complaint, the lawyers of the survivor argued that the fact that she went to the place where the incident took place with her boyfriend M.K., as she testified before the prosecutor's office and confirmed in court, caused the prosecutor's office and the law enforcement authorities to evaluate the trial with prejudice and that this violated the principle of prompt and impartial investigation by the competent authorities. This can be seen in the statement "it was determined that there was a love affair between the complainant and the suspect M.K." in the decision of non-prosecution prepared by the prosecutor's office during the investigation phase. The link between the existence of a relationship of affection and the fact that the investigation was not conducted by the prosecutor's office has led to the discrediting of the survivor and undermined her credibility.

The lawyers of the survivor also reported that the judicial authorities did not look at the contents of the file impartially because the survivor was a woman and the case involved a sexual offense committed by the survivor's boyfriend. Indeed, during the course of the proceedings, the court took into account these victim-blaming defenses, which were irrelevant to the subject matter of the proceedings. One of them is that the court took into account the defendants' statement that the survivor "has a psychological disorder" and included the case file of the survivor's parents, who divorced years ago. The lawyers for the case stated that this issue would not contribute to the trial, but that the survivor's past life was brought to the agenda in order to influence the court's attitude.

b. Impact on the wider society

The length of such cases, perpetrators' impunity, and survivors' inability to access justice and psychological support leads to despair among sexual assault survivors who want to fight for their rights. The underreporting of such crimes is further exacerbated by the belief that the perpetrators will go unpunished and that the courts will not believe what the survivor says.

The impunity of the perpetrators of sexual violence paves the way for the normalization and spread of sexual violence in society. While perpetrators become more daring in the belief that they will go unpunished, potential perpetrators are also emboldened by this situation. This leads to an increase in sexual violence.

Impunity reinforces gender inequality. Failure to ensure the safety of women and children deepens gender inequality and negatively affects women's participation in social life. This leads to violations of women's rights in general. It also increases gender-based discrimination.

Failure to ensure justice leads to erosion of general societal ethical values. People lose faith in the legal system and social norms. This leads to general breakdown of social order and increased social tolerance of crime. In addition, as mentioned in the report, the discrediting of survivors in the judicial process, evaluation of their virginity¹⁵, emphasis on their romantic relationship with the perpetrator, as mentioned in the report in such cases, increases victim blaming and damages the reputation of women before society.

X. Recommendations and Requests

Although the Committee made some recommendations on sexual violence and gender-based violence in its Concluding observations on the fourth periodic reports of Turkey in 2016 (paragraph 46), it should be noted that these recommendations have not been implemented as of 2024. In particular, there are no recent developments in the effective investigation of all forms of violence against women and prosecution of perpetrators.

In this regard, the Association for Struggle Against Sexual Violence requests CAT to urge the State Party to

1. Provide information of the measures taken by the State to ensure effective investigations in cases of sexual violence.
2. with the CSOs and the public, the utilization rate of the Forensic Interview Rooms, where statements from survivors are taken in the presence of experts in courthouses and take the necessary measures and regulations to ensure that these rooms are used more frequently by the Public Prosecutor's Office and victims' lawyers, especially during the investigation phase.
3. Examine carefully the attitudes of public officials, prosecutors' offices, police stations and courts, in order to prevent victim-blaming in the judicial process, and take sanctions against law enforcement agencies and members of the judiciary who make victim-blaming statements.
4. Provide information to judicial personnel to ensure consistency in judicial decisions in practice with a view to facilitate the establishment of a common case-law through the Court of Cassation and Court of Appeal Ministry of Justice in cases of crimes based on sexual violence.
5. Fulfill its positive obligations and transparently disclose which actions mentioned in the national action plans are implemented to pave the way for access to justice in order to end the widespread culture of impunity in cases of sexual violence.

¹⁵ See: Perpetrator lawyer's defense that Şule Çet, who was killed after being sexually assaulted, was not a virgin. <https://www.cumhuriyet.com.tr/haber/sule-cet-davasinda-skandal-savunma-1233550>

6. Disclose which actions in the Action Plans on Combating Violence against Women prepared by the Ministry of Family and Social Services of the Republic of Turkey covering the years 2021-2025 have been implemented and how they have been implemented.
7. Disclose how many complaints or reports have been filed, how many ex officio investigations have been initiated, and how many of these reports and complaints have reached the trial process within the scope of articles 102/sexual assault, 103/sexual abuse and 104/sexual intercourse with a minor in the last 5 years in Turkey.
8. Share data and implementation practices on sexual violence and make these data publicly accessible through the Ministry of Justice.
9. To monitor at least a certain number of sexual assault files, in the form of a pilot application, from the date of the complaint or denouncement until the date of the final decision, and report on these files by ensuring the confidentiality of the information; on the grounds that it will provide a practical benefit in terms of reducing or eliminating systematic problems in cases of sexual violence. In this way, it will be possible to identify discrepancies between the courts of first and higher instance, differences in practice, difficulties faced by survivors during the judicial process, the active implementation of the right to a fair trial and the prevention of ill-treatment through effective investigations.
10. Allocate more resources to the protection and rehabilitation of survivors and establish rape crisis centers for survivors of sexual violence in collaboration with the Ministries of Health and Justice, as well as other comprehensive State-funded support centers that provide legal, psychological and medical assistance.
11. Develop and implement a comprehensive rights-based training program on sexual violence, victim psychology and gender for judges, prosecutors and law enforcement officials.
11. Impose the obligation for the courts to publish anonymized and disaggregated data on the number and types of cases of sexual violence that they handle, including conviction rates and processing times for the purpose of ensuring accountability in cases of sexual violence, and accordingly make such data available to the public in order to ensure transparency.

Annex: Similar cases in terms of procedural practices

In this section, in order to demonstrate the similarity of judicial practices, some summaries of cases that have attracted public attention and whose contents are easily accessible are included:

The case of Şule Çet¹⁶: In this case, a woman named Şule Çet was pushed to her death through the glass partition of the house after she went to the house where the perpetrator and his friend, with whom she allegedly had a romantic relationship, were staying. In order to discredit Şule Çet, the lawyers of the perpetrators in this case made a defense that focused on her virginity. During the trial, contradictions in the forensic reports were not resolved for a long time. There were delays in the collection of evidence.

The case of N.Ç: Although this case involves children, it can be seen that judicial practices do not change when it comes to sexual violence, whether children or adults are involved. The profiles of the perpetrators in this case are quite similar to the Fethiye Case. A total of 28 people, including civil servants, district governor's office employees, captains, mukhtars and business people, were put on trial for subjecting children to abuse at various times and even forcing them into prostitution in exchange for money. The trial lasted 11 years.¹⁷

A recent example is the case of H.K.G.¹⁸: In this case, which also concerns children, the survivor was married off at the age of 6 to another member of the same community. This abuse was reported by the child at various times but was not taken into consideration by the judicial bodies. It is one of the important details of the case that the bone age report of the child was written as older than her age. After the case became public, the trial was expedited, but only 2 people were sentenced instead of all defendants. The case is not yet closed. In such community-oriented trials, the real criminals go unpunished.

¹⁶ For the chronology of the Şule Çet case see: <https://bianet.org/haber/sule-cet-cinayeti-kronolojisi-203299>

¹⁷ Details of the N.Ç. case: <https://artigercek.com/makale/12-yasindaki-n-c-yi-hatirliyor-musunuz-232633>

¹⁸ Trial continues in the HGK case. <https://www.odatv.com/guncel/hkg-davasi-sil-bastan-saniklar-yeniden-hakim-karsisina-cikti-120042135>