

DIMENSIONS AND CAUSES OF DOMESTIC VIOLENCE IN TURKEY AND SUGGESTIONS¹

*Assoc.Prof.Dr. Yener ÜNVER**

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I – INTRODUCTION

The study we have conducted throughout Turkey in 2003 is a legal case study pertaining both to physical and sexual domestic violence and has been applied to 1133 subjects. Main objectives of this study are to reveal the importance of the subject for our country, control the efficiency of legal mechanisms and inspect its deficiencies if there are, to contribute to the development of social culture and to the creation of awareness of law state and put forward the need to fulfill the obligations stemming from multilateral supranational conventions signed for our country being a law state for both women and children.

II – METHOD

Face-to-face interview has been the main method of our research, where we personally asked the questions and for some parts received help from students at our faculty and other faculties of law. It had been paid attention that there is an equal distribution in terms of sex, settlement, age and region among the people who had participated in our survey. All survey forms are anonymous to ensure secrecy; in addition to that, in some areas where contact with other subjects could cause incorrect answers to be given, the survey

¹ This report has been present in August 12. 2003 in 13 th World Criminology Congress, Rio de Janeiro / Brezilya.

* Istanbul University Faculty of Law Department of Criminal and Criminal Procedure Law, academician. .

forms were placed in closed envelopes when handing them out and receiving them. In this study, because it is of high significance, both the questions related to victim and perpetrator profile and the views and tendencies of the society related to problems in survey questions and to positive law legislation and people and institutions in execution had been tried to be determined. After legal case results had been taken, the results have been evaluated on the SPSS 10.0 statistics computer program, with the help of two expert academicians and in addition to net numerical results, standard deviation rates had been taken into consideration beside percentage rates in order to recognize margins of error which are frequently encountered in such studies.

In this study, although numerical results have been previously evaluated, subjective opinions we acquired during the process and opinions not written yet declared by people who had participated in the survey and intentional abstention from answering some questions and reactions had been taken into consideration in evaluation and in interpretation of the data and it had been explained in the part related.

Though we have considered standard deviations in evaluation and mentioned them thinking that it would be helpful, we applied two more methods. Previously, the results achieved by comparing data from similar studies carried out by other official or private people or institutions until completion of our study had been mutually evaluated. On the other hand, by including all the results we attained and the questions we asked in the study and all the answers given to these questions, we endeavored to provide that other people and institutions concerned could make different evaluations and examine our study and evaluations and also could recognize other approaches we did not consider because it was beyond our objective.

III-DATA

A – Data arising from our survey

a) Situations in which the perpetrator is within the family and the person who answers is both the victim and the witness of domestic violence:

31 people have answered the questions below related to this situation but 1102 people have abstained from answering the question. Among the people who have answered, two people have stated to have been exposed to forceful sexual intercourse and 29 people have claimed not to have been exposed to forceful sexual intercourse. 31 people have stated not to have been exposed to sexual harrasment. 24 people have claimed that they had been beaten and 7 people have stated that they had not been beaten. 19 people have stated that they

had been subjected to maltreatment and 11 people have claimed that they have not been victims of maltreatment. 12 people have suffered from the restriction of freedom action and 18 people have stated that they had not been subjected to restriction of freedom. All 31 people have given negative answers to the question of whether having been exposed to compelled sexual photograph/film record. 2 people have stated that they had been coerced to sexual photograph/film record and 29 people have claimed not to have suffered from such an act. 9 people have stated to have suffered from other types of violence and 22 people have given negative answers to this question.

b) Situations in which the perpetrator and the victim is within the family and there is no other victim within the family:

224 people have answered the questions connected with this situation but 909 people have avoided answering. Among the people who have answered, 11 people have claimed that they had been subjected to forceful sexual intercourse and 213 people have not. 4 people have suffered from sexual harassment acts whereas 220 people have not been victims of sexual harassment. 166 people have been exposed to beating and 58 people have stated not to have suffered from such an act. 58 people have been subjected to maltreatment whereas 165 people have not. 40 people have been deprived of freedom and 184 people have not encountered with this situation. 223 people have stated not to have been exposed to compelled sexual photograph/ film record and 1 person has given an invalid answer. 3 people have been coerced to work and 220 people have not faced such an act. Finally, 9 people have stated that they have been exposed to other types of violence whereas 215 people have not.

Another research conducted between the years 1998-2000 in İstanbul had fixed the percentage rates of domestic violence type and application as follows: physical violence %95; sexual violence %3; emotional violence %34; verbal violence % 45 and economic violence % 9.²

c) Situations in which the perpetrator is within the family and the person who answers is not the victim but the witness of domestic violence actions within the family:

104 people have given valid answers pertaining to this situation but 1029 people have avoided answering. Among the people who have answered, 1 person has claimed to have been exposed to forceful sexual intercourse whereas 103 people have not. All these 104 people have not witnessed sex-

² See YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. *Aile İçi Şiddet Olgularında...*, p: 63.

ual harrasment actions. 73 people have claimed to have observed beating and 31 people have not observed such actions. 28 people have given positive answers and 76 people have given negative answers to the question whether having been subjected to maltreatment. 13 people have stated having been exposed to acts of restriction of freedom and 91 people have not witnessed such an action within the family. All the people who have answered have stated not having observed coerced sexual photograph/film record acts. These 104 people have also declared that they had not observed compelled working. 5 people have stated having been subjected to other types of violence whereas 99 people have not.

The answers of the people among the participants of our survey who define violence differently and who observe violence in other families:

Answers of this type have been given by 9 people and 1124 people have not given such an answer. Among the people who have answered 1 person has stated having been subjected to forceful sexual intercourse. All these 9 people have stated not having been exposed to sexual harrasment acts. 7 people have observed beating whereas 2 people have not witnessed such acts. 2 people have witnessed maltreatment acts and 9 people have not witnessed violence of this type. Finally 9 people have not observed acts of restriction of freedom, compelled sexual photograph/ film record, forceful work and other types of violence.

d) Other data related to perpetrators and victims connected with the questions stated above:

aa) People who have been victims of domestic violence themselves:

Among 1133 people with whom we had conducted this survey, 264 people have stated that they have been subjected to domestic violence themselves. 95 of these victims of domestic violence are males and 169 are females.

In another study carried out between 1998-2000 in İstanbul, it had been determined that females constitute 89% of victims of domestic violence.³

Age groups and numbers of victims of domestic violence are as follows: Age group of 12-15: 2people; 16-18 age group: 16 people; age group of 19-

³ See. YILDIZ, Yakup-YAVUZ, M. Fatih-SOKULLU/AKINCI, Füsun-GÖLGE, Z. Belma. Aile İçi Şiddet Olgularında 4320 Sayılı Ailenin Korunmasına Dair Kanunun Uygulamaları. , in: Adli Tıp Dergisi 2003, c: 17, v: 1, p: 59.

25: 102; 26 – 35 age group: 62; 36 – 45 age group: 50 people; 46 – 55 age group: 18 people and 56+ age: 13 people.

Educational statuses of domestic violence victims are as follows: Illiterates: 9 people; literates who haven't attended any school: 13 people; primary school graduates: 33 people; elementary school graduates: 18 people; high school graduates: 131 people, university graduates: 56 people and master graduates: 4 people.

Professional statuses of domestic violence victims are as follows: Tradesmen: 16 people; farmers: 3 people; merchants: 3 people; civil servants: 36 people; employers: 15 people; academicians: 3 people; unemployed\ housewives: 77 people; students and others: 101 people.

Economical statuses of domestic violence victims are as follows: Poor: 26 people; middle class: 163 people; wealthy: 70 people; over wealthy: 3 people.

Settlements of domestic violence victims are: Metropolises: 99; city centers: 141; village centers: 10; rural areas: 2, squatter areas: 12.

Marital statuses of domestic violence victims: Married: 130 people; single: 111 people, divorced: 21 people.

Marriage ways of domestic violence victims: Marriage based on love: 68 people; marriage based on matchmaking: 77 people; other: 6 people.

Settlement regions of domestic violence victims are as follows: Aegean region: 8 people, Marmara region: 58 people, Blacksea region: 56 people, Mediterranean region: 42 people, Inner Anatolia region: 49 people, Eastern Anatolia region: 26 people, Southerneastern Anatolia region: 17, abroad: 2 people.

Numbers of members in families in which domestic violence victims live: 2: 16 people, 3: 51 people, 4: 81 people, 5: 56 people, 6: 29 people, 7+: 26 people.

bb) Other people who have been exposed to domestic violence:

Among 1133 people whom we have applied survey 137 have stated that other people within the family had been subjected to domestic violence. Among these 61 are males and 76 are females.

Another study carried out between 1998-2000 in İstanbul has determined the rate of other individuals who had been subjected to domestic violence

apart from spouses and children as follows: Mother: 2, 68%; brides: 2, 68% and mothers in law: 0, 90%.⁴

Educational statuses of other individuals (apart from ones who have answered) who have been exposed to domestic violence are as follows: Illiterates: 2 people, literates but not graduated from any school: 2 people, primary school graduates: 10 people, elementary school graduates: 8 people, high school graduates: 85 people, university graduates: 29 people, master graduates: 43 people.

Professional statuses of other individuals who are domestic violence victims: Tradesmen: 8 people, farmers: 2 people, merchants: 3 people, civil servants: 20 people, employees: 8 people, academicians: 41 people, unemployed\ housewives: 21 people, students and others: 70 people.

Economical statuses of other individuals who are domestic violence victims are as follows: Poor: 15 people, middle class: 86, wealthy: 34, over wealthy: 1 person.

Settlements of other domestic violence victims: Metropolises: 54, city centers: 70, village centers: 8, rural areas: 2, squatter areas: 3.

Marital statuses of other domestic violence victims: Married: 56 people, single: 78 people, divorced: 2 people.

Marriage ways of other individuals who are domestic violence victims: Marriage based on love: 25, marriage based on matchmaking: 26, other: 7.

Settlement regions of other domestic violence victims are: Marmara region: 22 people, Aegean region: 17 people, Blacksea region: 19 people, Mediterranean region: 21 people, Inner Anatolia region: 23 people, East Anatolia region: 17 people, Southeast Anatolia region: 11 people, abroad: 1 person.

Number of members in families where other domestic violence victims reside: 2: 11 people, 3: 23 people, 4: 36 people, 5: 32 people, 6: 14 people, 7+: 18 people.

cc) Frequency of violence which both two groups have been subjected to:

361 people who have participated in our survey and been exposed to violence have answered the question about the frequency of violence they had been subjected to. The answers are as follows: Very often: 25 people, often:

⁴ See. YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. Aile İçi Şiddet Olgularında..., p: 62.

32 people, sometimes: 94 people, rarely: 121 people, once or twice: 89 people.

e) Important digital data about the answers given to questions related with domestic violence

Among 234 people who have answered the question related with complaint, 20 people have complained whereas 214 people have never complained about violence. Among 20 complainers, 12 individuals have demanded their complaints be concluded, 4 people have withdrawn their complaints and 2 people have been compelled to renounce their complaints.

In terms of attitudes of policemen and public prosecutors, in 6 events policeman and prosecutor who are informed had tried to pass the case to adjudication. In 9 events police and prosecutors have showed effort to solve the problem domestically, whereas in 3 events they had not been concerned with the matter.

In terms of the result of the complaint, in 3 events complained, the accused has acquitted, 4 people have been sentenced, in 6 cases complaint had been renounced and in 3 cases complaint had not been followed.

Among the victims of violence, 36 people have considered complaining but given up whereas 88 people have not considered complaining at all. As come to the reasons of not complaining, 39 people have stated that they feared compulsion, 8 people have said that they abstain from being abandoned/divorce, 29 people have stated that they do not complain because they care about their children, 15 people have stated that they abstain from their relatives' and neighbours' attitudes and 74 people have said that they love the person who applies violence on them.

492 people have stated that they would apply to adjudication, 102 people have reported that they would not apply to adjudication and 239 people have been reported as not having an opinion about this question. 185 of the people who have stated that they would apply to adjudication, are males and 306 of them are females. Among 102 people 51 are females and 51 are males and finally among people who have said that they do not have an idea, 110 are males and 129 are females. 244 of 1133 participants of the survey have stated that rape in marriage should be an ex officio investigated crime, whereas 518 people have expressed that it should be a crime dependent upon complaint and 91 people have been reported as not having an opinion about this subject. **(search the rate between males and females in evaluation)** Among the people who have stated that it should be an ex officio investigated crime, 77 are males and 167 are females. 231 males and 287 females have expressed that it should be a crime dependent upon complaint while 78

males and 27 females have the conviction that it should not be considered as a crime. Finally, 48 males and 42 females do not have an opinion on this subject. The distribution of these answers in terms of individuals who have been exposed to violence and individuals who have not is as follows: Among the people who have been victims of violence 74 and 125 have stated that it should be an ex officio investigated crime and crime dependent upon complaint respectively. 23 victims have expressed that it should not be considered as crime and 29 people have been reported as not having an idea. On the other hand, among the people who have not been subjected to violence, 164 and 381 people have expressed that it should be an ex officio investigated crime and crime dependent upon complaint respectively. 79 people have the opinion that it should not be considered as crime and 62 people do not have an idea about the subject.

439 people who have been asked the question that whether **removal from home precaution in family protection law** is appropriate, have stated that it is appropriate, 381 people have expressed that it is partly appropriate and 154 people have agreed that it is inappropriate. 881 people have expressed that they support **state shelter houses**, 135 have claimed to have been supporting them partly and 55 people have been reported as not being in favor of these houses.

Answers to the question of which right should be put into force for women are as follows: 335 people(125 males-229 females): right to work, 50 people(26 males-24 females): suffragee (right to elect and be elected), 588 people(274 males-314 females): right to education, 68 people(57 males-11 females): right to worship and a person: other rights.

39 people have found **the education of media/educational institutions** sufficient, 284 people have stated that it is partly sufficient and 750 people have described it as insufficient.

Numerical distribution of answers to the question of **how to struggle against domestic violence**: 530 people: elimination of ignorance, 50 people: application of legal establishments, 92 people: elimination of male-female inequality, 258 people: solution to economic problems and 18 people: some other measures.

We have asked, in order to identify the reasons of violence, **whether men have the right to train women**. 113 people support the men's right to train women, 255 people have stated that they partly agree with this idea. On the other hand, 715 people share the conviction that men do not have the right to train women and finally 19 people have stated not to have had an idea at all. In parallel with the same question, 57 people have said that men

can **apply violence in order to prevent inappropriate behaviours of women** and 143 people have partly agreed with this idea. 891 people have expressed that men can not apply violence on women with this purpose and 16 people have been notified as not having an idea. (search the rates among men and women while evaluating) (see education level, age and economic status groups)

To the question of **whether religion allows violence against women**, 153 people have given affirmative answers whereas 619 people have stated that religion does not permit violence against women. 195 people have not put forward an idea. (search the rates among men and women while evaluating)(see education level, age and economic status groups)

48 and 83 people have stated that application of violence to spouse/ children is normal and partly normal respectively when asked the question **whether it is normal to apply violence to spouses\children**. 114 people have declared that it is normal when deserved, 843 people have not supported application of violence to spouses\children and 17 people have replied that they do not have an idea on this subject. (search the rates among men and women while evaluating)(see education level, age and economic status groups)

856 people who have been asked **whether domestic violence constitutes a serious problem in Turkey** have given positive answers whereas 174 people have partly agreed with this idea. 46 people think that it does not constitute a problem and 32 people do not have an opinion related with this subject. Among the people who have given positive answer to this question, 353 are males and 502 are females, the number of males and females are 102 and 72 respectively among people who agree partly with this conviction. 31 and 15 are males and females respectively of people who do not count this issue as a problem. Lastly, 22 males and 10 females have not put forward any idea.

To the question of **whether state institutions/judiciary agencies take necessary measures**, 112 people have replied that these agencies mentioned above take necessary measures. 323 people have stated that they partly agree while 567 people have claimed that these institutions are insufficient. 96 people have been reported as not having an idea.

Among the people who have replied the question of **whether society is informed about the decrees in legal system**; 128, 320 and 377 have stated that society is informed, partly informed and not informed respectively. 257 People have been reported as not having an idea.

f) Other subordinate data about people who apply domestic violence (perpetrators)

Age statuses of offenders who apply domestic violence are below: 0-12 age: 3 people, 13-17 age:6, 18-25 age: 38, 26-35 age:49, 36-45 age: 79, 46-55 age: 70, 56-65 age: 21 and 66+ age: 4 people. When this table is scrutinized, it can easily be observed that most of the perpetrators are juveniles, teenagers or adults. When percentages are examined: 18-25 age group:14, 1%; 26-35 age group 18, 1%; 36-45 age group: 29, 3% and 46-55 age group: 25, 9%.

Gender of people who apply domestic violence is: Males:222 people, females:48 people. In terms of being a perpetrator; the percentage of female perpetrators is 17, 8% whereas the percentage of male perpetrators is 88, 2%.

In another research conducted between the years 1998-2000 in İstanbul, it had been revealed that 89% of perpetrators who apply domestic violence are males.⁵

Educational backgrounds of people who apply domestic violence are as follows: Illiterates: 7, literates but not graduated from any school: 4, primary school graduates:66, elementary school graduates: 34, high school graduates: 81, university graduates: 75, master's degree graduate:1. **This result is confusing because most of the perpetrators are educated (because of young population)** When percentages of perpetrators in their own groups are examined: Illiterates: 2, 6%; literates but not graduated from any school: 1, 5%; Primary school graduates: 24, 4%; elementary school graduates: 34%; high school graduates: 81%; university graduates: 75% and master's degree graduates:1%.

In another research conducted between 1998-2000 in İstanbul, percentage of primary school graduates and university graduates among perpetrators of domestic violence had been determined as 43% and 45% respectively and 39% and 44% of victims are primary school and university graduates respectively.⁶

Settlement regions of people who apply domestic violence are given below: Marmara: 44 people, Aegean region: 19 people, Blacksea region: 50 people, Mediterranean region: 43 people, Inner Anatolia region: 50, East Anatolia region:23 people, Southeast Anatolia region: 24 people, abroad:2

⁵ See. YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. Aile İçi Şiddet Olgularında..., p: 59.

⁶ See. YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. Aile İçi Şiddet Olgularında..., p: 62.

people. When rates are examined, it is recognized **that in areas where economical, cultural and educational levels of the society are high, numbers of both perpetrators and victims have increased.** Rates are: Marmara region: 16, 3%; Aegean region: 7%; Blacksea region: 18, 5%; Mediterranean region: 15, 9%; Inner Anatolia region: 18, 5%; East Anatolia region: 8, 5%; Southeast Anatolia region: 8, 9% and abroad: 0, 7%.

Marital statuses of people who apply domestic violence are as follows: Officially married: 204, married by religious ceremony: 6, single: 39, divorced: 17, other (living together without marriage): 1. Percentage of these are: officially married: 75, 6%; married by religious ceremony: 2, 2; single: 14, 4%; divorced: 6, 3% living together without marriage: 1%.

The number of marriages of people applying domestic violence are as follows: 1 marriage: 193 people, 2 marriages: 19 people, 3 marriages: 1 person, 5 marriages: 1 person. **Perpetrators who have married once show greater tendency to domestic violence.** Percentages are: 1 marriage: 71, 5% 2 marriages 7; 3% marriages: 0, 4% 5. marriages: 0, 4%.

Relationship of people applying domestic violence (perpetrators) with the victims and percentages are such: Mother: 28 people (10, 4%) *father*: 66 people (24, 4%); *brother*: 29 people (10, 7%); *sister*: 12 people (4, 4%); *relative*: 7 people (2, 6%); *neighbour*: 1 person (0, 4%); **spouse**: 108 people (40%); *children*: 2 people (0, 7%); *ve stranger/other*: 7 people (2, 6%). One pleasing fact from this research is the scarcity of perpetrator-child relationship.

In another research conducted in İstanbul between 1998-2000, it has been proven that domestic violence is mostly applied to **spouses** (77, 68%) which is a result we have reached in our study. In addition to this, according to this study the spouse who is exposed to violence is female and percentage of events in which female is the perpetrator and victim is male, is 4, 46%. Results of the research about children differ from the results we have attained and the rate of violence applied to children is 8, 02%.⁷

Relations of perpetrators and victims have been determined according to the results of a research about 32 sexual crimes committed in İstanbul, which are: friendship 28%; kinship: 6%; social relationships: 60%.⁸

⁷ See. YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. Aile İçi Şiddet Olgularında..., p: 59 ve 62.

⁸ See. TUNCEROĞLU, Zafer. İstanbul Emniyet Müdürlüğü Sorumluluk Bölgesinde Polis Açısından Cinsel Suçların Soruşturulmasında Mevcut Uygulamalar ve Yeni Yaklaşımlar (Yüksek Lisans Tezi), İstanbul 2003, p: 54.

Professional statuses and percentages of people applying domestic violence are: Tradesmen: 29 people (10, 7%); *farmers*: 13 people (4, 8%); *merchants*: 6 people (2, 2%); *civil servants*: 56 people (20, 7%); *employees*: 54 people (20%); *academicians*: 6 people (2, 2%); *unemployed/housewives*: 27 people (10%); and other professions: 72 people (26, 7%).

Changes in acts of people applying domestic violence are numerically as follows: Decrease: 163 people, increase: 9 people, spreading: 9 people, periodical change: 36 people, no change: 32 people.

Changes in economic conditions of people applying domestic violence are as follows: Improvement: 64 people, deterioration: 28 people, periodical change: 51 people, no change: 109 people.

Bad habits of people applying domestic violence and percentage rates in themselves are as follows: alcohol consumption: 72 yes (26, 7%), 134 no (49, 6%); *drug consumption*: 1 yes (0, 4%), 204 no (75, 6%); *gamble habit*: 10 yes (3, 7%), 195 no (72, 2%); *chemical substance\drug usage*: 4 yes (1, 5%), 201 no (74, 4%); *smoking*: 20 yes (7, 4%), 185 no (68, 5%); *other bad habits*: 1 yes (0, 4%), 204 no (75, 6%).

Criminal pasts of people applying domestic violence are as follows: Previous offender: 16 people (5, 9%) and no past crime: 248 people (91, 9%).

People who apply domestic violence had been asked whether they take psychological treatment and their answers are below: Treatment continues: 7 people (2, 6%); *treatment ended*: 7 people (2, 6%); *abandoned treatment*: 8 people (3%) and no treatment: 239 people (88, 5%).

B – Data arising from other legal case studies in the same field, conducted within the last few years by other people and institutions

As distinct from our country, in general, more than %90 of violence victims are women and children. According to the experts of the subject, dynamics producing domestic violence do not only include domestic dynamics but also include mechanisms which cause women to be dependent on men and discrimination between men and women in social, legal, traditional, political, educational structure of the community.⁹

A research conducted by Ege University Department of Sociology has demonstrated that 76, 5% of women are exposed to violence in various

⁹ KEMERLİ, Nurhayat. Aile İçinde Kadına Yöneltilen Şiddet. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 41-42.

ways.¹⁰ As to another research made by Turkish Parliament Commission of Investigating Women Problems, 90% of women are exposed to violence in the first three years of their marriages and this ratio is as high as 73% among women who are university graduates.¹¹

According to other studies, women aged 17-25 constitute the largest risk group.¹²

Groups in which **traumas are mostly observed** are children and aged women.¹³

As in the USA, domestic violence is prevalent in Turkey and it has been observed that violence against women and violence against children generally go hand in hand.¹⁴

To a research conducted with 85. 857 people by DEU Faculty of Law, 83. 38% of our society believes that **rape in the marriage should be regulated as a crime**. 79, 27% of men believe that rape in the marriage should be considered as a crime while 90, 05% of women agree with this idea. These percentages decrease in rural areas, increase in squatter areas and reach to the highest level in city centers. 10, 39% of people have stated that, spouse should consent to this act of rape and it should not be counted as a crime.¹⁵

In another research conducted in **Ankara**, it is observed that 75% of female victims are low-income and 20% of these women are high-income. ¹⁶

In a research carried out in Ankara, 65% and 25% of female victims have been determined as primary school and high school\university graduates respectively, in terms of educational level.¹⁷

10 See. "Devlet Çocuklarını Korumuyor". , in: Cumhuriyet Gazetesi, 18. 07. 2003, p: 6 ve "Şiddete Karşı Yeni Birim". , in: Cumhuriyet Gazetesi. , 22. 07. 2003, p: 6. .

11 See. "Kadına Şiddet Var, Sığınak Yok". , in: Cumhuriyet Gazetesi, 18. 07. 2003, p: 6.

12 İŞLEĞEN, Yeşim. Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 71.

13 İŞLEĞEN, Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım, p: 71.

14 See. İŞLEĞEN, Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım, p: 82.

15 See. ÖZTÜRK, Bahri-ERDEM, Mustafa R. -ÖZBEK, V. Özer. Uygulamalı Ceza Muhakemesi Hukuku. , 7. Bası, Ankara 2002, p: 1104.

16 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 113.

17 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 113.

In a research made in Ankara, when **ages** of female victims were examined, it has been depicted that, women aged 40 and over form the majority among female victims and 25-29 age group, 35-39 and 30-44 age groups take the second, third and fourth rows respectively.¹⁸

According to a research conducted in Ankara, **reasons of obeying violence** have been reported as generally “for my children, I can’t raise my children” and “I have nowhere to go”¹⁹

Again in the same research when professional statuses of female victims were examined, 70% of them have been recorded as unemployed, only 30% of these women work.²⁰

In the research mentioned above, **possessions** of women had been asked and it had been determined that majority of female victims do not have possessions; in Turkey most of the people not having possessions are women.²¹

In terms of **marital status**, female violence victims have mostly married once (76%); 24% of these women have married twice and the rate of marrying three or four times is considerably low according to this research.²²

In a research conducted in Ankara, it has been determined that 98% of violence victims had been subjected to violence by their spouses and 2% of violence victims had been subjected to violence by their brothers, fathers, children, mothers in law and sisters in law.²³

In a research conducted in Ankara, **forms of violence** have been determined as follows: Kick, slap, forceful sexual intercourse, swearing, insulting, not giving food or money, detaining at home, wounding with an incisory or drilling tool.²⁴

18 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 114.

19 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 114.

20 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 114.

21 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p : 114.

22 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

23 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

24 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

In another research connected with both domestic and external sexual crimes, conducted in İstanbul and surroundings, it has been revealed that in 79% of sexual crimes violence have been applied, in 13% acts have started with ruses and turned into violence, in 12% sexual crimes have been committed with ruse and deceit. According to the research based on 108 events, in 47% of events, the perpetrator has used verbal and physical violence along with violence based on weapon and in 35% of these events the offender has used both verbal and physical violence.²⁵

According to a research made in Ankara, 78% of violence has been applied to women in the first days of the marriage.²⁶

In the same study, when women's responses to violence have been examined, following results have been acquired: They have obeyed violence for a long time and done nothing to prevent it; most of them have thought to commit suicide but 16-20% of them have attempted to do it , 60% of them have resorted to police stations but most of them have renounced their complaints because of malevolent attitudes in police stations and obligation of being examined in official expertise institutions (eg. Forensic Medicine Institution).²⁷

According to a survey conducted on 118 people who are below 18 and victims of sexual abuse (cases heard in İstanbul Criminal Court for Major Cases and Juvenile Courts), **35% of victims of sexual abuse have felt very bad after the intercourse**, 18, 1% of them have gone into depression, 11, 6% of victims have attempted to commit suicide, 11, 6% have hated people and themselves, 15, 9% have felt desireless, angry and hopeless and 7, 7% have not been affected by the event.²⁸

According to a research conducted on 155 women living in Ankara, 15% of women have been forced to sexual intercourse by their spouses at least

25 See. TUNCEROĞLU, Zafer. İstanbul Emniyet Müdürlüğü Sorumluluk Bölgesinde..., sh: 61.

26 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

27 Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

28 See. AYDEMİR, Temel. Cinsel İstismara maruz kalan Çocukların Adli Tıp Açısından İncelenmesi ve korunması. , (İ. Ü. Adli Tıp Enstitüsü - Yayınlanmamış Yüksek Lisans Tezi), İstanbul 1994, p: 92.

once and 1% of these women have stated that this event has been experienced frequently.²⁹

According to a research made by **Prime Ministry General Directorate of Women Status and Problems in 2001**, in Turkey in 86% of families **domestic violence and verbal attack** have been experienced. According to this study, violence has been applied by husbands to 30% of women, violence has generally been experienced in the first years of the marriage and women have been insulted by their husbands. (52%)³⁰

According to a research in **Diyarbakır; between 1997 and 1999**, 88 women have complained about **domestic violence** and in the same period 4 women have declared to have been subjected to **external violence**.³¹

Researches made in **Urfa**, have shown that 54% of women living in rural areas, 44% of women living in city centers are exposed to violence frequently. Women who were married at the age of 15 and below constitute the vast majority of female victims.³²

In a research made on **Turkish women** aged between 17-61 who live in **Berlin**, 11%; 7, 7% and 6, 8% of these women have stated to have been forced to sexual intercourse frequently, sometimes and rarely respectively.³³

Results of a research about Germans who live in Federal Republic of Germany clarify that 70% of sexual crime victims and sexual crime offenders have a relation (eg. neighbourhood, friendship or kinship).³⁴

²⁹ ARTUK, Mehmet Emin, transferring from Leyla Gülçür. Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde Irza Geçme ve Fücür. , İn: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukuk Yaklaşımı, 2. Bası, İstanbul 2002, p: 45, dipnot: 30.

³⁰ Narrating ŞATIROĞLU, Hakan. Cinsel Taciz ve Tecavüzle İlgili Profesyonellerin Davranışları ve Eğitimi. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 230.

³¹ DANIŞ BEŞTAŞ, Meral. Kadına Yönelik Şiddetle Mücadelede Diyarbakır Deneyimleri. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 145. According to a report, written based on a research about suicide acts of women in Batman, in a very short period more than 60 women have committed suicide and of these women %75 are young women. According to the report, a great part of suicides have occurred because people who have moved to cities have not been able to conform to social life of cities and have had to stay at home which has given way to psychological disturbances. (Narrating DANIŞ BEŞTAŞ, Kadına Yönelik Şiddetle Mücadelede Diyarbakır Deneyimleri, p: 150).

³² Narrating FARAÇ, Mehmet. Kanlı Gelenek. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 137.

³³ ARTUK, Mehmet Emin transferring from Pınar İlkaracan. Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde Irza Geçme ve Fücür, p: 45, dipnot: 30.

According to the results of a survey made **throughout Turkey**, 97% of married people have stated that they had been subjected to violence by their husbands. Husbands of 51% of these women have sexual intercourse without considering women's consent, husbands of 21% coerce these women to have sexual intercourse.³⁵

According to the results of a study made by DEU Faculty of Law **throughout Turkey**, 32, 68%; 2, 7% and 1, 17% of married women have expressed that they had been beaten by their husbands, by their fathers and/or mothers and by other relatives respectively. Surprisingly, 60, 93% of married people have stated that they have not been beaten at all. Another interesting outcome of the survey is that the percentage of being a victim among people who live in city centers and who are also university graduates is 8, 79%, while this ratio is as high as 61, 26% among people who live in the same place but who are illiterates. According to the same study, 26, 45%; 25, 55% and 4, 12% of people who have stated to have been beaten before marriage, have been beaten by their fathers, mothers and other relatives respectively and the numbers of events in which mother or father is the perpetrator are close which is a frightening fact that refutes the conception that only males apply violence in our country.³⁶

According to the results of the same study, **when fathers' relations with the children** are inspected following facts have shown up: 76, 27% of people have stated that father is in good relations with the children, 14, 96% have stated that father beats children occasionally, 2, 12% of them have expressed that father often resorts to beating and 0, 96% have stated that father mistreats to the children. Nevertheless; 5, 68% of the people have abstained from answering this question.³⁷

According to the results of another research conducted **throughout Turkey** by DEU Faculty of Law, 0, 77% and 0, 82% of **married women** have been beaten by their fathers and brothers respectively and 1, 97% of these women have been subjected to **sexual harrasment** by other relatives.

34 Narrating NAAB, Daniela-JUNG, Heike. Sexuelle Gewalt gegen Frauen. , in: Kriminalistik. 1991, Heft: 12, p: 801.

35 Narrating ARTUK, . Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde Irza Geçme ve Fücür, p: 45, dipnot: 30.

36 See ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1109-1111.

37 See ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1112.

This ratio increases in rural areas and reaches its highest point in squatter areas.³⁸

According to the results of another research conducted **throughout Turkey** by DEU Faculty of Law; 65, 94% of **married women** have stated that **measures to protect women and family (like removal from home)** would be helpful and 90, 94% of these women have stated that **shelter houses for women** should exist.³⁹

According to the results of another research conducted **throughout Turkey** by DEU Faculty of Law; 22, 67% of people in our society have stated that they have not been beaten at all whereas 77, 33% of the people have been reported to have been beaten. 41, 16% of these people have stated to have been beaten by their, fathers, mothers and relatives; %6. 34 of them have been beaten by government officials like policemen and gendarme forces ; 7% have been beaten by their teachers and 22, 06% have been beaten both by their relatives and government officials.⁴⁰

According to the results of another research conducted on 5411 people **throughout Turkey** by DEU Faculty of Law, 76. 69% of **children** (69% of male children and 82% of female children) have been exposed to violence during childhood. Number of events encountered in city centers are slightly higher when compared to the number of acts in rural and squatter areas. Among these children, 15, 67%; 19, 27% and 31, 61% have stated that they had been subjected to violence by their mothers, fathers and both fathers and mothers respectively. **Other people out of the family have also applied violence on these children with a high proportion.** For instance; 19, 69%; 7, 12% and %6, 21 of the children have been subjected to violence by siblings, relatives and both two groups respectively. Moreover, 4. 97% of the children have been beaten by their employees; 39, 26% have been beaten by their teachers; 39, 26% of the children have stated to have been beaten by both their employees and teachers and 11, 09%; 14, 86% and 5, 77% of the children have been beaten by friends, strangers and by both these two groups.⁴¹

According to the results of another research conducted on 4577 people **throughout Turkey** by DEU Faculty of Law, 37. 78% of the **children have**

³⁸ See ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1111.

³⁹ See ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1113.

⁴⁰ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1118.

⁴¹ See . ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1121-1122.

stated to have applied violence themselves and 27, 45% of this violence had been assault and battery while 10, 88% of children had given damage to properties. 1. 34% of the children were engaged in looting; 2, 15% were guilty of attack; 1, 44% had been held responsible for giving damage to properties and looting and 1, 50% had been guilty from assault and battery.⁴²

According to the results of another research conducted on 7139 people throughout Turkey and completed in 2001, **the ratio of people who have been subjected to violence in the last two years** has been 44. 47% (males 40. 23%, females 47. 05%). 31. 55%; 4, 27%; 1, 74%; of violence acts have been assault and battery, looting and forcing to sexual intercourse respectively and these violence acts have been carried out in houses (17%), in schools (14, 19%), outdoor(12, 09%) and in places for sport(1, 88%).⁴³

IV – CAUSES OF VIOLENCE

Patriarchal and/or partial matriarchal structure of society produces violence and by damaging the communication of family members and relationships of life and production and the social structure, it constitutes the major source of violence.⁴⁴ In this context, it is an apparent fact that society culture props up the understanding of obeying to violence.⁴⁵

Economic dependence and the status of women in our society lay the groundwork for sexual harrasment and violence acts especially in offices.⁴⁶ Surely, this situation influences the points of view in this subject in negative ways and unless it is eliminated coordinatedly, especially with education and law institutions and rules, traditional role distribution will continue to exist and women who are in the fear of losing their jobs will continue to be silent.

42 See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1124.

43 See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1128-1129.

44 SELEK, Pınar. Ataerkillik ve Şiddet Kültürü. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 17.

45 KEMERLİ, Aile İçinde Kadına Yöneltilen Şiddet, p: 56.

46 ÖZKUZUKIRAN, Şule. Çalışma Yaşamında Cinsel Taciz ve Şiddet. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, sh: 35. Ayrıca karş. SCULLY, Diana. Tecavüz – Cinsel Şiddeti Anlamak (Çev. : Şirin Tekeli ve Laleper Aytok). , Ankara 1994, p: 12 vd. ve 46 vd.

Defective formation of political system and preservation of it cause violence to be accepted and applied as a means of power. ⁴⁷ In this context, political and sexual violence are in interaction with each other, thus; it nourishes and strengthens the violence applied especially by men and triggers other negative agents.

In recent years it has been widely accepted that children and young people have desensitized to violence and this fact influences the future of society health deeply; moreover violence is assented among people in our society⁴⁸ and it can be said that this fact gives way to a new wave of violence and triggers it.

It has been expressed that, the reason for children committing violence within or outside the family, is the violence and abuse they have been subjected previously especially within the family, like a vicious circle, and it has been determined that juvenile criminals have experienced sexual or physical abuse in their past.⁴⁹

Reasons of sexual abuse against children can be defined as follows: Conservative and closed structure of our society, **not perceiving the children as independent individuals, absence of a serious state policy to protect and rehabilitate children and insufficient measures of state institutions and nongovernmental organisations.**⁵⁰

In a research conducted on 5411 people throughout Turkey by DEU, the answers of people, who have been exposed to violence, to the question of reasons for violence are given below: 36. 10% training, 19. 37% no reason, 20. 86% punishment, 4. 30% response to attack. According to the same research 29, 64%; 36, 17%; 36, 17% of violence victims have stated that they had been exposed to violence at home, at school and at both school and home respectively. Remaining rates are below: 5. 61% at workplace, 22. 32% outdoor, 6. 53% both at workplace and outdoor, 5. 73% at places for sport, 5. 26% entertainment places and 2. 36% at sport and entertainment

⁴⁷ SANCAR ÜŞÜR, Serpil. Bir İktidar Aracı Olarak Cinsel Şiddet. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p:25, 29, 31.

⁴⁸ See. KOLBURAN, Güliz. Sunum ve Açılış Konuşması. , in: İSTEK Rehberlik ve Psikolojik Danışma Sempozyumu – Şiddet ve Okul Ortamına Etkileri (29 Nisan 2000), İstanbul 2000, p: 1.

⁴⁹ See. POLAT, Oğuz. Çocuk Hakları-Çocuk Suçluluğu. , in: İSTEK Rehberlik ve Psikolojik Danışma Sempozyumu – Şiddet ve Okul Ortamına Etkileri (29 Nisan 2000), İstanbul 2000, p: 13-14.

⁵⁰ See as an example. "Devlet Çocuklarını Korumuyor", p: 6.

places; 5. 97% at shopping places, 1. 59% at meeting places. 71. 7897% of violence has been assault and battery.⁵¹

According to the results of another research conducted on 4577 people throughout Turkey by DEU Faculty of Law, reasons for children and juveniles to incline towards violence are as follows (according to importance): 1) ignorance of parents and lack of interest 2) domestic violence; broadcasting, programs and games containing violence 3) social environment the child lives in and psychological condition of the child 4) economic conditions and imitating adults.⁵²

V-SYNTHESIS DETERMINATIONS RELATED TO PROBLEMS

From the data I have acquired from my legal case study, I can deduce those common significant points:

Which rights should be put into force for women in our country: 335 people: right to work (125 males, 229 females) 50 people (26 males, 24 females): right to elect and to be elected, 588 people (274 males, 314 females): right to education, 69 people (57 males, 12 females): right to worship and 1 person: other rights.

Sufficiency of education of media and of education institutions: 39 people: sufficient 284 people: partially sufficient and 750 people: not sufficient

How to struggle against domestic violence: 530 people: elimination of ignorance, 258 people: solving economic problems, 50 people: application of legal institutions, 92 people: elimination of discrimination between males and females and 18 people: other precautions.

Whether men have the right to train women in marriage (to identify the causes of violence): 113 people: men have right, 255 people: partially agree to the idea that men have right, 715 people: men do not have right and 19 people: no idea

In relation with the same question, 57 people have stated that **men can resort to violence in order to prevent wrong behaviours of women**, 143 people have expressed that they partly share this idea, 891 people have opposed to that kind of violence and 16 people have been reported as not having an opinion.

Whether religion allows to violence against women: 153 people: religion permits violence against women, 129 people: partially believes that relig-

⁵¹ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1122-1223.

⁵² See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1126.

ion allows, 619 people: religion does not permit violence and 195 people: no opinion

Whether it is normal to apply violence to children\spouse: 48 people: normal, 83 people: partially believe it is normal, 114 people: normal when it is deserved, 843 people: not normal and 17 people: no opinion.

Whether domestic violence is a serious problem in Turkey: 856 people (353 males, 502 females): serious problem, 174 people (102 males, 72 females): partially believe it is a serious problem, 46 people (31 males, 15 females): not a serious problem and 32 people (22 males, 10 females): no idea.

Whether society is informed about the decrees in legal system: 128 people: informed, 320 people: partially agree that it is informed, 377 people: not informed and 257 people: no idea.

Women constitute the majority of domestic violence victims: 169 (27, 6%; valid percentage:28, 3%) of 597 women who have answered the survey questions, have been violence victims themselves ; 76 (12, 4%; valid percentage: 12, 7%) of these 597 women have seen another female violence victim in the family. 95 (18, 3%; valid percentage: 18, 8%) of 506 males who have participated in this survey have been victims themselves and 61 (11, 7%; valid percentage 12, 1%) of these males have witnessed a violence act in which male is the victim.

According to other researches, women aged between 17 and 25 constitute the largest risk group in terms of sexual assaults.⁵³

Groups in which traumas are mostly observed are children and aged women.⁵⁴

A research made throughout Turkey by Ege University Department of Sociology, has revealed that 76, 5% of women are exposed to violence in various ways.⁵⁵

In general, more than 90% of violence victims are women and children. According to the experts of this field, dynamics generating domestic violence do not only include domestic dynamics, but also dynamics in social, legal, political, traditional and educational structure of the society concerned

⁵³ İŞLEĞEN, Yeşim. Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 71.

⁵⁴ İŞLEĞEN, Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım, p: 71.

⁵⁵ See. "Devlet Çocuklarını Korumuyor" , in Cumhuriyet Gazetesi, 18. 07. 2003, sh: 6 ve "Şiddete Karşı Yeni Birim" , in Cumhuriyet Gazetesi. , 22. 07. 2003, p: 6. .

which cause discrimination between males and females and which render women dependent on men.⁵⁶ In fact, it has been observed that violence against women and violence against children in the family generally develop together.⁵⁷

According to another research made in 1995, in 34%, 53% and 46% of families in Turkey physical violence, verbal violence and physical violence against children have been observed . Moreover, this investigation has disclosed the fact that women and children form the greatest part of domestic violence victims.⁵⁸

From the data given below it can be seen that mostly children and aged people are exposed to violence. The rates of violence victims in their age groups are below: 12-15 age group: 40%; 56+ age group: 35, 1%; 35-45 age group: 27, 3%; 26-35 age group: 22, 1%; 46-55 age group: 21, 4% and 19-25 age group: 20, 9%.

However, here it is necessary to clarify three important points. The first is that every age group has been exposed to violence in considerable rates; the second is the fact that children and young people are the groups who have the highest rates when age groups are formed according to the age average of Turkey and thirdly in terms of events of being witness to domestic violence, except from survey participants in the family, young people and children form the majority of victims. The percentage of people who have witnessed domestic violence in the family (according to age groups): 12-15 age group: 20%; 56+ age group: 8, 1%; 35-45 age group: 9, 3%; 26-35 age group: 10, 4%; 46-55 age group: 13, 1% and 19-25 age group: 13, 3%.

The distribution of domestic violence victims according to educational backgrounds exhibits an interesting picture; that is people who are literates but not have not finished any school and illiterates are violence victims in the highest proportions. This interesting situation reflects an inverse proportion, that is the higher the education level is, the lower the rate of being a violence victim. For instance, children and young people and university students follow these first two groups and finally people who have taken master degrees constitute the lowest proportion. We can sum up the

56 KEMERLİ, Nurhayat. Aile İçinde Kadına Yöneltilen Şiddet. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 41-42.

57 See. İŞLEĞEN, Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım, p: 82.

58 Narrating BÜLBÜL, Nafiye Yasemin. Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 109.

proportions as follows: illiterates: 60%; literates but who have not graduated from any school: 56, 5%; primary school graduates: 33, 3%; elementary school graduates: 31, 6%; high school graduates: 22, 8%; university graduates: 17, 8% and master students: 9, 3%.

Although these proportions slightly increase at primary, elementary and high school levels, when compared to the events in which survey participants have witnessed domestic violence, in a mixed evaluation, it is observed that determinations above do not alter. The distribution of violence events witnessed in the family in terms of victim's educational status is as follows: Illiterates: 13, 3%; literates but who have not finished any school: 8, 7%; primary school graduates: 10, 1%; elementary school graduates: 14%; high school graduates: 14, 8%; university graduates: 9, 2% and master graduates: 0%.

When looked at the distribution of domestic violence victims according to their professions, it is observed that small tradesmen, farmers, unemployed people and housewives have the highest proportions. List of proportions according to professions is: small tradesmen: 32%; farmers: 25%; merchants: 0%; civil servants: 14, 8%; employees: 19%; academicians: 7, 3%; unemployed/housewives: 46, 7%; other professions: 19, 8%. Situation in other events of being exposed to domestic violence: small tradesmen 16%; farmers: 16, 7%; merchants: 0%; civil servants: 8, 25; employees: 10, 1%; academicians: 0%; unemployed/housewives: 12, 7%; other professions: 13, 7%.

Here, two interesting matters are the absence of merchant victims and the high proportions of violence victims among other profession groups.

Domestic violence is in a direct relation with economic status and it decreases as economic conditions improve.

Proportions in situations when exposed to violence in person: poor: 46, 4%; middle class: 22, 6%; wealthy: 21, 3%; over wealthy: 13, 6%. Proportions in situations when witnessed to domestic violence: poor: 26, 8%; middle class: 11, 9%; wealthy: 10, 4%; overwealthy: 4, 5%.

Nevertheless, here the upsetting point is the existence of domestic violence in families of all levels of economic status.

When settlement areas of domestic violence victims are examined, it is inferred that people residing in rural areas and squatter areas have the highest proportions. People who live in city centers have a majority in terms of two groups given below (and does not show deviation) Distribution according to the people who have replied themselves: metropolises: 23, 2%; city centers: 22, 5%; village centers: 18, 2%; rural areas: 33, 3%; squatter

areas: 70%. Proportion of witnessed domestic violence events wank: metropolises: 12, 6%; city centers: 11, 2%; village centers: 14, 5%; rural areas: 33, 3%; squatter areas: 17, 6%.

A striking point in the distribution of domestic violence victims in terms of marital status is that divorced people constitute the majority among domestic violence victims. Beside this, single people become victims in high proportion and the proportions in people who have answered themselves and proportions of witnessed domestic violence events show a big difference. Status of people who have answered themselves: married: 24, 8%; single: 19%, divorced: 63, 6%. Status in witnessed events: married: 10, 7%; single: 13, 9%, divorced: 6, 1%.

The distressing matter in the distribution of violence victims in terms of marriage methods which affects marriages in negative ways is that the highest proportion of violence victims are people who have married by matchmaking, in other words without knowing the potential spouse. The distribution according to people who have answered themselves: marriage by love: 20, 6%; by matchmaking: 37, 2%; other methods: 28, 6%. Situation in events which are witnessed: marriage by love: 7, 6%; by matchmaking: 12, 6%; other methods: 33, 3%.

In the distribution of violence victims according to their settlement areas the most interesting matter is the more intense application of violence in the prosperous regions of our country where educational and cultural levels are higher and contrary to the common belief, domestic violence is applied less in underdeveloped regions where economic, educational and cultural levels are comparatively low: Distribution according to the people who have answered themselves: Marmara region: 22, 2%; Aegean region: 6, 5%; Blacksea region: 32, 2%; Mediterranean region: 27, 1%; Inner Anatolia region: 24, 6%; East Anatolia region: 21, 8%; Southeast Anatolia region: 25, 4% and abroad: 25%. Distribution according to domestic violence events which are witnessed: Marmara region: 8, 4%; Aegean region: 13, 8; Blacksea region: 10, 9; Mediterranean region: 13, 5; Inner Anatolia region: 11, 6; East Anatolia region: 14, 3; Southeast Anatolia region: 16, 4% and abroad: 12, 5%.

In opposition to the common belief, violence acts towards children and women are observed not only in undereducated socio-economic social classes but at all socio-economic and education levels.⁵⁹

⁵⁹ KEMERLİ, Aile İçinde Kadına Yöneltilen Şiddet, p: 57.

Obvious result arising from the evaluation according to the number of family members is that the more the children are, the higher the proportion of application of violence and in relation with this fact violence is applied in great proportions in families of 5 and over people. Distribution according to people who have answered themselves: family of two people: 15, 7%; family of three people: 23, 7%; family of four people: 22, 6%; family of five people: 23, 6%; family of six people: 27, 4%; family of 7+people: 28%. Proportions according to the violence events witnessed: family of two people: 10, 8% family of three people: 10, 7%; family of four people: 10, 1%; family of five people: 13, 5%; family of six people: 13, 2%; family of 7+people: 19, 4%.

When frequency rates of domestic violence are examined, in this negative picture the pleasing fact is the minority of the violence acts applied frequently and very frequently. However, except from the application of violence once or twice, when other probabilities are evaluated together, proportions reach to an upsetting level. Rates can be summed up as follows:very frequently: 6, 8%; frequently: 8, 6%; sometimes: 25, 4%; rarely: 32, 7%; once or twice: 24, 1%.

Distinctive characteristics of violence perpetrators according to our case research:

a)The most striking outcome in terms of the age of perpetrators(offenders) of domestic violence is that majority of them are 18-55 aged people. Distribution percentage of perpetrators are as follows: 0-12 age: 1, 1%; 13-17 age: 2, 2%; 18-25 age: 14, 1%; 26-35 age: 18, 1%; 36-45 age: 29, 35; 46-55 age: 25, 9%; 56-65 age: 7, 8% and 66+ age: 1, 5%.

Ages of offenders can be given as: 0-12 age: 3 people, 13-17 age: 6, 18-25 age: 38, 26-35 age: 49, 36-45 age: 79 people, 46-55 age: 70, 56-65 age: 21, 66+ age: 4 people When the table is scrutinized, it can be observed that adults and young people form the majority of perpetrators. For instance percentages are:18-25 age group: 14, 1%; 26-35 age group: 18, 1%; 36-45 age group: 29, 3% and 46-55 age group: 25, 9%.

b)The percentage of perpetrators in terms of gender: 82, 2%: male perpetrators; 17, 8% female perpetrators, which is an expected result in our society.

Gender statuses of perpetrators of domestic violence are(in terms of number) male: 222 people, females: 48 people.

In another research conducted in İstanbul between years 1998 and 2000, it has been established that 89% of perpetrators are males.⁶⁰

c) Results according to the educational statuses of perpetrators are striking as the percentages of victims; that is **except from master's degree, violence acts increase as educational levels rise**. Percentages are: illiterates 2, 6%; literates but have not graduated from any school: 1, 5%; primary school graduates: 24, 4%; elementary school graduates: 12, 6%; high school graduates: 30%; university graduates: 27, 8%; master education: 0, 7%.

Educational statuses of perpetrators of domestic violence are (in terms of numbers): Illiterates: 7, literates but have not graduated from any school: 4, primary school: 66, elementary school: 34, high school: 81, university: 75, master's degree: Here, **the striking result is that people who have received education constitute the largest part of perpetrators**. When proportions of perpetrators in their own groups are examined: illiterates: 2, 6%; literates but have not graduated from any school: 1, 5%; primary school: 24, 4%; elementary school: 34%; high school: 81%; university: 75% and master: 1%.

In another research conducted in İstanbul between years 1998-2000, it has been revealed that 43% of perpetrators and 39% of victims are primary school graduates while 45% of perpetrators and 44% of victims are high school and university graduates, which is different from the results we have attained.⁶¹

d) Contrary to the common belief, except from Aegean region and abroad, **people living in prosperous regions where cultural and economic levels are high, resort to violence more frequently**. The rates are: Marmara region: 16, 3%; Aegean region: 7%; Blacksea region: 18, 5%; Mediterranean region: 15, 9%; Inner Anatolia region: 18, 5%; East Anatolia region: 8, 5%; Southeast Anatolia region: 8, 9% and abroad: 0, 7%.

Settlement areas of people who apply domestic violence are as follows (in terms of number): Marmara region: 44, Aegean region: 19, Blacksea region: 50, Mediterranean region: 43, Inner Anatolia region: 50, East Anatolia region: 23, Southeast Anatolia region: 24, abroad: 2. When percentages of regions are examined in themselves, it is recognized that **in terms of both perpetrators and victims, the number increases in regions where financial, cultural and educational levels are high**. Percentages are: Marmara region: 16, 3%; Aegean region: 7%; Blacksea region: 18, 5%; Mediterranean

⁶⁰ See YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. *Aile İçi Şiddet Olgularında...*, p: 59.

⁶¹ See YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. *Aile İçi Şiddet Olgularında...*, p 62.

region: 15, 9%; Inner Anatolia region: 18, 5%; East Anatolia region: 8, 5%; Southeast Anatolia: 8, 9% ; abroad: 0, 7%.

People who perceive children as sexual objects are not necessarily uneducated or low-income people; wealthy and educated people are also engaged in these type of acts; it is a fact that children prostitution which has reached serious levels in holiday places, is ignored and children are even sold openly to wealthy people; however in spite of these facts sufficient measures to prevent it are not taken.⁶²

e)When distribution in terms of marital status is examined, it is seen that, in opposition to the common belief, **people who have married by religious ceremony (not officially married) form just a small part.** Percentages are: officially married: 75, 6%; married by religious ceremony: 2, 2%; single: 14, 4%; divorced: 6, 3%; relationship without marriage: 0, 4%.

Marital statuses of domestic violence perpetrators are (in terms of number) officially married: 204, married by religious ceremony: 6, single: 39, divorced: 17, relationship without marriage: 1. Percentages of these are as follows: officially married: 75, 6%; married by religious ceremony: 2, 2%; single: 14, 4%; divorced: 6, 3%; relationship without marriage: 1%.

f)In terms of number of the marriages perpetrators have experienced, **perpetrators who have married once constitute the largest part.** 1 marriage 71, 5%; 2 marriages:7%; 3 marriages: 0, 4% ; 5 marriages: 0, 4%.

The number of marriages perpetrators have experienced: 1 marriage:193 people; 2 marriage:19; 3 marriages:1 person; 5 marriages:1 person. **Here, the striking point is the density of violence among people who have married once.**

g)When relationship between the perpetrator and the victim is examined, it can easily be observed that **victims are subjected to violence mostly by their spouses, mothers, fathers and brothers.** Percentages of the perpetrators below will be helpful to indicate the scope of domestic violence: mother: 10, 4%; father: 24, %; brother: 10, 8%; sister: 4, 4%; relative: 2, 6%; neighbour: 0, 4%; spouse: 40%; child: 0, 7% ; stranger/other: 2, 6%.

Relationship between perpetrators and victims is as follows (numbers and percentages):mother: 28 people (10, 4%); *father*: 66 people (24, 4%); *brother*: 29 people (10, 7%); *sister*: 12 people (4, 4%); *relative*: 7 people (2, 6%); *neighbour*: 1 person (0, 4%); **spouse**: 108 people (40%); *child*: 2 people (0, 7%) and *stranger/other*: 7 people (2, 6%).

⁶² See "Devlet Çocuklarını Korumuyor", p 6.

In another study conducted in İstanbul between 1998 and 2000, it has been determined that domestic violence is most intensely (77, 68%) applied to spouse which is compatible with the results we have attained. Here, the spouse who is exposed to violence is wife and the percentage of events in which husband is the victim has been fixed as 4, 46%. The percentage of violence against children has been found as 8, 02% which is a higher percentage than the percentage in our study. ⁶³

According to the results of a research about 32 sexual crimes (either domestic or external) committed in İstanbul, relationship between perpetrators and victims has been fixed as follows: friendship: 28%; kinship: 6%; social relationship: 60%. In terms of number; 1 perpetrator is father and 1 is fiance. ⁶⁴

According to the results of another study; in 76, 27% of marriages husband has been in good relations with the children; in 14, 96% it has been stated that father beats the children occasionally; in 2, 12% father frequently beats children and in 0, 96% of marriages it has been expressed that father behaves very badly towards children, nevertheless 5, 68% have avoided answering the question. ⁶⁵

In a research conducted throughout Ankara, **when the identities of people who apply violence to women are examined**, it has been established that 98% of female victims have been exposed to violence by their spouses and 2% of these women have been subjected to violence by their fathers, children, brothers, mothers in law and sisters in law. ⁶⁶ These results verify the determinations we have arrived at.

h)When dispersion according to the professions of perpetrators are examined, it is recognized that **academicians, merchants and farmers constitute the smallest parts**: Percentages can be presented as: Small tradesmen: 11%; farmers: 4, 8%; merchants: 2, 3%; civil servants: 21, 3%; employees: 20%, 5; academicians: 2, 3%; unemployed/housewives: 10% and other professions: 26, 7%.

⁶³ See. YILDIZ-YAVUZ-SOKULLU/AKINCI-GÖLGE. Aile İçi Şiddet Olgularında..., p: 59 ve 62.

⁶⁴ See. TUNCEROĞLU, Zafer. İstanbul Emniyet Müdürlüğü Sorumluluk Bölgesinde Polis Açısından Cinsel Suçların Soruşturulmasında Mevcut Uygulamalar ve Yeni Yaklaşımlar (Yüksek Lisans Tezi). , İstanbul 2003, p: 54.

⁶⁵ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1112.

⁶⁶ Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

Professional statuses of perpetrators of domestic violence (in terms of number and percentage): Small tradesmen: 29 people (10, 7%); *farmers*: 13 people (4, 8%); *merchants*: 6 people (2, 2%); *civil servants*: 56 people (20, 7%); *employees*: 54 people (20%); *academicians*: 6 people (2, 2%); *unemployed/housewives*: 27 people (10%) and *other professions*: 72 people (26, 7%).

i) When we examine the change rates in economic conditions of perpetrators, it is recognized that **a large part of the perpetrators have not experienced alterations or have experienced periodical changes in their economic conditions**. The dispersion is as follows: improvement: 23, 7%; deterioration: 10, 4% periodical change: 51%; no change: 40, 4%.

j) When we examine the percentages of the people who have answered the questions connected with bad habits and criminal records, **the most striking point is the excess of alcohol consumption according to the circumstances of our country**. Percentages are: alcohol: 26, 7%; drugs: 0, 4%; gamble: 3, 7%; chemical substance/drug: 1, 5%; cigarettes: 7, 4%; other bad habits: 0, 4%; existence of past crime(criminal past-record): 5, 9%.

In terms of number, the existence of past crime of domestic violence perpetrators are as follows: past crime: 16 people (5, 9%) and no past crime: 248 people (91, 9%).

Bad habits of domestic violence perpetrators and percentage rates in themselves can be presented as follows: *alcohol consumption*: 72 yes (26, 7%), 134 no (49, 6%); *drugs usage*: 1 yes (0, 4%), 204 no (75, 6%); *gamble*: 10 yes (3, 7%), 195 no (72, 2%); *chemical substance/drug usage*: 4 yes(1, 5%), 201 no(74, 4%); *smoking*: 20 yes(7, 4%), 185 no (68, 5%); *other bad habits*: 1 yes (0, 4%), 204 no (75, %).

k) When we examine the rates according to the perpetrators' answers to the questions related with psychological treatment, it is recognized that **most of the perpetrators have not received such treatments**. If we give the percentages; psychological treatment continues: 2, 6%; treatment ended: 2, 6%; gave up treatment: 3%; have not received/not receiving: 88, 5%.

Below are further data about **psychological treatment status** of people applying domestic violence: *treatment continues*: 7 people (2, 6%); *treatment ended*: 7 people (2, 6%); *gave up treatment*: 8 people (3%) and *have not received/not receiving treatment*: 239 people (88, 5%).

VI-SOCIOLOGICAL, ECONOMIC, CULTURAL, RELIGIOUS AND LEGAL DIMENSIONS

1) **Firstly, we have to clarify that discussing about domestic violence acts, especially sexual violence acts; trying to find solutions and activating or informing external institutions, especially legal institutions are still regarded as taboos in our country.** Only 31 of 1133 survey participants have accepted to answer the questions connected to this subject, remaining 1102 people have avoided and this number forms a high proportion. People avoid or abstain from answering questions because of various reasons. Although the main causes are social culture, traditions and religious beliefs; fear of being exposed to violence again, being isolated from the society, being damaged in economic or other ways and fear of having to divorce are other remarkable causes. People abstain from talking about domestic violence due to various reasons and instead of trying to solve the problem, by concealing or veiling the problem they prefer outworn and old methods and ignore the problem.

2) **It is a fact that domestic sexual crimes have reached to horrifying levels in our country.** In addition to the causes which will be investigated thoroughly below, absence of other social security guarantees, losing social values, formalist approach of our society in issues such as morality, religion, freedom, healthy life, respect to rights and tolerance but lack of a genuine belief and comprehension about these issues accelerate this process. Although there is not a possibility of attaining net digital data because of the absence of reliable statistical studies since answers given to survey questions are not enough, when the rates achieved from the answers of the survey and other surveys conducted by other people and institutions and trials heard in local courts and Supreme Court⁶⁷ are examined, it is obvious that violence has reached to frightening levels and this fact should not be undervalued.

In the same way, among the participants of our survey, 67, 9% of men and 82% of women have stated that domestic violence is a serious problem of our country; besides, 19, 6% of men and 12% of women have expressed that they partly believe in this idea; these rates support the conviction about violence mentioned above. Men and women of all education levels have affirmed the seriousness of this problem. When we examine the rates we have attained;

In events of forceful sexual intercourse: Among the people who have answered questions of domestic sexual violence, the rate in events in which

⁶⁷ See as an example CGK. 17. 10. 2000. , E:2000/5-196, K:2000/201.

there are other victims apart from family members is 6, 5% (valid percentage is 6, 5% with deviation probability) the rate in events in which there is no victim outside the family is 4, 7% (valid percentage is 4, 9% with deviation probability), the rate in events in which there is a victim from the family except from the person who answers is 0, 9% (valid percentage is 1, 0% with deviation probability), the rate in events occurred in a family except from the family of the person who answers is 0, 1% (valid percentage is 11, 1% with deviation probability); totally 4, 9% of victims (valid 5, 1%). Among 31 people who have answered this question noone has stated to have been **subjected to sexual harrasment**, however abstention of 1102 people from answering this question, other survey studies and events which are brought to court execution damage the credibility of this result.

According to the results of another study conducted throughout Turkey by DEU, 0, 77%, 0, 82% and 1, 97% of married women have stated to have been subjected to sexual harrasment by their fathers, brothers and other relatives within the family respectively. These percentages rise in cities, squatter areas and in rural areas alternately.⁶⁸

On the other hand, physical violence acts within the family have reached to graver levels and dangers or risks have not been taken under control by this time: In beating acts within the family: Among the participants who have answered the question about domestic beating, the rate in events in which there is a victim beside family member is 77, 4% (valid percentage with standard deviation probability is 77, 4%), the rate in events in which there is no victim outside the family is 71, 2% (valid percentage with standard deviation probability is 74, 1%), the rate in events in which there is a victim within the family apart from the person answering the question is 68, 9% (valid percentage with standard deviation probability is 70, 2%), the rate in events which have occurred in another family is 1, 0% (valid percentage with standard deviation probability is 77, 8%) in total sum 73, 5% of victims (valid 71, 8%).

In another study conducted throughout Ankara, when form of violence applied to women is taken into consideration, it is observed that female victims are subjected to violence mostly in forms like kicking, slapping, forced sexual intercourse, swearing, insulting, not giving money or food, detaining at home or wounding by excisory or drilling weapons.⁶⁹

⁶⁸ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1111.

⁶⁹ Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 115.

As to another research conducted in İstanbul and surroundings, about sexual crimes (either domestic or external), in 79% of sexual crimes committed violence has been used, in 13% of these crimes acts have started as ruse or trick and transformed into violence and lastly, 12% of these sexual crimes have been committed by means of ruse and deceit. In the study conducted on 108 events, it has been established that in 47% of events perpetrator has made use of verbal, physical violence and violence based on weapon concurrently whereas in 35% of events perpetrator has resorted to both verbal and physical violence.⁷⁰

According to a research, made by Prime Ministry General Directorate of Women Status and Problems, in 2001, 86% of families in Turkey have experienced violence and verbal attack. According to this study, violence has been applied to 30% of women by their husbands in the first years of the marriage and by 52% these women have been insulted by their husbands.⁷¹

According to a research conducted on German citizens in Federal Republic of Germany, it has been concluded that, 70% of sexual crime perpetrators and victims have relations such as kinship, neighbourhood, friendship or social connection⁷²

As to a survey study, conducted throughout Turkey, 97% of married women have stated to have been exposed to violence by their husbands. 51% of these women's husbands have sexual intercourse without considering the consent of women, while 21% of them have sexual intercourse with these women forcefully.⁷³

As to the results of another research conducted throughout Turkey by DEU Faculty of Law, 32, 68%, 2, 7% and 1, 17% of married women have stated to have been beaten by their husbands, fathers and/or mothers and by other relatives respectively. Amazingly, 60, 93% of married women have stated not to have been beaten. Another interesting outcome of this study is the difference between the rates of being a victim of beating among people living in city centers and who are university graduates (8, 79%) and the rates

70 See. TUNCEROĞLU, Zafer. İstanbul Emniyet Müdürlüğü Sorumluluk Bölgesinde..., p: 61.

71 Narrating ŞATIROĞLU, Hakan. Cinsel Taciz ve Tecavüzle İlgili Profesyonellerin Davranışları ve Eğitimi. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 230.

72 Narrating NAAB, Daniela-JUNG, Heike. Sexuelle Gewalt gegen Frauen. , in: Kriminalistik. 1991, Heft: 12, p: 801.

73 Narrating ARTUK, . Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde Irza Geçme ve Fücür, p: 45, dipnot: 30.

among people living in the same places but who are not literates (61, 26%). According to the same study, 26, 45%; 25, 55% and 4, 12% of women who have stated to have been beaten before marriage, have been beaten by their fathers, mothers and by other relatives respectively. It is a frightening fact that percentages of fathers and mothers are approximate and weakens the supposition that only males apply violence in our country.⁷⁴

According to a research made on 155 women living in Ankara, 15% of women have been coerced by their husbands to have sexual intercourse at least once and 1% of these women have stated to have experienced this many more times.⁷⁵

In a study made in Diyarbakır between 1997-1999, 88 women have applied with domestic violence complaint and 4 women have stated to have been exposed to external violence within the same years.⁷⁶

It is obvious that domestic maltreatment acts are very abundant and can not be underrated: Among people who have answered the questions about domestic mistreatment; the rate in events in which there is a victim beside family members is 61, 3% (valid percentage with standard deviation probability is 61, 3%), the rate in events in which there is no victim outside the family is 24, 9% (valid percentage with standard deviation probability is 25, 9%), the rate in events in which there is a victim from the family except the person answering is 26, 4% (valid percentage with standard deviation probability is 26, 9%), in events which occurred in another family is 0, 3% (valid percentage with standard deviation probability is 22, 2%); in total 29% of victims (valid 30, 1%) and 27% of domestic violence victims (valid 27, 4%).

Investigations carried out in Urfa have depicted that 54% of women living in rural areas and 44% of women living in urban areas are exposed to violence frequently or at short intervals.⁷⁷

According to a research carried on Turkish women aged between 17 and 61, living in Berlin, Federal Republic of Germany, 11%, 7, 7% and 6, 8% of

⁷⁴ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1109-1111.

⁷⁵ ARTUK, Mehmet Emin transferring from Leyla Gülçür. Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde Irza Geçme ve Fücür. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukuk Yaklaşımı, 2. Bası, İstanbul 2002, p: 45, dipnot: 30.

⁷⁶ DANIŞ BEŞTAŞ, Meral. Kadına Yönelik Şiddetle Mücadelede Diyarbakır Deneyimleri. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p: 145.

⁷⁷ Narrating FARAÇ, Mehmet. Kanlı Gelenek. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 137.

these women have been compelled to have sexual intercourse by their husbands frequently, occasionally and rarely respectively.⁷⁸

According to the results of another study made on 5411 people by DEU Faculty of Law, 76. 69% of children (69% of male children and 82% of female children) have stated to have been subjected to violence in their childhood. Quantity of events in city centers is slightly higher in comparison to the events in squatter and rural areas. Of these children who have been exposed to **domestic violence**, 15. 67%, 19. 27% and 31. 61% have stated to have been subjected to violence by their fathers, mothers and by both parents respectively. Also other people **outside the family** have been observed as perpetrators. According to this research, percentages are; by friends (19. 69%), by relatives (7. 12%) , by both groups (6. 21%), by employees (4. 97%), by their teachers(39. 26%), both by their employees and teachers (39. 26%) , by friends (11. 09%) and by both friends and strangers (5. 77%).⁷⁹

According to the results of another research conducted throughout Turkey on 4577 people, by DEU Faculty of Law, 37. 78% of children have stated to have applied violence themselves and of this violence 27, 45%, 10, 88%, 1, 34% has been assault and battery, damaging possessions and looting respectively. Also 2. 15%, 1, 44% and 1, 50% of these violence acts have been in the form of attacking with gun, looting or damaging possessions and assault and battery.⁸⁰

Acts of restriction of liberty within the family have reached to a remarkable level in terms of quantity: Among the participants who have answered the questions related with restriction of liberty in the family, the ratio in events in which there is a victim apart from family members is 38, 7% (valid percentage with standard deviation probability is 38, 7%), in events in which there is no victim outside the family is 17, 2% (valid percentage with standard deviation probability is 17, 9%), in events in which there is a victim from the family except from the person answering is 12, 3% (valid percentage with standard deviation probability is 12, 5%), in events which occurred in another family is 1, 2% (valid percentage with standard deviation probability is 100%); in total 19, 7% of victims (valid 20, 4%).

Although among 1133 people, only 31 people have answered the questions related with **sexual film/photograph record** in the family and all these

⁷⁸ ARTUK, transferring from Pınar İlkkaracan. Kadına Yönelik Cinsel İstismara Örnek Olarak Evlilik İçinde İrza Geçme ve Fücür, p: 45, dipnot: 30.

⁷⁹ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1121-1122.

⁸⁰ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1124.

31 people have stated that an act of this type has not occurred in the family, when we consider the fact that especially in the last years thousands of families have been producing pornographic and erotic works and marketing them on the internet, it is hard to rely on the answers given to our survey questions.

Among the participants who have answered the questions related with act of compelling to work, the rate in events in which there is a victim apart from family members is 6, 5% (valid percentage with deviation probability is 6, 5%), the rate in events in which there is no victim outside the family is 1, 3% (valid percentage with deviation probability is 1, 3%), the rate in events in which there is a victim from the family except from the person answering is 98, 1% (valid percentage with deviation probability is 100%), the rate in events which occurred in another family is 1, 4% (valid percentage with deviation probability is 100%).

When rates in other events of **other types of violence** are examined, among the participants who have answered the questions related with other types of crime; the rate in events in which there is a victim apart from family members is 29% (valid percentage with deviation probability is 29%), in events in which there is no victim outside the family is 3, 4% (valid percentage with deviation probability is 4%), in events in which there is a victim from the family except from the person answering is 4, 7% (valid percentage with deviation probability is 4, 8%), the rate in events which occurred in another family is 1, 2% (valid percentage with deviation probability is 100%); in total 7, 2% of victims (valid 7, 5%) and 6, 4% of witnesses (valid 6, 7%)

In spite of all these aspects, the pleasing point in terms of drug usage and committing other crimes is that, although risks and dangers for Turkey grow day by day, still violence is at reasonable levels and can be controlled and reduced to minimum rates.⁸¹

VII-SUGGESTIONS

A – In General

The obligations (education, protection, improvement, prevention of abuse) arising from the **Convention on Prevention of any Discrimination against Women (5th article)** and **Convention on Children's Rights (article 34)** should be fulfilled immediately.

⁸¹ POLAT, Çocuk Hakları-Çocuk Suçluluğu, sh: 14.

Education of the society should be considered as of high significance, and individuals should be educated in individual and social senses. Education which will be given to individuals should be facilitative to denounce crime and to provide the effective operation of legal authorities and institutions (investigation offices) and preventive to hinder the trauma which the event will generate and it should alter cultural prejudices. Besides, in this process and struggle against violence, nongovernmental organisations (NGOs) should play an active role. For instance, among the people who have stated that rape of the spouse in the marriage should be regarded as a crime, the obvious difference between the rates of illiterates and the rates of literates prove the assumption that education is of high importance in struggle against violence.

In the same way, in the legal case research we have made, among the people who have answered the question about which rights for women should be put into force, 51% have stated that **women's right to education** should be entered into force and this fact shows the problem and the need for education. In the same way 66, 2% of these people have found the education of media and education institutions insufficient and 25, 1% of these have defined the education of mass media and education institutions as partly sufficient and the ratio of people finding the education of these institutions has been 3, 4%; in short, these percentages verify the deficiency of education. Likewise, men and women have expressed the insufficiency of education of media and educational institutions in equal rates (66, 2%). In the same way, according to the answers of survey participants about the questions related with the ways to struggle against violence; 46, 8% of them have stated that ignorance should be annihilated. Another point of agreement between men and women has been about education and with more than a percentage of 50, both men (52, 7%) and women (51, 3%) have given priority to education.

Another vital result in this aspect is that the value placed upon education whether by people who are illiterates or by people who are of high levels of education and the priority given to education and the insufficiency of education of mass media and educational institutions disclose the problem and the solution at the same time. Moreover, another significant outcome is that people of all economic levels, have put the priority on education, related to the question of women's rights. (poor: 51, 8%; middle: 49%; wealthy: 57% and over wealthy: 72, 7%) Likewise, people from different economic classes have mentioned education in terms of ways against struggle (poor: 30, 4%; middle: 46%; wealthy: 50, 9% and overwealthy: 59, 1%) Here, the only different approach is the preference of people residing in squatter areas

in the subject of women's rights (right to work: 64, 7%; right to education: 31, 4%) and of ways to struggle against violence (economic problems: 47, 1%, elimination of ignorance: 11, 8%) When life conditions of these people are taken into consideration, this difference can be comprehended. Even it can be said that, in terms of causes of violence, economic problems constitute the major factor in squatter areas.

Cultural development should be accelerated, and by integrating with the Western world, the influence of endemic dogmas particularly the ones connected with sexuality, family, woman-child and morality should be erased.

Negative characteristics of large family structure should be removed, not only because it is outworn and in contradiction with modern life, law and culture rules and norms but also because it creates an environment causing violation of many rights including communication. That kind of social structure, which is **tribal/feudal structure** should be removed immediately. (still existing in some parts of our country)⁸² Our society still bears the signs of patriarchal family structure and this kind of social structure encourages violence. For instance, women constitute 4, 4% of people who have stated that rape of the spouse in the marriage should not be regulated as crime whereas this rate increases to 15% among men. Likewise, women constitute 27, 3% of people who have stated that this act should be regulated as an independently investigated crime whereas men constitute just 14, 8% of these subjects. In the same way, the percentage of supporting men-women equality is 4, 3% among while it reaches to 12, 3% among women.

Most of our citizens are not informed about their legal rights and due to this reason they do not attempt to look for a way to solve the problem. They have a wrong opinion that it constitutes a crime for them to complain especially while marriage is going on.⁸³ In the same way, 33, 3% of participants have stated that they are not informed about the regulations in legal system and 22, 7% have stated to have had "no information" about the subject which confirms our statements. In the same way, as to the answers re-

⁸² For the short tales of numerous examples to comprehend the horrifying, wild, striking and the outdated picture, that tevdal structure hos created in cites in Southeast Anatolia see. KOÇARSLAN, Ömer. *Namus Cinayetleri*. , in: *Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı*, 2. Bası, İstanbul 2002, sh: 131 vd. ; FARAÇ, Kanlı Gelenek, p: 135 vd. ; TURAN, Şehnaz. *Namus Cinayetleri*. , in: *Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı*, 2. Bası, İstanbul 2002, p: 139 vd.

⁸³ BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 110.

garding the question about complaining (resorting to adjudication), 21, 2% of males and 21, 1% of females have accentuated their unfamiliarity with the law system by stating to have no idea.

Likewise, in recent years, although some units **under the texture of Police and Gendarme organisations named Juvenile Branch, Juvenile Police, Juvenile Unit or Branch for Protection of Children have been established**, officials in these units are not specialists of the subject and not educated; and because they are appointed officials, they can not fulfill the requirements of this special duty efficiently.⁸⁴

According to a research conducted throughout Ankara, when answers of female violence victims are examined, it is observed that most of them have submitted to violence for a long time and done nothing to stop it; have thought of committing suicide and but 16%-20% of these women have attempted to commit suicide. 60% of female violence victims have resorted to police stations but most of them have renounced their complaints because of the obligation of being medically examined in official expertise institutions (like Institution of Forensic Medicine) and negative attitudes at police stations.⁸⁵

In the same way as in Western world⁸⁶, **media should make informative broadcasting or publishments to warn people about sexual diseases and to prevent child abuse and to make them use their denunciation rights by considering age groups separately.**

Economic problems should be overcome and economic security systems (unemployment insurance, credit possibilities and employment possibilities) should be developed and entered into operation. Not all of sexual crimes are committed because of sexual perversity, the status of women in the society, especially economic dependence of women and lack of education are directly linked with sexual crimes. To take up the matter on the basis of sexual impulses and to link it with patriarchal social structure impede us to identify the problem efficiently. The problem has cultural and economic dimensions; which insist on the existence of a feudal or tribal social structure and which are covered under morality values and which espouses the con-

⁸⁴ In the same opinion; POLAT, *Çocuk Hakları-Çocuk Suçluluğu*, p: 8-9.

⁸⁵ Narrating BÜLBÜL, *Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları*, p: 115.

⁸⁶ See the situation in the USA. DONALD, Bernice Bouie. *Amerikan Hukukunun Cinsel Suçlara Yaklaşımı*, in: *Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukuk Yaklaşımı*, 2. Bası, İstanbul 2002, p: 28.

tinuation of such a social, cultural and economic structure.⁸⁷ All these factors trigger, nourish and prop up each other since economic difficulties cause violence acts and weaken the struggle with these acts. In the same way, participants of our survey have pointed out the right to work (31, 3%) after the right to education. In the same way, regarding the question about the ways to struggle against violence, participants have stated that, economic problems should be solved (22, 8%) Among these, 24% of men and 37, 4% of women have mentioned the right to work after the right to education.

In a research conducted throughout Ankara, when female victims have been asked the reasons for submission to violence, most of them have declared that they have obeyed violence because “they can not raise their children and they have no job and a place to go”.⁸⁸

In addition, legally controlled programs in which scientists and officials will collaborate should be activated, milieux to prevent violence should be developed and betterment of perpetrators should be realized.⁸⁹ Execution applications like sentence constraining freedom or postponing execution alone are not sufficient in struggle against violence and weaken this process.

Prevention of violence outside the family is in direct relation with the prevention of domestic violence and with struggle against violence.⁹⁰ As long as violence, particularly against children and women, is not eradicated, the application of both domestic and external violence can not be prevented and victims of violence can be potential perpetrators of violence themselves. According to the results of a study conducted throughout Turkey on 8386 people by DEU Faculty of Law; 22, 67% of our community have stated not to have been **beaten** at all, and 77, 33% have stated to have been beaten; of which 41. 16% have been beaten by their fathers, mothers or relatives; 6. 34% ; 7% and 22, 06% have been beaten by officials such as police and gen-

⁸⁷ See for Pakistan example, which shows similarities with the social structure in some regions of our country. KHAN, Tahira. Namus Cinayetleri: Tanımına ve İçeriğine Bir bakış. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 122-130.

⁸⁸ Narrating BÜLBÜL, Ankara Barosu Kadın Danışma Merkezi ve Şiddet Mağduru Kadınların Başvuruları, p: 114.

⁸⁹ For England example see. KELLY, Liz. Erkekleri Değiştirmede Karşılaşılan Zorluklar: Saldırganlara Uygulanan Programlardan Çıkarılacak Dersler. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 111 vd.

⁹⁰ In the same way; POLAT, Çocuk Hakları-Çocuk Suçluluğu, p: 17.

darme forces; by their teachers and by both officials and teachers respectively.⁹¹

Application of religious norms by false, groundless and outworn customs and rules should be stopped by whether law rules or other branches of law. In the same way, answers given to the question related with the application of violence to prevent the inappropriate behaviour of women and to train women are worrying. If illustrated by example, people sharing the conviction that men can train women constitute 10%; while people agreeing that men can do so is 22, 5%. Besides, the ratio of participants who have stated that men can beat women to prevent incorrect behaviours of women is 5%, and the ratio of people partly sharing this idea is 12, 6%; the ratio of participants believing that religion allows violence of that kind is 13, 5% and the ratio of participants partly sharing this conviction is 11, 4%. Moreover, participants who regard the application of violence by one of parents as normal constitute 4, 2% whereas the ratio of people partly agreeing this idea is 7, 3%. These figures are amazingly high and demonstrate unacceptable beliefs, approaches and life culture of our society and indicate the urgent need for an efficient way of struggle against outworn customs and beliefs. The interesting point here is that there is no difference between ratios of men and women (50%) who have stated that women can be beaten for reasons mentioned above. For example, among the people who defy that men can beat women for mentioned reasons, women have reached to a high percentage of 83%, whereas it is 42, 9% among men. Likewise, 67% and 43, 9% of men have rejected the idea that religion permits violence against women. The level of economic statuses of people do not cause a considerable change in these ratios and this fact indicate the seriousness of the problem.

For instance, in our country there are people still believing that, having sexual intercourse with the person who will break the spell, will save them from evil spirits and due to this superstition rape acts occur.⁹²

Sexual harrasment at workplaces and educational institutions should be regarded as an employee-employer health and security problem, and this approach should be supported by legal positive norms.

Scientists of medicine should be educated in order to provide that they can interfere violence acts consciously.

⁹¹ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1118.

⁹² See. 5. CD. 23. 10. 1981. , E: 1981/3006, K: 1981/3041.

Especially members of medicine science should be taught Medical Ethics rules and provided that they behave meticulously in subjects such as medical investigation, diagnosis, treatment, obtaining evidence⁹³, secrecy, denunciation of crime and report arrangement.⁹⁴ Generally accepted belief, on the other hand, is that medical authorities do not show the concern needed and they are deficient in matters such as probable effects of violence and can not communicate efficiently with violence victims.⁹⁵

Likewise, the consent of woman victim should be taken, after necessary psychological treatment.

Testimonies and interrogations of victims and witnesses must be taken by experts of the subject. If necessary, during trials or cross-examinations some technical equipment such as telephones, closed circuit TV systems and videos must be utilized in order to reveal the truth. Basically, in investigation of sexual crimes, educated and expert officials from armed forces and general attorneyship should be charged in terms of obtaining evidence. Even judges should be educated in these subjects, particularly in domestic sexual violence.⁹⁶

To overcome the legal handicaps in events **frequently encountered after sexual crimes** which wears out the victim of the crime, institutional studies should be conducted and especially police force should be educated in

⁹³ İŞLEĞEN, Kadınlara Yönelik Şiddete Jinekolojik Yaklaşım, p: 73. For instance while physical findings in most of the reports which are arranged related to female victims are evaluated, such findings like disturbance in mental activities (article 456 of Turkish Penal Code) are excluded from evaluation which is a deficiency and fault of application (KORUR FİNCANCI, Kadına Yönelik Şiddete Adli Tıp Açısından Yaklaşım, p: 87-88.).

⁹⁴ For instance, Haydarpaşa Hospital has given a woman whose bone has been broken as a result of violence a rest for 45 days whereas Forensic Medicine Institution has given a rest for 15 days (See. ÖNAL, Gülşüm. Sağlık Alanında Kadına Yönelik Şiddete Etik Yaklaşım. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Ankara Tabip Odası Yayınlarından), Ankara 2003, p 63-64.).

⁹⁵ In the same opinion; ÖNAL, Sağlık Alanında Kadına Yönelik Şiddete Etik Yaklaşım, p: 64, 65. In the same way, applications are carried out in the way suggested in Iceland (See. AGNARSDOTTIR, Gudrun. Tecavüze Uğrayan ve Cinsel Tacize Maruz Kalan Kadına Acil Servis'te ve Tecavüz Kriz Merkezi'nde Yaklaşımlar. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukuk Yaklaşımı, 2. Bası, İstanbul 2002, p: 69 vd.).

⁹⁶ See for the situation in the USA. DONALD, Bernice Bouie. A. B. D. Hukuku Açısından Koruma Emri. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 106.

this subject.⁹⁷ For instance in the events which have been subject of our study, in 6 events police and prosecutor have passed the event to adjudication; in 9 events they have tried to solve the problem domestically and in 3 events they have remained indifferent to the subject and this situation weakens the struggle against crimes.

Systems supporting family unity should be developed. Especially families who have problems experience violence acts; in this sense child abuse is a part of problematic family relation and in families of one parent, child abuse is encountered less compared to families of two parents.⁹⁸ Because of this fact, official institutions to prevent woman and child abuse and to support families of multiparents, should be established. Unfortunately, Ministry of Family which has been constituted artificially in our country is not able to perform its duties and responsibilities efficiently. Because, even individuals, who are aware of their rights, are afraid that they can face with a new wave of violence; and even if they complain, they renunciate their complaint or they are forced to withdraw their complaints. So, legal institutions should enter into this process and provide protection and security needed. In the same way, results obtained from our study espouse this aspect: According to the results of the study we have carried out, 10% of violence victims who have complained, have been compelled to withdraw their complaints; in other words their complaints have created a new wave of violence. In the same way, another interesting point is that 18, 2% of non-complainers have stated that they are in the fear of compulsion.

According to the results of a research conducted throughout Turkey by DEU Faculty of Law, 65. 94% of married women have expressed that precautions (measures like removal from home) protecting woman and family would be useful; also 90. 94% of married women have insisted that shelter houses for women be founded.⁹⁹

On the other hand, *although it is wrong to arrive at definite allegations, since studies on this subject are not healthy and reliable*, experts claim that children who are physically abused can be result of unwanted pregnan-

⁹⁷ See for samples in England about this subject. YEARNSHIRE, Stephanie. Aile İçi Şiddet ve Tecavüz Konularında Yasal İhtilaflar ve Polisin Yaklaşımı. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukuk Yaklaşımı, 2. Bası, İstanbul 2002, p: 73 vd.

⁹⁸ See. POLAT, Çocuk Hakları-Çocuk Suçluluğu, p: 20.

⁹⁹ See. ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1113.

cies.¹⁰⁰ Although unwanted pregnancy is not the only reason of abuses, it still constitutes an influential factor. Insufficiency of public education in subjects such as family planning, healthy marriage, ways to prevent unwanted pregnancies, healthy sexual life and economic difficulties lay the grounds for child abuse and violence.

B – In terms of our positive norms

Sexual assault crimes should be excluded from the section of Turkish Penal Code titled “Crimes Against Public Morality and Family Order” and should be regulated under “Crimes Against Personal Rights and Freedoms” or under “Crimes Against Sexual Freedoms”¹⁰¹ This arrangement will direct the practice in the way required.

Age, related with indirect consent in rape crimes should be fixed as 18 instead of 15.¹⁰² Nevertheless; reducing the age limit of consent can be discussed. Maybe, it would be more healthy to exclude the acts of individuals below 18 from the field of Criminal Law as in Western countries.¹⁰³

In the adjudications related to sexual crimes, even victim or perpetrator is not a minor, it is necessary to receive help from expert psychologists and psychiatrists in processes of interrogation, evidence obtaining and evaluation and in trials.¹⁰⁴

The distinction of married-unmarried in terms of crime of women abduction with sexual intentions in art. 429 of Turkish Penal Code (TPC) should be abolished.¹⁰⁵

¹⁰⁰ See. ZİYALAR, Neylan. Okulda Şiddet. , (Tartışma Bölümü) in: İSTEK Rehberlik ve Psikolojik Danışma Sempozyumu – Şiddet ve Okul Ortamına Etkileri (29 Nisan 2000), İstanbul 2000, p: 54.

¹⁰¹ For detailed information see. ÜNVER, Yener. Özellikle Cinsel Suçlar Alanında Olmak Üzere, Kadınlarla İlgili Ceza Hukuku Normlarındaki Değişim ve Türkiye’deki Durum. , in: Adalet Yüksekokulu 20. Yıl Armağanı. , İstanbul 2001, p: 294-298.

¹⁰² UYSAL, Elif. Türk Hukuk Sisteminin “Kadına Yönelik Şiddete” Yaklaşımı. , in: Kadına Yönelik Şiddet ve Hekimlik Sempozyumu. (Publication of Ankara Tabip Odası), Ankara 2003, p: 122.

¹⁰³ See for the practice in the USA. DONALD, Amerikan Hukukunun Cinsel Suçlara Yaklaşımı, p: 27.

¹⁰⁴ In the same way; UYSAL, Türk Hukuk Sisteminin “Kadına Yönelik Şiddete” Yaklaşımı, p: 126.

¹⁰⁵ Yener ÜNVER. Özellikle Cinsel Suçlar Alanında Olmak Üzere, Kadınlarla İlgili Ceza Hukuku Normlarındaki Değişim ve Türkiye’deki Durum. , in: Adalet Yüksekokulu 20. Yıl Armağanı, İstanbul 2001, p: 325-326. In the same way; ARIN, Canan. Kadına Yönelik Cinsel Şiddet (Açılış Konuşması). , in: Kadına Yönelik Cinsel Şiddete Karşılaşım Hukukun Yaklaşımı. , 2. Bası, İstanbul 2002, p: 10.

Article 434 of TPC causes injustices in many ways. Victim is coerced to marry to the perpetrator, also her will and choice are ignored. The aim of this article is to put the customs and traditions on a legal basis, which is unlawful itself. Moreover in discrete events, if spouse causes divorce indirectly, this article is nullified and in crimes committed by partnership, the sentences of perpetrators, beside of the one married, are postponed. This article should be annuled.¹⁰⁶

Article 477 and 478 of TPC should either be restricted and clarified in terms of legal type or be annulled. This article is unlawfully practiced; as if it is parents' legal right to punish; investigation officials regard the violence or compulsion, applied to children by parents, teachers or nannies as legitimate right of these individuals. These acts are considered under the 477. and 478. articles of TPC which foresee a lighter sentence than 456. article of TPC, (about assault and battery) which is the article that must be practiced¹⁰⁷. By a legal alteration, this practice which has not changed in spite of all the suggestions in the doctrine, should be modified.

We believe that regulation of the act of "harrasment" as an independent and special crime is not apropos. There is no doubt that this type of acts should be punished; these acts must either be considered under the regulation of indecently assaulting or the regulation about indecently assaulting should include this type of acts.

There is no type of crime in our legislation which regulates **voyeurism acts** and norms about it should be established in TPC.

Acts of marriage by deceit and divorce by deceit should be considered as crimes. (See as an example. 1998 TPC Draft art. 332).

There is no need to regulate **acts of incest** as separate crimes. Although these acts, like homosexuality and adultery, are in contradiction with moral or religious rules¹⁰⁸, they are not type of acts which must be sentenced by criminal law and it is not legitimate to penalize this type of acts. Here what is horrifying is that acts occur between people whose marriage is unlawful. Some writers argue that, because it will create diseased and disabled children and ancestry will mix (with the assumption that children will be born), and

¹⁰⁶ Also see. ÜNVER, Özellekle Cinsel Suçlar Alanında..., p: 324-325.

¹⁰⁷ ÜNVER, Yener. Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei. , in: Annales de la Faculté de Droit d'Istanbul 2002, Volume: 34, No: 51, p: 209-210.

¹⁰⁸ For detailed information see. IŞIKTAÇ, Yasemin. Encest ve Hukuka Yansıması. , İBD 1992, Nr: 4-5-6, p: 344 vd.

because it hurts moral and religious feelings, punishments should be regulated against these acts.¹⁰⁹ But, children may not be born necessarily thanks to methods of protection; what is vital here is the protection of children or young people and people who are mentally or physically disabled. It is already a crime in our penal code, to commit act of incest against children and it is punished¹¹⁰. It is already envisaged in the legislation that this act constitutes a crime and be punished on the basis of non-existence of consent. Consequently, the allegation that abuse of children by parents is not punished, is groundless provided that executive organs apply legal rules wholly. If we assume that, this type of acts are regulated as crime, article 423\2 and 434 of TPC (which foresee that in the case of marriage between perpetrator and victim, punishment is abolished) are applied to these acts; kinship relation will impede marriage and these articles of TPC will be invalid in this case. Also regulating the investigation of this type of crime dependent upon complaint, would cause it to be invalid at the first step. Because, for the right to complaint, it is necessary that act be born as a crime; however act realized by consent, is born as legal or legitimate. Consequently; acts committed against children, like rape, abuse or harrasment are already punished. Like homosexual inclinations and adultery; incest can not be punished for the reasons illustrated above and there is no validity and meaning in punishing these acts; criminal law should not be put in service of customs and traditions.¹¹¹

The abolition of the regulation about individuals, committing assault and battery or murder to their close relatives or people within the family they catch in the act of illegal sexual intercourse to receive much less punishment than other perpetrators of that type of crime (**art. 462 of TPC, which has existed reviously in our legislation and which was unlawful and incorrect**)¹¹² has been a very positive development in terms of our legal system. Critics from the doctrine against this regulation have been taken into consideration by legislator and it has resulted in the abolition of this article. ¹¹³

¹⁰⁹ See. ARTUK, M. Emin-GÖKCEN, Ahmet-YENİDÜNYA, Caner. Ceza Hukuku Özel hükümler. , Ankara 2000, p: 745.

¹¹⁰ See. 5. CD. E. 1985/103, K. 1986/28; 5. CD. E. 1985/36, K. 1987/50; 5. CD. E. 1983/2, K. 1983/7; 5. CD. E. 1989/106, K. 1989/9 (=IŞIKTAÇ, Encest ve Hukuka Yansıması, p: 2).

¹¹¹ For detailed information see. ÜNVER, Özellikle Cinsel Suçlar Alanında..., p: 298, 303-305 ve 332-333.

¹¹² See. ÜNVER, Özellikle Cinsel Suçlar Alanında..., p: 329-331.

¹¹³ For example see. ÜNVER, Özellikle Cinsel Suçlar Alanında..., p: 329-331.

Also compliance studies with EU have helped the abolition of this article¹¹⁴. Although very late, with this change in the Penal Code, an aberration in our law, encouraging murders of tradition and leading to the situation that criminal law is (mis)guided by out-dated and false traditions has been eradicated.

Article 453 of Turkish Penal Code should be annuled. This article envisages a reduction in the sentence of the mother who kills her new born baby in order to save her honor.¹¹⁵ But, in modern law such a reduction in the punishment of a crime is illegitimate and it should immediately be removed from our legislation.¹¹⁶ Although a law adopted in recent years has reduced the rate of discount in the 453. article of TPC, it has not extenuated the injustice of this regulation. While this type of crime had been being punished with a sentence of imprisonment for 4 to 8 years previously, by newly adopted law of 19. 07. 2003, this type of crime has started to have been punished with an imprisonment sentence for 8 to 12 years.¹¹⁷ **However, what is required is the practice of article 450A of TPC and article 448 of TPC (related to deliberate murder) and the abolition of this regulation.** In fact, since the perpetrator is the mother of the victim, this situation should be considered as an aggravating circumstance; however it is considered as an extenuating circumstance because perpetrator has committed the crime in order to save her honor and name. This situation has been regulated for continuance of an old-fashioned and bigoted approach by means of criminal law and this condition requires the annulment of this regulation. In our Supreme Court, for the discount in sentence based on this article, the investigation of the perpetrator's fault in terms of violation of perpetrator's honor, is not made at present.¹¹⁸

The inability of the victim to resist the act of rape (art. 414/2 of TPC), in terms of concrete events, is an aggravating circumstance. In concrete events, the inability of women or children to resist this act is possible. In Supreme Court implementation, the lower age limit was envisaged as 9 until 1993 and from this year on, it has started to be foreseen as 12; accord-

¹¹⁴ See. 15. 07. 2003 tarih ve 4928 sayılı (AB 6. Uyum Paketi diye adlandırılan) "Çeşitli Kanunlarda Değişiklik Yapılmasına İlişkin Kanun"un 19/a maddesi . , in: RG: 19. 07. 2003, sy: 25173.

¹¹⁵ See. ÜNVER, *Özellikle Cinsel Suçlar Alanında...*, p: 328-329.

¹¹⁶ ÜNVER, *Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei*, p: 203.

¹¹⁷ See. 15. 07. 2003 tarih ve 4928 sayılı "Çeşitli Kanunlarda Değişiklik Yapılmasına İlişkin Kanun"un 1. maddesi. , (RG: 19. 07. 2003, sy: 24173).

¹¹⁸ As an example see 1. CD. 13. 10. 1967. , E: 1967/1955, K: 1967/2367.

ing to this regulation it is unlawful not to consider victims below 12 under this decree. What is more significant than the existence of such a regulation is, the implementation of this article in accordance with the objective of it. Also the implementation of this article should not be confined to age limits; even if the victim is over the age of 12, it should be determined whether the victim was unable to resist to the act and if the inability of the victim is fixed, sentence should be increased in concordance with this article.¹¹⁹

The statement of “breaking virginity” in article 423 of Turkish Penal Code is both abstruse and misleading in the sense that; it causes a distinction between girls and women, in terms of crime and punishment, and it also contradicts with the changing legal values. It should be annuled not only because it causes injustice and confusion but also because there is no need for this positive norm.¹²⁰

The reduction in the sentence of the person who has committed the crime of abandoning her unlawful child (article 475 of Turkish Penal Code) is illegitimate because it causes a distinction of lawful/unlawful child and this incorrect regulation must be abolished.¹²¹

Article 478 of TPC should be changed and in the event of committing this crime against the spouse and the children, investigation should not be made dependent upon complaint. Besides, the rejection of the request to withdraw the complaint can give way to maltreatment and to the recurrence of assault and battery. Based on these facts, the inappropriateness of the present situation of this regulation is recognized.¹²² In the same way, 36 people (violence victims) have gave up complaining although they have thought about it; while 88 people have never thought about it. In terms of reasons for not complaining; 39 people have stated to have feared compulsion. Among 20 people answering the question related with the result of the complaint, 12 have continued on their complaints, 4 have withdrawn their complaints and 2 people have been coerced to renunciate their complaints.

Commanding obligations of ILO Convention and EU compliance studies about children should be fulfilled and regulations, which punish the involvement (usage) of children in erotic-pornographic works and

¹¹⁹ For information see. ÜNVER, Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei, p: 206-207.

¹²⁰ For information see. ÜNVER, Özellikle Cinsel Suçlar Alanında..., p: 325-327.

¹²¹ For information see. ÜNVER, Özellikle Cinsel Suçlar Alanında..., p: 331.

¹²² ÖZTÜRK-ERDEM-ÖZBEK. Uygulamalı Ceza Muhakemesi Hukuku, p: 1109.

marketing of these works in the form of photograph, video, film etc and on the internet should be adopted.¹²³ To sum up; children prostitution, involvement of children in the production of pornographic works and **sex tourism** (children are sent abroad to be worked in prostitution) should be regulated as crimes and these acts should be covered under an internationally investigated regulation in the sense of article 4 of TPC.¹²⁴

The secrecy principle in duties of doctors, nurses and other members of medicine, should be excepted in the case of sexual assaults. But in denunciation of crime, in order to prevent a second damage, this obligation of denunciation of crime should not be dependent upon complaint in major sexual acts (rape, some type of domestic sexual acts), whereas it should be based on complaint in other events. Other subjects related to this regulation should be clarified in the law in order to obstruct complexities in implementation and to assist in struggle with this type of crimes.

Demands of change in proving obligation in sexual crimes will bring about damages both to struggle with sexual crimes and to human-accused rights and also will give way to illegal implementations. Here, it must not be ignored that there is a difference between the characteristics of the acts European Court of Human Rights except in terms of proving and of the acts of investigation. There, proving application can be charged to the state/government but not to the separate official. To claim that these suggestions do not contradict with "indirect evidence of innocence", means to express the unnecessaryness and nonfunctionality of this principle, however phases of criminal trials refute this assumption. Besides, examples of article 45 and article 578 which are asserted to support this faulty claim are not apropos.¹²⁵ Firstly, criminal intention is not supposed in terms of acts of offense; secondly proving of fault is not abandoned or not accepted by means of supposition in article 45 of Turkish Penal Code, only existence of fault is adequate for punishing. The existence of fault in separate event must be proved. On the other hand, article 578 of Turkish Penal Code is a product of a very old and out-dated approach and it is indefensible in the sense that it

¹²³ For detailed information see. ÜNVER, *Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei*, p: 200-203.

¹²⁴ Also see. ÜNVER, *Özellikle Cinsel Suçlar Alanında...*, p: 310-311.

¹²⁵ For this suggestion see. NUHOĞLU, *Ayşe. Cinsel Suç Mağdurunun Beyanı ve İspat. , in: Kadına Yönelik Cinsel Şiddete Karşılaştırmalı Hukukun Yaklaşımı, 2. Bası, İstanbul 2002, p: 62-63.*

is not appropriate for modern law.¹²⁶ If this article is taken as a model; it becomes necessary to sentence the person concerned, for sexual crime without seeking proof on imputation, in other words this attempt would be very hazardous and unlawful. Here, methods, principles and means of modern criminal procedure law should be utilized in full extent; besides indirect evidence of innocence should not be ignored. Likewise, the assertion of some people¹²⁷ is that, proving obligation should be put on the person accused both in administrative and legal implementations, which is very incorrect and dangerous; for these reasons it should be rejected.

Scientific and technological developments should be utilized **in obtaining evidence**.¹²⁸ Especially studies conducted on DNA's would be very helpful in this aspect and in this context a DNA bank should be founded in our country as long as possible.

The Committee for Prevention of Discrimination against Women (CEDAW) should be officially recognized like European Court of Human Rights and our society should resort to a second international organisation when this type of crimes are committed.

In order to be succesful in the investigation of these acts, which are alleged to have happened at official institutions, **official expertise handicap** should be overcome and it should be rendered obligatory to be able to get help from other private or autonomous expertise institutions or from separate experts.

Another required, vital change in struggle with the violence is the abolition of statement of "if deprivation from customary occupation has not lasted for more than 10 days" in **article 456/4 of Turkish Penal Code**.

C – In terms of Implementations of Supreme Court

Sexual crimes like rape, harrasment within the marriage are crimes according to our legislation and this type of acts should not be evaluated under the article 477 of TPC. In this subject, an implementation considering the act of forceful anal sexual intercourse as a maltreatment act and not accepting act of forceful vaginal intercourse as a crime, is still in operation

¹²⁶ For detailed information see. Ceza Hukukunda Objektif Sorumluluk. , in: Ceza Hukuku Günleri (70. Yılında Türk Ceza Kanunu), İstanbul 1998, p: 148-148.

¹²⁷ See. UYSAL, Türk Hukuk Sisteminin "Karına Yönelik Şiddete" Yaklaşımı, p: 123.

¹²⁸ See for sample implementations in England YEARNSHIRE, Stephanie. Aile İçi Şiddet ve Tecavüz Konularında Yasal İhtilaflar ve Polisin Yaklaşımı, p: 85-86.

and this defective implementation¹²⁹ must be stopped and the fact that the victim of this type of acts is the spouse of the perpetrator should not be a reason for unpenalizing the perpetrator or extenuating the sentence of the perpetrator.¹³⁰ **It has been very wrong to expect help from other branches of law except criminal law and from social sciences in terms of struggle with this illegal act.** This problem is too serious to be excluded from the coverage of criminal law; that is, it deserves punishment and our available legislation should be implemented as required. The act of rape is in the characteristic of a violence act, no matter committed by the spouse or another member of the family or a person outside the family. The realization of this act by the spouse does not mean the justness of these acts in terms of criminal law or private law (neither by indirect consent arising from the character of the marriage unity). Also, this problem should not be evaluated only by rape; all other sexual crimes like harrasment can also committed against the spouses. Moreover, consent to sexual intercourse does not render all the acts, committed against the spouse, lawful; that is the spouse may show consent to sexual intercourse but may not show consent to other acts of the spouse; these acts are not under the coverage of consent and may be considered unlawful. Consent can be withdrawn by the spouse afterwards and there is no doubt that from this point this act is accepted as a crime. Since the legal value preserved is the sexual integrity or sexual self-determination of the individual, the currency and the gravity of the act of rape should not make us forget the existence of other sexual crimes. On the other hand, if the act is illegal, the realization of this act within the marriage or externally does not carry a significance and does not annul the illegitimacy of this act. **On the contrary, it can be claimed that, the realization of this act within the marriage should be sentenced more heavily, since it means misuse of trust in the marriage and since it has caused the victim to be unable to resist to this act, because of the environment and the person beside the fact that this act is an assault to sexual self-determination.** In the legal case study we have made on 1133 people, total percentage of people who have stated **that rape in the marriage should be regulated as a crime**, is 68, 2% of which 21, 5% have stated that it should be an independently investigated (ex officio) crime and 45, 7% expressed that it should be regulated as

¹²⁹ As an example see. 4. CD. 07. 07. 1994. , E. 1994/2788, K. 1994/6217.

¹³⁰ For detailed information see. ÜNVER, *Özellikle Cinsel Suçlar Alanında ...*, p: 305-308 and p: 321-323. For the situation in comparative law see. Same work 305-308 and 321-323. and ÖRÜCÜ, Esin. *Karşılaştırmalı Hukukta Evlilik Birliği İçinde Irza Geçme.* , in: İBD 1992, v: 1-2-3, p: 90-105.

a crime dependent upon complaint. The percentage of the subjects stating that this act should not be regulated as a crime has been 9, 3%; which depicts the need in this subject. Marital statuses, settlement areas, economic conditions or professions of the participants have not caused remarkable differences in the rates; only difference of percentage has been that of between men and women. The ratio of women among the people stating that this type of act should be regulated as a crime, has been higher than that of men. Among 1133 participants, 244 (77 males, 167 females) people have stated that rape in the marriage should be regulated as an ex officio crime, 518 people (231 males, 287 females) have stated that it must be regulated as a crime dependent upon complaint, 105 people (78 males, 27 females) have expressed that it should not be considered as a crime and 91 people (48 males, 42 females) have stated to have had no idea about the subject. The dispersion of these answers according to violence victims and people who have not been exposed to violence is as follows: 74, 125 and 23 of **violence victims** have stated that this act should be regulated as an ex officio crime, should be regulated as a crime dependent upon complaint and should not be regulated as a crime respectively and 29 of violence victims have been reported as having no idea. On the other hand, 164 of subjects **who have not been exposed to violence** have stated that this act must be considered as an ex officio crime, while 381 and 79 of these people have stated that it should be a crime dependent upon complaint and it should not be considered as a crime respectively and 62 of these subjects have asserted no idea about the subject.

In the same way, according to a research conducted throughout Turkey on 85. 857 people by DEU Faculty of Law, 83. 88% of society thinks that rape in the marriage should be regulated as a crime. The dispersion of subjects who think that it should be considered as a crime, according to the gender (in themselves) is as follows: Males: 79. 27% ; females: 90. 05%. These percentages decrease in rural areas and increase in squatter areas and finally it reaches its highest point in urban areas or cities. 10, 39% of survey participants have stated that this type of act can not be considered as a crime, since the spouse has consent "because of marriage".¹³¹

Marriage is not only an area of private life; it has a social dimension in the sense that it is an element of the society. Violence can not constitute a natural component of marriage and by ignoring the social dimension of the marriage, the victim of the violence can not be left alone.

¹³¹ See. ÖZTÜRK, Bahri-ERDEM, Mustafa R. -ÖZBEK, V. Özer. Uygulamalı Ceza Muhakemesi Hukuku. , 7. Bası, Ankara 2002, p: 1104.

In terms of crime of restriction of freedom, our law does not seek for special intention and even the aim of the perpetrator is to conserve the marriage unity, the perpetrator must be sentenced for the crime of restriction of liberty. (faulty İBK, dated 11. 06. 1956 and no:5/12, should be changed) In contrary to this code; good intentions or another purpose does not prevent the formation of a crime against the spouse. In the same way, the interpretations, which accentuate that Supreme Court¹³² should accept the formation of two crimes in the case that another crime beside threatening has been committed, are apropos and these interpretations must be implemented in the case of crimes which are committed against children or other family members.¹³³

Supreme Court acts responsibly in the acts of rape in terms of rightful defense and in many events in which the victim of rape has killed the perpetrator in order to eliminate the attack, supreme court decides that there exists rightful defense and that by the act of killing the limit of legitimacy has not been transgressed. Although, conditions of concrete event are characteristic, these decisions are interesting examples in the sense that they expose the sensitivity of Supreme Court against these violence acts.¹³⁴

On the other hand **Supreme Court perceives the sexual freedom in direct relation with the individual** and the only person able to give consent is the individual himself/herself, not the guardian or the representative of the victim. The consent of the representatives is not valid in terms of criminal law, and this implementation is appropriate in terms of sexual self-determination.¹³⁵

Valid (in force) regulations should be put into operation, in the event that national (Press Law art. 32) and international press law norms (Peking Rules art. 33, Contract of Children Rights art. 40) **which prohibit the publication of suicide acts**, are violated.

The act of rape should not be restricted to the act of men, forcing the penis into vagina or anus of the women or into anus of the men. Here, by the interpretation made according to ratio legis and according to the legal merit that is wanted to be protected; this narrow interpretation of the act of rape

¹³² See. Y. CGK. 02. 10. 2001. , 4-165/195. , in: YKD 2002, sy: 2, p: 282-285.

¹³³ Also see. ÜNVER, Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei, p: 210-211.

¹³⁴ As an example see. CGK. T:30. 03. 1987. , E:1987/1-11, K:1987/182. ; CGK. 30. 03. 1987. , E: 1987/11, K: 1987/162.

¹³⁵ Y. İBK. 10. 02. 1969. , E: 1968/5, K: 1969/2.

should be abandoned and in Supreme Court implementation, it must be admitted that men are not only perpetrators of this type of crimes.¹³⁶

On the other hand, seeking physical contact for the violation of sexual freedom is an out-dated approach; in terms of changing legal values, physical contact is not a condition of the act of rape; thus our implementation must change in concordance with this new legal values. For this reason, seeking these types of physical contact (entering of the penis to the vagina and so on) should be given up. In a case of breaking the virginity by finger, Supreme Court has paved the way for the continuation of defective implementations.¹³⁷

In our country many parents force their daughters to virginity control (medical examination made in order to determine whether the girl is virgin or not) in order to stop the rumours or while marrying their daughters: If the daughter is not minor and if she is minor but does not give consent, the judge must reject this demand. In legal cases, even it is demanded for evidence obtaining, the consent of the girl must be taken. Forceful virginity control is contrary to the ethics of medicine and it also contradicts with law. As an example, we can remind of a recent development; a female named U. F, has been passed through a gynecologic test while she was under custody and European Court of Human Rights decided that the (8th article of European Contract of Human Rights) privacy had been violated and sentenced Turkey to a fine of 7. 000 Euro (as compensation including trial expenses)¹³⁸

D – In Terms of the Draft Penal Code of 2003

1) The regulation of types of crime against sexual self-determination, with sub-title of sexual freedom (self-determination) under the title of “**moral customs**” in the Draft Penal Code of 1997 is an unacceptable way of legalization. Legal merit, intended to be preserved is the sexual unity (integrity) and self-determination of the individual. The category and chapter of the Draft related to these crimes should be changed and legal merit must be emphasized. In other words, statements which remind of customs or traditions or morality norms should be excluded from the Draft.

2) **In article 315**, although the crime of rape is accepted as a crime dependent upon complaint, the statement that complaint can not be withdrawn

¹³⁶ BECK, Karl. Die sexuelle Handlung. , Stuttgart 1988, p: 24 vd. and esp. p: 89 vd.

¹³⁷ İçtihadı Birleştirme Genel Kurulu 16. 04. 1941. , E: 1939/13, K: 1941/13.

¹³⁸ See. Türkiye’de yayınlanan 23/07/2003 tarihli gazeteler.

after it has been made (art 315) is a wrong regulation, in the sense that it contradicts with the reason which relates this article with provision of investigation. The regulation of the same decree in the 317th article has been faulty for the same reasons.

3) The existence of the consent of the rape victims, between the ages of 0 and 18 has been considered as an extenuating circumstance, which is a very faulty regulation (**art. 316/1 and art. 316/2**). In the same way, although the age limit of giving consent to the act of sexual attack has been fixed as 15 in the Draft, the acceptance of this as an extenuating circumstance has not been apropos. (See. art. 318 of the Draft)

4) A similar decree to the decree in article 453 has been included in the 139th article of Turkish Penal Code, which envisages a reduction in the sentence of a mother who has killed her newborn illegitimate baby. This regulation does not concord with the principles of the Criminal Law, legal merit theory or decisions of Civil Law and it should be excluded from the Draft.

5) According to the article 155 of the Draft Code, the pregnancy caused by a crime may be aborted without any time restriction. The cause of excuse applies to the mother and the person who does the abortion; however, the article does not specify that the abortion should be done with the consent of the mother, or otherwise it would be punished, which could cause inconsistent and illogical legal practice and that offenders forcing women to abort their pregnancies would not be punished. In addition, the article makes no distinction among offenders, conditions of pregnancy or other situations, and should be revised.

6) The Draft Code foresees that minors that gained majority through marriage or through a court's decision cannot be victim to rape with their consent. This is a wrongful regulation. The sole criterion to the age of consent should be the age of the victim. This article (**316/3**) should be excluded from the Draft, especially conditions in our country are taken into consideration.

7) The crime of "sexual abuse" in the Draft Code (article 321) is not in concordance with the other sexual crimes and its wording could cause problems, because the term "sexual abuse" is not defined sufficiently. This kind of behaviour should be regulated under the existing "sexual harassment" crime, punishing it heavier where it occurs in offices, schools or in the family.

8) In the crime of abducting with sexual intentions, the distinction between men and women and married and not-married women still exists in

the **article 325/2 of the Draft** and should be abolished. Here, marital status of the victim does not matter, since the important point is the restriction of freedom of mobility and limitation of the freedom with sexual intentions. Values or rights of married people can not be held less important than other people's rights because they are married and do not require to be underrated or overprotected. In today's world, such an approach, based on the distinction of women-girl should be immediately abandoned.

9) The article 327 of the Draft regard the marriage of the victim and perpetrator, in terms of act of rape and sexual assault, as a reason for not penalizing the perpetrator (cause of excuse). The existence of such a decree paves the way for forcing the victim to marry to the perpetrator who has committed a crime to herself and also rewards the perpetrator, who has committed this crime because he has not been able to marry to the person he has wanted (the victim) and not to mention the fact that this article encourages the people who has not been able to marry to the person he has wanted, to commit the act of rape or sexual assault. This article is also a product of the social culture which perceive women as purchasable objects and which insists on marrying of women. With these reasons mentioned, such a regulation should not be included in the Draft. The most dangerous aspect of the decree is that; in the event that perpetrators are more than one; the marrying of one of the perpetrators to the victim rescue the others from being penalized. Such a regulation should not exist in any codes of 21st century. If the prevailing conditions of the country push too hard, this article can be regulated in sensible ways; for instance, if two people, who want to marry to eachother are not able to marry because of social conditions, (if their marriage is legal), the judge should take this fact into consideration and execution of the penalty can be postponed or other functional decrees can be put into force. Nevertheless, the decree mentioned is illegal in the way it exists.

10) Punishments of the crimes "assault and battery", "torture", "sexual crimes" and "crimes against property and possession" should be brought in concordance because there is an inequality in terms of crime and punishment, between these crimes mentioned. The decrees of the Draft, related to punishments of these crimes do not match the necessities of modern criminal law. (compare. Art 142, 145, 206 and 315 of the Draft)

11) According to the Draft, no investigation can be made on children under 12 who have committed a crime, but measures can be taken that can have severe consequences. However, in some situations, it can be important to find out whether the act has been committed by the child or whether the act of the child constitutes a crime. So, a pre-investigation about such situations should be made available according to the Draft. The domestic violence acts

committed by the children against other family members should be regulated in the Draft in order to rehabilitate children and in order to provide efficient and coherent operation of the criminal law.¹³⁹

12) Although **the regulation of the act of behaving shamelessly** as a crime is acceptable, the involvement of the statement of “**assaulting moral purity**” in the Draft contradicts both with the principle of legalization and with the principle of definiteness. (See art. 320 of the Draft)

13) The absence of the regulation of **abuse of children in products of pornographic and erotic nature** as a crime is a deficiency and the involvement of the children in these types of products and marketing of these products should be criminalised according to the ILO-convention no. 182.

14) **It should be clarified that rape and sexual crimes can be committed by the spouse.** (eg. Rape in the marriage) Although, in essence, there is no need for such a special regulation, the lack of such a clarification causes many problems in actual legal practice, as shown above. The available practice of Supreme Court contradicts sometimes with article texts in this type of cases and this clarification can block the way for incoherent and illegal decisions. It must be stated in the Draft that the act of rape in the marriage is under the coverage of this type of crimes.

On the other hand, some positive regulations pertaining to these subjects have been included in the Draft. Some examples of these regulations have are illustrated below:

1) **The form of the regulation of the crime of “abandonment” in the article 149 of the Draft** and acceptance of the existence of kinship in this crime as an aggravating circumstance have been very positive developments.

2) The regulation of the crimes which are **against the secret area of life and private life**, in wide scope, especially the regulation of the acts of wire-tapping, recording of conversations, taking photographs or filming, as crimes which violate private life in article 188, has been apropos.

However, for instance in article 189 the absence of the regulation which includes internet traffic element constitutes a major deficiency. Also, interference with personal life (publishing photos on the internet by violating private life) and with communication area by the means of computer/internet has not been clearly regulated (see art. 188)

¹³⁹ For information see. ÜNVER. Einige strafrechtliche Probleme über Kinder und Jugendliche in der Türkei, p: 204.

3) It has been very appropriate to include **marriage by deceit** (art. 330/2), **divorce by deceit** (art. 331) and likewise **abandoning the family** (art. 335) among the crimes against the family in the Draft.