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### Public Policy Analysis for Children Dragged into the Crime in Türkiye<sup>1</sup>

Türkiye’de Suça Sürüklenen Çocuklara Yönelik Kamu Politikası Analizi

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**Abstract:** The Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989, entered into force on September 2, 1990. Signed by Turkey on October 14, 1990, the Convention entered into force after being published in the Official Gazette on January 27, 1995. Especially Articles 37 and 40 of the Convention are aimed at the protection of children dragged into crime. Both as a requirement of this Convention and as a requirement of the harmonization process with the European Union (EU), Turkey has had to change its practices and legislation regarding children dragged to crime. The increase in the number of children dragged into crime in the justice system requires this change to be as rapid as possible. This can only be realized with the existence of a decisive public policy. This study aims to analyze the public policies developed to address the problem with a process model, thereby understanding the policy and evaluating its results.

**Keywords:** Public Policy, Child, Child Dragged into Crime, Child Rights.

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**Öz:** Birleşmiş Milletler Genel Kurulu tarafından 20 Kasım 1989 tarihinde benimsenen Çocuk Hakları Sözleşmesi 2 Eylül 1990 tarihinde kabul edilerek yürürlüğe girmiştir. Türkiye’nin 14 Ekim 1990 tarihinde imzaladığı Sözleşme 27 Ocak 1995 tarihinde Resmî Gazete’de yayımlanarak yürürlüğe girmiştir. Sözleşme’nin özellikle 37. ve 40. Maddeleri suça sürüklenen çocukların korunmasına yöneliktir. Hem imza attığı bu Sözleşme’nin gereği hem de Avrupa Birliği (AB)’ne uyum sürecinin gereği olarak Türkiye suça sürüklenen çocuklara yönelik uygulamalarını ve mevzuatını değiştirmek durumunda kalmıştır. Adalet sistemindeki suça sürüklenen çocuk sayısındaki artış bu değişimin mümkün olduğunca hızlı olmasını gerektirmektedir. Bu ise, kararlı bir kamu politikasının varlığı ile gerçekleştirilebilir. Bu çalışma, soruna yönelik geliştirilen kamu politikalarının süreç modeli ile analiz edilmesini, böylelikle politikanın anlaşılmasını ve sonuçlarının değerlendirilmesini amaçlamaktadır.

**Anahtar Kelimeler:** Kamu Politikası, Çocuk, Suça Sürüklenen Çocuk, Çocuk Hakları

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## 1. Introduction

Crime has existed throughout history as a phenomenon that deeply affects societies. Societies have had to take different provisions for preventing crime in accordance with varied periods of history. Penalizing is the leading method of those measurements. As societies' point of view in crime and perpetrator change in parallel with the changing conditions, crime prevention mechanisms have also changed. When considered from this point of view, crime is a wide-ranging notion with both sociological and legal consequences and effects. Accordingly, crime is defined in different ways by different disciplines. For example, the concept is defined psychologically as a phenomenon that occurs as a result of pathological, dysfunctional mental processes or malformed behaviors in the personality (Shmalleger, 2003), and legally as "actions and activities sanctioned by the law" (Alacakaptan, 1970, p. 1).

Many juveniles are also involved in crime each passing day just like adults. Juveniles may become wrongdoers due to many different reasons such as individual, familial, and more environmentally (Gülüm, Cohen & Demircan, 2017, p. 156). However, juveniles have been characterized as "criminals" for a long time and they have been treated as such. As a result of this understanding, the struggle with these children has been an extension of the practices aimed at adults until recently. However, with the development of the scientific literature in this field and uptrend based on human rights and freedom, the understanding of these children has given its place to the understanding of "delinquent child" from "*child dragged into crime*" today. This development has been influenced by the fact that social and political evaluations of children have started to change in parallel with the rise of the discourse on children's rights.

The notion of the child dragged into crime propounds that child are innocent and therefore, children should not be stigmatized as "criminals" and if they got involved in crime, the reasons that direct them to this state should be emphasized and these reasons should be annihilated. This approach has also led to a transformation in public policies implemented towards children. The aim of this study is to explain this transformation in terms of policies that have been implemented after 2000. In this context, this study makes public policy analyze aimed at children dragged into crime in Turkey after 2000. The analysis is based on the process model. Process model has been preferred because it eases of understanding of the complex structure of public policy that emerges as a result of the interaction of various actors and the usage of different decision methods. Thus, this study seeks to answer how the policy for children dragged into crime is developed and implemented, who takes part in these processes and how, and what the implementation results are.

## 2. Conceptual Framework

### 2.1. The Concept of Child Dragged to Crime

In the dictionary of the Turkish Language Association, crime is defined as an illegal behavior, crime (Turkish Language Association Dictionary/Crime). Based on this definition, although it is possible to talk about the concept of juvenile delinquent if the perpetrator is a child, the definition of child dragged into crime is used instead of this concept. According to the 2005 dated and numbered 5395 Child Protection Law, a child dragged into crime is defined as a child who is investigated or prosecuted for allegedly committing an act defined as a crime in the law or for whom a security measure is decided due to the act committed (Art. 3/2-a). The concept of child dragged into crime asserts that children are innocent,

therefore they should not be stigmatized as "criminals", and if they are involved in crime, the reasons that brought them to this situation should be emphasized and eliminated.

Today, developed countries, as well as underdeveloped or developing countries, are struggling with the problem of juvenile delinquency. Statistics show that the highest rates of juvenile delinquency in Europe in 2015 were in Poland (49.34 per 100,000), Scotland (44.8) Hungary (20.45), Malta (19.25), Portugal (20.5) and Serbia (18.47), while the lowest rates were in Belgium (0.61), Sweden (0.91) and Norway (0.44). The rate of juvenile prisoners in Turkey, which was 10.16 per 100,000 in 2015, increased slightly in 2019, as in Malta and Serbia (URL 1)

In many countries of the world, the increase in juvenile delinquency and the age at which children commit crimes have started to decrease gradually. This situation has led to new searches on juvenile delinquency and juvenile proceedings and the juvenile justice system has taken its place in juvenile law (Sağlam, 2015). The most important international regulation on this issue is the UN Convention on the Rights of the Child of November 20, 1989. Article 40 of this Convention, which has been signed by all UN states except the United States of America (Yaman, 2022, p.377), stipulates that children who are dragged into crime should be tried fairly and that children should be treated in a way that is proportionate to their situation and crimes, and in a way that is for their well-being.

Another important development in this regard was the adoption of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) by the UN General Assembly on November 29, 1985, resolution 40/33 (URL 2). According to this legislation, a separate judicial system should be established for children who break the law, and children should be prevented from appearing before the judiciary as much as possible. The Code is considered by the UN Committee on the Rights of the Child as one of the norms that signatory states must comply with. Turkey is one of the signatory states of the UN Convention on the Rights of the Child. In this sense, both Article 40 of the Convention and the Beijing Rules constitute the basis of the Turkish legal system regarding children dragged into crime.

According to Article 31/1 of the Turkish Penal Code, the criminal responsibility of a child starts at the age of 12. Accordingly, children under the age of 12 are not criminally responsible. Another regulation on children who are dragged into crime is the Child Protection Law No. 5395. The purpose of this Law is to regulate the procedures and principles regarding the protection of children in need of protection or who are dragged into crime, and to secure their rights and well-being. According to this Law, a child dragged into crime is defined as a child for whom an investigation or prosecution is initiated due to the allegation that he/she has committed an act defined as a crime in the law, as well as a decision to take security measures (Article 3/2) .

## 2.2. Public Policy and Public Policy Analysis Notions

Public policy is a goal-directed course of action monitored by relevant parties (actors) aimed at solving a problem according to Andersons (2006) definition. Public policy can be defined as the set of actions and

transactions carried out by the state through public institutions within its authority and legal framework public policy can be defined as "they belong to governments" according to (Akdoğan, 2011, p.77) (1987, p.2). According to Dye (1987, p.2), public policy can be defined as what governments choose to do or not to do.

Public policy emerges in a complicated and irregular process and functions. This process generally expresses the total process where public policies are developed and implemented and is composed of a range of definable activities. Many formal or informal actors participate in the process regularly or irregularly (Eren, 2012, p.264)

Another notion that must be defined is public policy analysis. Dunn (2004, p.35), defined public policy analysis as an applied social discipline that relies on interdisciplinary research and discussion methods to generate and transform policy-related knowledge that will serve to solve public policy problems. All in all, public policy analysis aims for analyzing the public policy process which has state organization at its core (Bayırbağ, 2013, p.44).

Various methods are used to analyze public policy. It should be noted that none of these methods is sufficient to explain all aspects of public policy. This is because public policy is a complex process in which many decisions are taken and many actors are involved. Due to the limitations of the study, the process model is used here. The process model is an effective tool widely used for public policy analysis in Turkey as it provides a systematic approach to the process of analyzing public policies in different fields (Kaptı, 2011, pp. 24- 43). In this model, which is also defined as a staged model, the policy-making process is analyzed in stages, There have been many approaches to the process model, which assumes that public policies are formed through different successive stages. Laswell (1956) lists these stages as "thinking-promotion-formulating-initiating-implementing-finishing-evaluating". Anderson (2006) describes the policy process in five stages: "problem definition and agenda setting, formulation, adaptation, implementation and evaluation". According to Sabatier (2007) these stages consist of "coming to the agenda, formulation, enactment, implementation, and evaluation". This study is based on Sabatier's approach, which is one of the pioneers of public policy studies, due to the limitations of the study and the convenience it provides to researchers. Thus, this study seeks to answer how the policy for children dragged into crime is developed and implemented, who takes part in these processes and how, and what the implementation results are.

### 3. Method

The research aims to evaluate the practices and regulations for children dragged into crime in Turkey within the framework of public policy analysis. The scope of the study consists of the policies pursued for children who have been dragged into crime after 2000.

Many actors are involved in and influence the formation process of a public policy. These actors are classified as formal actors and informal actors (Birkland, 2010; Anderson, 2006). They can be classified as formal actors (legislative, executive, judiciary); informal actors (citizens, interest groups, political parties, civil society organizations, media and international organizations) (Samadova, 2017, pp. 60,61). While some of these actors have the authority to directly make choices about the policy to be adopted, others can only influence the choice depending on their status (Yıldız and Sobacı, 2013, p.24). Depending on their status, these actors produce so-called policy documents in order to bring demands to the agenda, to formulate and enact policy.

The issues on which governments will enact laws can be easily followed from these documents. *These documents include election manifestos of political parties, government programs, development plans, policy*

documents such as ministerial council decisions and master plans, and international commitments (Yılmaz and Biçer, 2009, s.57). Civil society organizations, on the other hand, try to attract the attention of the government to develop policies through reports or press releases on the issues they are interested in, in cooperation with the media. Therefore, the documents and statements produced by these actors were included in the scope of the study. These documents are shown in Table 1 below.

**Table 1:** Examples Of Documents Included In The Study

Actors	Documemnts
Official actor documents (Parliamentary documents, legal documents)	November 20, 1989 UN Convention on the Rights of the Child, 5395 Child Protection Law, 5237 Turkish Penal Code, 6328 Ombudsman Institution Law. 2013 Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution, 2006 Law Amending the Anti-Terror Law, 2010 Law Amending the Anti-Terror Law, 6701 Law on the Human Rights and Equality Institution of Turkey, Parliamentary Minutes, Parliamentary Questions, Parliamentary Research Proposals, Legislative Proposals
Unofficial actor documents (Civil Society Organization Documents, International Organization Documents, Political Party Documents, Bar Association Documents, Independent Board Documents)	ÇAÇAV 2015 Report, EU Progress and Country Reports, Union of Turkish Bar Associations (2015-2016) Prison Report, Izmir Bar Association (2013) Izmir Children and Youth Closed Prison Report, Human Rights and Equality Institution of Turkey Izmir Children and Youth Closed Prison Visit Report, KDK 2016, 2017, 2018 Annual Report, AKP, HDP, CHP, MHP, IYI Party Election Statements, Government Programs

In this way, the data used in the study were obtained from scientific and technical publications on the subject, as well as from the official websites, declarations and reports of the relevant institutions, relevant legislation published in the Official Gazette, news in the media, and the minutes of the Parliament. In this study, qualitative research method was used. In this context, the data obtained through document analysis were systematically coded under the themes of "coming to the agenda, formulation, enactment, implementation and evaluation" and analyzed by content analysis method and interpretivist approach based on the five-stage process analysis model put forward by Sabatier (2007).

#### 4. Public Policy Analysis for Children Dragged into the Crime

Agenda setting which is the first stage of public policy is a process that problems and alternative solutions attract or lose the attention of the public and elites. In no society, any problems that are not defined as a problem and provided with alternative solutions can be made a matter of policy. After a problem has been a topic of agenda, the phase of formulation commences (Demir, 2018) In this phase, various alternatives for the solution of the problem and political affairs and governments choose one of these developed alternatives and create a definite formulation for solving the problem. In order to formalize this formula, it is being legislated. Later, the administration is set in motion to execute the necessities of the law. In the last phase, matters such as how the policies are implemented, how far the policy targets are achieved, what the result of the policy is, how it affects who, and the reason if the

policy has failed are evaluated (Dye, 1987). How the policy process for children dragged into crime is implemented is explained below

#### 4.1. Phase of bringing into the agenda

The Convention on the Rights of the Child, which was signed by the United Nations General Assembly on 20 November 1989, was signed by Turkey on 14 October 1990 and entered into force on 27 January 1995. After the Convention was signed by Turkey and entered into force, amendments were made to the domestic legislation in accordance with the articles of the Convention.

In accordance with the related provisions of the Convention, even if Turkey has become liable to make the related regulations and arrange its domestic law in accordance with the convention, its responsibilities regarding this matter have been postponed due to political and economic reasons for a long period. On the other hand, in 1999 Helsinki Summit, the entire process has gathered speed with the help of the harmonization programs for the acceptance of Turkey to the EU as a member.

To state, although the problem of children dragged into crime has been an important problem in Turkey, as in all countries, the pressure to develop policies on the issue has been created by the EU itself through the EU Progress Reports. As a matter of fact, the EU attracted attention to this problem with a short statement like "the conditions in the institutions for juvenile delinquents should be prioritized" in the 2000 Progress Report and charged Turkey with some tasks within the framework of the EU harmonization process somehow.

In the 2007 Progress Report, it was stated that no remarkable progress was made in physical conditions of the detention rooms where children are retained and the quality of protection and maintenance of children by personnel; in accordance with the Child Protection Law adopted in 2005, it was stated that it was mandatory to make Juvenile Courts more equipped and to increase their number to help them overcome the problems. In the 2008 and the following Progress Reports, it was pointed out that the number of juvenile courts and personnel in these courts was inadequate, an increase was observed in the number of arrested children, physical and service conditions of detention centers were required to be enhanced, particularly in 2009 Progress Report, it was highlighted that children were kept in the same prisons with adults because of the limited capacity of the juvenile prisons, additionally in 2011 Progress Report, it was determined that in the provinces with no juvenile prisons, children were judged in the same courts with adults, in many provinces, suitable facilities to be used in case of children imprisonment before judgment or to help them be kept isolated from adults or access to the necessary psychological support. In 2012, 2013, 2015, and 2016 Progress Reports, in addition to these aforementioned matters, abuse and ill-treatment towards children in Adana Pozantı Prison were addressed. The 2018 Country Report pointed out that the number of arrested children increased, and the quality of legal assistance and rehabilitation activities for children in prisons was inadequate.

Izmir MP Ahmet Ersin and CHP Şanlıurfa MP Mehmet Vedat Melik submitted a parliamentary question (URL 3) on "children who have been dragged into crime being housed in dormitories affiliated to the Social Services Child Protection Agency without being rehabilitated" and Nationalist Movement Party (MHP) Kahramanmaraş MP Mesur Dedeoğlu submitted a parliamentary question (URL 4) on "rehabilitation of children dragged into crime" on 07.02.2013. Other parliamentary questions on the subject are shown in Table 2 below.

**Table 2:** Some Written Parliamentary Questions Issued by Parliament Members

Issuer of the Parliamentary Question	Addressee of the Parliamentary Question	Number of the Parliamentary Question	Receiving date of the Parliamentary Question	Current Status of the Parliamentary Question	Brief Description of the Parliamentary Question
Ömer Fethi Gürer (CHP)	Fuat Oktay	7/1477	12.07.2019	It was published in the incoming papers as it was not replied in the due date.	On the number of arrested and imprisoned trade unionists, children staying with their mothers and children dragged into crime
Metin Nurullah Sazak (MHP)	Zehra Zümrüt Selçuk	7/20109	16.10.2019	It was published in the incoming papers as it was not replied in the due date.	On imprisoned children under the age of 18 and social integration of children dragged into crime
Ömer Fethi Gürer (CHP)	Fuat Oktay	7/14854	12.07.2019	It was published in the incoming papers as it was not replied in the due date.	On children dragged into crime

Source: It was created by the authors using the URL 5: <https://tbmm.gov.tr/Denetim/Yazili-Soru-Onergeleri-Sonuc> website.

As it can be seen, parliament members put a great effort to bring the subject to the agenda. These works conducted in written parliamentary questions were supported with the motions for a parliamentary inquiry. In the following table, the parliamentary questions that have been issued on implementing a parliamentary inquiry for children dragged into crime in recent years are listed.

Table 3: Some Written Parliamentary Questions Issued by Parliament Members

Issuer of the Parliamentary Question	Serial number of the Parliamentary Question	Receiving date of the Parliamentary Question	Current Status of the Parliamentary Question	Brief Description of the Parliamentary Question
Turan Aydoğan (CHP) and 21 parliament members	10/2388	17.01.2020	On the agenda	On the examination and issue of a parliamentary inquiry for investigating the problem of children dragged into crime throughout and proposing solutions to the problem.
Feridun Bahşi (İYİ Party) and 20 parliament members	10/2115	14.11.2019	On the agenda	On the issue of an elaborated parliamentary inquiry for all challenges of children dragged into crime.
Esin Kara (MHP) and 20 parliament members	10/2094	11.11.2019	On the agenda	On the issue of an elaborated parliamentary inquiry for all challenges of children dragged into crime.

Source: It was created by the authors using the site URL 6: <https://tbmm.gov.tr/denetim/meclis-arastirma-onergeleri>.

Bar associations have as remarkable contributions as parliament members in bringing the issue to the agenda and keeping it on the agenda. For example, the Union of Turkish Bar Associations addressed the ill-treatment towards the children in penal institutions in its Union of Turkish Bar Associations Centre for Human Rights 2015-2016 Report on Prisons.

The presidency of Izmir Bar Association executed an inquiry and drafted a report on ill-treatment towards children in the Juvenile and Youth Penal Institutions, arbitrary attitudes, and behaviors of the institution delayed sending of prisoners to hospital, complaints on the challenges with the access to social and instructional activities following the notifications of children's defenders and the news on the media in 2013.

Recent statistics seem to cause the subject to be kept on the agenda for a while. The number of children who were accepted as children at those ages when they entered a penal institution (12-17 age group) among the children registered as sentenced prisoners in penal institutions increased by 1.9% compared to the previous year and reached 2 thousand 95 while the number of children who committed a crime at an early age became 14 thousand 502 with an increase of 22.8% compared to the previous year (Turkish Statistical Institute, 2019). However, as can be seen in the table below, although there has been a relative decrease in the number of children entering penitentiary institutions within a year from 2020, it is seen that there is a slight increase in 2021.



**Table 4:** Age Distribution of The Convicts Entering The Penitentiary Institution During The Year On The Date Of Entry 2016-2021

Yaş grubu - Age group	2016		2017		2018		2019		2020		2021	
	Sayı Number	Oran Rate (%)	Sayı Number	Oran Rate (%)	Sayı Number	Oran Rate (%)	Sayı Number	Oran Rate (%)	Sayı Number	Oran Rate (%)	Sayı Number	Oran Rate (%)
Toplam-Total	161 512	100,0	187 665	100,0	215 025	100,0	220 529	100,0	202 373	100,0	270 001	100,0
12-14	42	0,0	80	0,0	53	0,0	44	0,0	36	0,0	38	0,0
15-17	1 016	0,6	1 661	0,9	1 518	0,7	1 121	0,5	913	0,5	961	0,4
18-24	20 600	12,8	27 805	14,8	29 005	13,5	26 450	12,0	22 804	11,3	28 642	10,6
25-34	53 331	33,0	64 324	34,3	73 564	34,2	74 431	33,8	68 157	33,7	91 378	33,8
35-44	47 902	29,7	52 505	28,0	61 301	28,5	63 891	29,0	58 965	29,1	79 714	29,5
45-54	26 562	16,4	28 494	15,2	33 891	15,8	36 680	16,6	33 522	16,6	44 509	16,5
55-64	9 707	6,0	10 226	5,4	12 562	5,8	14 245	6,5	14 130	7,0	19 211	7,1
65+	2 346	1,5	2 564	1,4	3 128	1,5	3 662	1,7	3 840	1,9	5 545	2,1
Bilinmeyen - Unknown	6	0,0	6	0,0	3	0,0	5	0,0	6	0,0	3	0,0

Source: Ministry of Justice Penal Institution Statistics 2021

As can be seen, although there has been a decline in the number of children dragged into crime in the justice system in the last two years, there has been a rapid increase in general. This escalation has also been the subject of reports by opposition parties. With the Report on Children Dragged to Crime, prepared by Istanbul Gamze Akkuş İlgezdi on behalf of the CHP, which states "According to the data of the Turkish Statistical Institute's Forensic Statistics, between 2017 and 2021 ..., 1,311 children per day and 55 children per hour became either perpetrators or victims of crimes", the opposition has shown an insistent attitude in keeping the problem on the agenda.

As seen that a swift increase in the number of children dragged into crime has been observed in the legal system. Such an escalation remains an important factor in the currentness of the problem of children dragged into crime.

#### 4.2. Formulation Process

As the EU brings the problem to the agenda and defines the same, it also determines the formulations for the solution of the related problem, for example, in the 2008 Progress Report, the expression "Provisional release system should be improved to support those children and their families and to prevent the repetition of the crime." has been stated. In the 2011 EU Progress Report; the expression "Imprisonment should be the last punishment to resort for children and it should cover the shortest period possible. Efforts should be given to reduce the number of arrested and imprisoned children".

Domestic parliament members have contributed to the solution of the problem with their proposed formulations. Within this context, many legislative motions have been proposed for children within the legal system by parliament members from various parties in the Grand National Assembly of Turkey. Some of these are shown in Table 5 below.

Table 5: Some Legislative Motions Given by Parliament Members

First Sign of the Motion	Acceptance date of the motion by the presidency	Brief Description of the Motion
Turan Aydođan (CHP)	11.12.2019	The motion is aimed at issuing an arrest warrant for the children under the age of 18.
Mustafa Sezgin Tanrikulu (CHP)	02.07.2018	With the motion, it is anticipated that the placement of arrested and imprisoned children in the allocated sections of penal institutions where arrested and imprisoned adults are kept shall be terminated in case of the absence of a specific penal institution for arrested and imprisoned children.
Mustafa Sezgin Tanrikulu (CHP)	02.07.2018	Establishing training centers is proposed instead of closing down juvenile prisons and detention facilities.
Murat Bakan (CHP)	20.02.2019	With the motion, it is proposed that joining decisions must not be given regarding the cases in juvenile courts.
Veli Ağbaba (CHP)	05.11.2018	With the motion, it is aimed to implement free visitation on open days in juvenile prisons.
Meral Daniř Beřtař (HDP)	09.08.2018	With the motion, it is aimed to rearrange the actions that require imprisonment of children under the age of 18.

Source: Created by the authors using the website URL 7: <https://tbmm.gov.tr/denetim/meclis-arastirma-onergeleri>.

Proposed solutions for the subject matter have often been stated by bar associations to keep the subject on the agenda. In a press statement by Istanbul Bar Association to condemn the incidences in Pozantı Juvenile Prison it said "even if there is no abuse case, it should a last solution to arrest and imprison children. If they are imprisoned and deprived of freedom, then children should be kept in children-specific institutions apart from adults. Additionally, the personnel in institutions should be provided with training on children's rights" (Press Statement of 12.03.2012).

The Pozantı incidents have also mobilized many civil society organizations and some trade unions working in the field of human rights and children's rights. On 12 February 2014, the "Initiative for the Closure of Juvenile Prisons", which includes eighteen non-governmental organizations including the Human Rights Association, the Human Rights Foundation of Turkey, the Association of Contemporary

Lawyers, the Agenda Children's Association, the Association for Solidarity with Youth Deprived of Liberty, the Freedom Foundation for Children in Turkey and the Association for the Prevention of Child Abuse and Neglect, called for the socialization of children through alternative measures instead of juvenile prisons, stating that juvenile prisons could not prevent children from being dragged into crime and therefore the objectives of the juvenile criminal justice system could not be achieved. (URL 8)

In response to these efforts, the National Action Plan on the Rights of the Child covering the period 2013-2017 was developed and this plan included targets for the strategy of "improving the juvenile justice system" for children dragged into crime.

**Table 6:** 2013-2017 National Action Plan for Children's Rights

Goals	Activities
Development and effective implementation of a separate juvenile law.	7.1.1. A separate juvenile law will be developed, and juvenile law will be included in the curriculum of law schools.
	7.1.2. All national legislation is reviewed to ensure that it is in the best interests of the child.
	7.1.5. Methods that divert the kid away from the penal system (diversion measures) shall be utilized successfully in the juvenile justice system. Administrative and legal regulations will be enacted to make practices that will push the child out of the justice system more effective, such as reconciliation in accordance with international literature, compensation for damage, conditional release, social work, mediated rehabilitation, participation in therapy groups, placement with foster families, and practices such as postponing the announcement of the verdict more effective.
7.2. Preventing traumatization in the legal system for children who have been led to crime or who are victims of crime.	7.2.1. An increase in the number of juvenile courts, prosecutors, and high criminal courts will be implemented.
	7.2.1. All juvenile court needs in terms of number, resources, and personnel shall be satisfied, and required steps will be done to shorten case time and minimize juvenile detention duration.

After 2000, various parties established objectives for juvenile delinquency in their electoral statements.

*According to the Nationalist Movement Party (MHP) electoral manifestations for the 2011 and 2015 general elections, "Children who commit crimes and are prone to crime will be reintegrated into society by training them, if any, cooperating with their families, providing them with a profession, and protecting and rehabilitating those who do not have a family."*

*In the Good Party (İYİ Party) 2018 electoral manifestations, it was stated that "We will eliminate youth detention centers. Instead, we will establish rehabilitation clinics. During the rehabilitation process, we will ensure*

that our youngsters obtain mandatory skill development as well as basic and vocational training." Similar goals to the İYİ Party were expressed more vaguely in the Justice and Development Party's (AKP) 2015 and 2018 electoral proclamations, with statements like "We will ensure that children who are victims of crime or dragged to crime are reintegrated into society as quickly as possible by switching to a specialized rehabilitation system for our children." The Republican People's Party's (CHP) 2015 and 2018 Election Declarations stated, "We will seek not to punish the children who have been involved in crime, but to educate and reintegrate them into society," while the Peoples' Democratic Party's (HDP) 2015 and 2018 Election Declarations stated, "We will guarantee that the juvenile jails are closed. *Child assistance and education facilities will be established for delinquent children,*" implying that all parties agree that delinquent children should be reintegrated into society via education and improvement rather than punishment.

However, of the parties mentioned above, the problem of juvenile delinquents has only been addressed by the İYİ Party Program. "Individualized rehabilitation programs will be designed for juvenile delinquents and victims of crime, based on age, gender, victimization, or delinquency type, and service providers will be specialized," according to the İYİ Party Program. *The program established a more thorough road map on the matter, saying, "For youngsters whose rehabilitation process has been finished in lighter offenses other than terrorism, murder, and so on, the rehabilitation process will be prolonged."*

The issue of juvenile delinquency is also addressed in the eighth and eleventh Development Plans. The issue of juvenile delinquency is also addressed in the eighth and eleventh Development Plans. While the 8th Development Plan establishes a scenario and requirements, the 11th Development Plan establishes more specific goals for the problem. The issue was noted in the 8th Development Plan as follows: "The issue of children in confrontation with the law remains essential. There is a need to establish policies to prevent juveniles from being pushed into crime, to establish a Juvenile Police Department, to build an adequate number of juvenile detention centers and correctional facilities, to employ qualified juvenile personnel within the bodies of juvenile detention centers, correctional facilities, Police and Gendarmerie, and to increase the number of juvenile courts by establishing the structure stipulated by Law No. 2253, and to create programs for reintegrating children into society."

As will be detailed later, this timidity and hesitancy regarding what needed to be done were reflected in the implementation phase, and the essential procedure could not be completed quickly enough. In fact, although the shortcomings indicated above and articulated as needed were never specified until the 11th Development Plan and no deadlines were set for their eradication, these shortfalls were continually highlighted in EU Progress Reports and essential steps were advised. The aims addressing the problem are considerably more explicit and detailed in the 11th Development Plan, which spans the years 2019-2023.

- The juvenile justice system will be structured to integrate risk monitoring in conjunction with preventative, restorative, and developmental approaches.
- The implementation of child-specific measures envisioned in the Child Protection Law, as well as the creation of systems for monitoring injunction judgments, shall be assured.
- The juvenile justice system will be restructured using a restorative justice approach, reconciliation procedures tailored to children will be developed, a model for deferring the opening of a public case for juvenile delinquents will be developed, and first-degree trial and legal remedy investigations will be prioritized.
- Alternative ways of execution tailored to children will be developed.

- Child-specific protection measures in the judicial process will be enhanced, child-friendly interview processes will be encouraged, and the number of judicial meeting rooms in courthouses will be raised.
- Institutional capacity will be enhanced to protect children from being exposed to criminality.

It is obvious from these objectives that the political authority has a clear target for how to address the problem; it is now clear what to do and what measures to take. However, only time will tell how these goals will be implemented in practice, what priorities and timelines will be set, and whether these goals will remain on paper.

### 4.3. Enactment Phase

The Child Protection Law No. 5395 and dated 3.7.2005 came into force within the context of the conditions that must be satisfied in the European Union membership process, after the Juvenile Courts Law No. 2253 and dated 7.11.1979 was first dissolved. It was determined under this act to create juvenile courts in each city center. However, following the publication of Law No. 5532 Amending the Anti-Terror Law in the Official Gazette on June 29, 2006, it became permissible for youngsters aged fifteen to eighteen to be prosecuted as adults. In fact, this modification dramatically increased the number of prosecutions brought against minors in this age bracket under Turkish Penal Code Articles 220 and 314.

Consequently, the Law on the Amendment of Some Laws with the Anti-Terror Law No. 6008, which was published in the Official Gazette on July 22, 2010, was approved. This Law stipulates those juveniles accused of terrorist offenses would be prosecuted in juvenile courts. In principle, the Anti-Terrorism Law states that certain aggravating conditions should not be applied to children. Finally, for terrorist offenses, the Law empowers juvenile courts to postpone the judgment, convert the jail term to another discipline, or suspend the conviction (EU 2010 Progress Report).

The New Turkish Penal Code has resulted in yet another reform in the Juvenile Justice System. The Turkish Penal Code No. 5237, which was ratified on September 26, 2004, and published in the Official Gazette on October 12, 2004, became effective. It has implemented laws that contain more beneficial protections for minors, according to the defunct Turkish Penal Code No. 765. First, everyone under the age of eighteen on the day of the offense was deemed a juvenile under the Turkish Penal Code, and as a result, public lawsuits brought against children began to be heard in juvenile courts and juvenile high criminal courts, which are courts dedicated to minors. Consequently, the practice of prosecuting juveniles between the ages of 15 and 18 in adult courts, which was in place before 2005, has ceased. The revised Penal Code raises the age of criminal liability for youngsters from eleven to twelve. Aside from the ones mentioned above, the Turkish Penal Code has included new rules in favor of minors. Short-term freedom-binding sentences must be transformed into one of the measures relating to work or education in a publicly valuable job (Second and Third Progress Report Turkey, Prepared in accordance with Article 44 of the UN Convention on the Rights of the Child).

Following the adoption of the new Turkish Penal Code, Child Protection Law No. 5395 was passed on July 3, 2005, and went into effect on July 15, 2005, after being published in the Official Gazette. For the first time, a legal framework was formed with this law to defend the rights and happiness of children who have special needs, are under judicial investigation or have been convicted of any crime. This law demands the creation of juvenile courts in all provinces. Although the enactment of this Law was a great step, it did not completely satisfy international standards in the field of juvenile legislation, since its provisions for delinquent minors (12 to 18 years of age) remain within the ambit of regular penal law (EU 2005 Progress Report).

#### 4.4 Implementation Phase

The "Establishment, Duties, and Working Regulations of General Security Directorate, Child Division/Administration" entered into force after being published in the Official Gazette dated 13.04.2001 and numbered 24372, with the goal of improving the Security Service's services to children, based on the legislation in force, particularly the United Nations Convention on the Rights of the Child. With this regulation, Child Divisions were formed in all provinces across the country, as well as Administration for Children in the districts (Second and Third Progress Report Turkey in the Report Prepared pursuant to Article 44 of the UN Convention on the Rights of the Child).

The name "youth detention center" was changed to "children's education home" in compliance with Law No. 5275 on the Execution of Penalties and Security Measures, which was published in the Official Gazette on December 29, 2004. These are facilities where "the punishments meted out to young prisoners are carried out with the goal of educating the convicts, gaining a career, and reintegrating them into society" (Law on the Execution of Sentences and Security Measures, art. 15).

As of the end of 2017, there were 108 juvenile courts and 18 juvenile heavy criminal courts (Presidential Annual Program, 2019), as well as four children's education centers with capacities ranging from 100 to 250 persons (Our Children's Education House Institutions and Features).

In addition, as of 2022, the pilot implementation of the Juvenile Justice Center was launched to ensure that the physical conditions of juvenile courts are made suitable for the purpose of the juvenile justice system and that all judicial procedures for children are carried out in a single center in a child-friendly manner. The number of directorates of judicial support and victim services established to support child-friendly interview procedures in the judicial process increased to 161. The number of forensic interview rooms used to take the statements and declarations of victims, witnesses and children dragged into crime, victims of sexual crimes and domestic violence crimes, and other victims whose statements and declarations need to be taken in special environments or whose face-to-face meeting with the perpetrator is considered to be inconvenient increased to 152 (Presidency Annual Program, 2023).

The Human Rights and Equality Institution of Turkey (TİHEK) was formed by Law No. 6332 in 2012. The Turkish Human Rights and Equality Institution Law, issued in the Official Gazette on 20 April 2016 and numbered 29690, renamed this institution the "Human Rights and Equality Institution of Turkey." "The institution has essential duties, such as formally examining, investigating, deciding, and following up on the consequences of human rights violations; examining, investigating, and deciding on the applications of persons deprived of their liberty or taken under protection within the scope of the national preventive mechanism and following up on the results; making regular informed or unannounced visits to places where people deprived of their liberty or taken under protection are held and forwarding the reports regarding these visits to the relevant institutions and organizations (Law No. 6701, Art. 9). The Human Rights and Equality Institution of Turkey evaluated the findings, observations, and complaints regarding the prison conditions of juvenile detainees and convicts in İzmir Juvenile and Youth Prison in accordance with national and international norms in the İzmir Juvenile and Youth Prison Report, which was published in September 2018 (Human Rights and Equality Institution of Turkey 2018). Aside from that, no information was discovered on the inspection of juvenile detention centers.

The Ombudsman Institution (KDK) was founded in 2012 by Law No. 6328. The institution's role has been determined to examine, research, and provide recommendations to the administration in terms of compliance with the law and equity, within the framework of justice based on human rights, in response to a complaint against the administration's functioning. (art. 5) While the powers and processes

associated with the Authority are excluded from the Institution's area of responsibility, concerns such as the operation of the prisons and the management of the conditions inside are not deemed beyond the Institution's jurisdiction. Authorities from the institution paid visits to the İzmir Child and Youth Closed Penitentiary Institution in 2016, 2017, and 2018.

During the implementation phase, some important non-governmental organizations also assumed important roles through their activities. The Project for the Improvement of the Juvenile Justice System in Turkey was carried out between 1999 and 2004 by the Foundation for the Re-Freedom of Children (TCYOV) in Turkey, UN Children's Fund (UNICEF), the Ministry of Justice, the Ministry of Interior General Directorate of Social Services and the Union of Turkish Bar Associations. The project aimed to improve the juvenile justice system in Turkey in order to effectively protect the rights of children who are in conflict with the law, who are "dragged into crime and enter the juvenile justice system", who are abused and/or who witness abuse, and to ensure their reintegration into society. At the end of the project, the Child Protection Law was amended and the Law on Probation was enacted (URL 8) Another project carried out by the Foundation for the Re-Freedom of Children is the Disadvantaged Sector Life School Project. The project, carried out with the support of the World Bank, aims to rehabilitate and reintegrate children involved in crime due to poverty (URL9)

The activities of UNICEF at the international level regarding children dragged into crime are also important. UNICEF's activities on the subject are as follows;

- Strengthen child-friendly and child-sensitive legal procedures for child victims, witnesses and accused children facing the justice system,
- Support the Ministry of Justice in establishing child-friendly forensic interview rooms to protect children in contact with the law from secondary victimization,
- Build the capacity of law enforcement and judicial authorities to better serve and protect children in justice systems,
- To carry out advocacy activities to increase the quality and scope of application of alternative measures to detention and imprisonment, in particular probation, and to ensure that measures for deprivation of liberty are applied as a last resort and for the shortest possible period of time,
- To strengthen child-friendly and child-sensitive legal procedures for child victims, witnesses and accused children who face the justice system (URL 10)

In line with these objectives, in 2021, UNICEF, in collaboration with the Ministry of Justice, UNICEF and the International Children's Center, published the Report on Child Friendly Courthouses in Turkey. The report sets out some basic principles on child-sensitive spaces within the judicial system, provides guidelines on the physical and managerial structures of child-friendly courthouses, and discusses how these spaces can be managed in a more child-friendly manner, based on their role in ensuring a non-discriminatory, understandable and participatory judicial process. (URL 11)

#### 4.5. Evaluation Phase

The advancement of ties with the EU in recent years has necessitated the amendment of laws, particularly those pertaining to the prosecution of juveniles. The Turkish Penal Code (TPC), as well as the Criminal Procedure Code and the Execution Law, were all updated in this context. During this process, Law No. 2253 on the Establishment, Duties, and Trial Proceedings of Child Courts, which governs judicial procedures involving children, was abolished, and Child Protection Law No. 5395, which attempts to

comply with the new TPC and Criminal Procedure Code, took effect. However, if the child commits a crime in the company of an adult and the general court decides to combine the cases, the child's trial in the general court (Child Protection Law Art. 17) overshadows this beneficial progress. Apart from that, the law provides few alternatives to punishment, particularly for minors above the age of 15. Aside from that, in certain prisons, children are detained alongside adults. Worst of all, as mentioned in EU progress reports and reported in the press, minors are subjected to a variety of abuses in these state-run jails. The fact that Turkey's Human Rights and Equality Institution, which was founded in 2012 and performs investigations on the issue, has yet to publish a report that concretely indicates this condition weakens the control over such incidents. It is not feasible to obtain information from the Ombudsman Institution that there is full research on juvenile delinquents and the institutions where their sentences are implemented, but it has been noticed that studies in this sector are typically at the level of "representation."

Regarding justice for children, following the amendment made in the Law on Fight Against Terrorism, Criminal Procedure Code, and other legal regulations in June 2010, in case children resist law-enforcement officers or commit a propaganda crime in demonstrations in favor of terrorist groups, it has been proposed that these children will not be penalized by terror crimes or the crime of being a member of a terrorist organization. The related law also propounds that the "aggravating circumstances" within the Law on Fight Against Terrorism will not be applicable to children and children will only be judged in juvenile courts or juvenile heavy criminal courts. (2011 the EU Progress Report). Such a disruption remains. EU 2022 Turkey Report Concerns remain that children continue to be detained and arrested on charges of being members of terrorist organizations, often for prolonged periods and in some cases in institutions not dedicated to children. The number of juvenile courts remains insufficient. There is an urgent need to improve non-custodial measures for children. Children convicted of crimes have limited access to legal aid.

In addition, the 2013-2017 National Action Plan on the Rights of the Child expired and no new action plan was prepared until 2023. Thus, like all other areas of children's rights, a situation of "lack of planning" has prevailed in the field of children dragged into crime during this period. Such a deficiency was addressed as a warning in the 2018 EU Turkey Report. Similarly, in the 2019 EU Turkey Report, the inadequacy of the quality and quantity of juvenile courts was restated. With the expression "the quality of the legal assistance for children and rehabilitation facilities in prisons is a source of concern", the processes implemented within the legal system are implied to be inefficient again (The 2019 EU Turkey Report). In this sense, increasing the number of juvenile courts and juvenile penal institutions has great importance for the implementation of rehabilitation activities for children and their protection in judgment and execution processes.

Thanks to legal regulations made, provisions that favor the best interest of children more than the previous legal regulations related to children within the legal system have been provided. In such positive progress, especially the EU accession process had a greater contribution. However, most of the drawbacks have yet to be eliminated. This is clearly understood from the deficiencies and goals determined in basic political documents. Accordingly, the determined goals are a repetition of the previous ones. Although objectives such as the development of protective mechanisms against juvenile delinquency and the implementation of child-specific alternative forms of execution have been expressed in many policy documents, they have not been reflected in practice. It is easily understood from the statistics given in the tables below (Table 7 and Table 8) that the problems have not been solved sufficiently.



**Table 7:** Number of Decisions on Children Dragged to Crime in Criminal Courts by Decision Type, TURKEY, 2014-2021

Yıllar	Türüne Göre Karar Sayısı ve Oranları								Toplam
	Mahkûmiyet (*)	%	Beraat	%	Hükmün Açıklanmasının Geri Bırakılması	%	Diğer Kararlar (**)	%	
2014	104 124	31,2	55 164	16,5	71 379	21,4	102 701	30,8	333 368
2015	105 677	33,0	53 776	16,8	63 792	19,9	96 982	30,3	320 227
2016	87 335	34,6	44 123	17,5	45 608	18,1	75 277	29,8	252 343
2017	75 237	34,8	33 591	15,5	32 756	15,1	74 744	34,6	216 328
2018	83 840	37,0	36 458	16,1	36 097	15,9	70 074	30,9	226 469
2019	77 807	34,6	35 357	15,7	39 470	17,6	71 972	32,0	224 606
2020	52 505	32,4	24 321	15,0	29 592	18,3	55 694	34,4	162 112
2021	78 790	35,1	35 641	15,9	41 028	18,3	68 841	30,7	224 300

Source: Ministry of Justice, General Directorate of Judicial Records and Statistics Judicial Statistics 2021

As can be seen in the Table 7 above, although the number of convictions given for children dragged into crime between 2014-2021 has decreased due to the decrease in the number of children dragged into crime over the years, it has increased proportionally within the decisions given for these children. The Table 8 below shows the situation of the conviction decisions according to their qualifications. According to the Table 8 below, it is seen that imprisonment has been imposed with a significant increase in proportion over the years. There is a slower increase in the imposition of security measures. These tables show that alternative execution systems are not sufficiently adopted in the judicial system.

**Table 8:** Qualifications of Conviction Decisions on Children Dragged to Crime in Criminal Courts Number of According to, TURKEY, 2014-2021

Yıllar	Niteliklerine Göre Mahkûmiyet Karar Sayısı ve Oranları (**)										
	Hapis Cezası	%	Adli ve İdari Para Cezası	%	Hapis Cezası Ertelenen	%	Güvenlik Tedbiri	%	Diğer Mahkûmiyet	%	Toplam
2014	26 745	25,7	49 060	47,1	7 779	7,5	2 477	2,4	18 063	17,3	104 124
2015	30 996	29,3	50 175	47,5	9 323	8,8	2 768	2,6	12 415	11,7	105 677
2016	27 057	31,0	39 594	45,3	7 470	8,6	2 122	2,4	11 092	12,7	87 335
2017	24 374	32,4	30 416	40,4	7 138	9,5	1 694	2,3	11 615	15,4	75 237
2018	28 309	33,8	33 268	39,7	7 876	9,4	1 708	2,0	12 679	15,1	83 840
2019	29 078	37,4	30 529	39,2	8 200	10,5	2 294	2,9	7 706	9,9	77 807
2020	20 236	38,5	19 365	36,9	5 926	11,3	1 521	2,9	5 457	10,4	52 505
2021	32 131	40,8	28 574	36,3	9 030	11,5	2 369	3,0	6 686	8,5	78 790

Source: Ministry of Justice, General Directorate of Judicial Records and Statistics Judicial Statistics 2021

On the other hand, the studies have revealed that the protective and supporting injunctions made in juvenile courts or other courts regarding the children dragged into crime or victim of crime are not soundly practiced (For example, Erükçü&Akbaş,2012; ÇAÇAV, 2015; Kumcu &Kaya, 2012). In this case, the problem should be more intensively addressed. Here the efforts of parliament members mean more. In the present research, the status of non-governmental organizations and benches are investigated in detail. However, it is believed that these structures are as important as parliaments in keeping this problem on the agenda and even improving these proposed solutions.

## 5. Conclusion and Evaluation

From the past to the present, many legal regulations and improvement efforts have been made regarding children in the justice system. However, these studies have not sufficiently taken into account that the child is a whole with the environment in which he/she lives and that the factors and environment that push the child to commit these acts are as important as the acts of the child and the consequences of the acts.

Therefore, the facts dragging children into crime should be examined; and more effective legal regulations for the rehabilitation and social inclusion of children should be arranged rather than penalizing them.

Since a person under 18 years of age cannot be said to have completed his/her physical and mental development, it is not possible for him/her to fully comprehend the legal meaning and consequences of the act he/she commits. Therefore, it does not seem possible to agree with the idea of the law that envisages the arrest of children as a consequence of the acts they commit. The main thing is not to punish

the child, but to rehabilitate and reintegrate the child into society. For this reason, it is a more accepted view that the existing provisions should be reorganized in a way that will ensure the implementation of special security measures for children and that the best interests of the child should be taken into consideration more. In addition, it is necessary to ensure that the conditions in which children are currently in penal institutions are good and that their fundamental rights are protected. Ombudsman Institutions and the Human Rights and Equality Institution of Turkey can play an important role in this regard by increasing their work in this direction.

According to the Law on the Ombudsman Institution, although the Institution cannot act ex officio, the review process can be initiated by following the complaint procedures, which are quite easy. As of Article 7 of the Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution No: 28601 of 28.03.2013 in case a complaint is made for human rights, fundamental rights, and freedoms; women's rights, children's rights, and general affairs related to the public, the third natural or legal persons are also entitled to make a complaint without seeking any infringement of interests. In this sense, notably non-governmental organizations have a greater role in bringing the Institution into action.

In addition, further research on this subject is needed in Turkey. It has been determined that there is a limited number of studies conducted on what kinds of progress policymakers and non-governmental organizations have made and might make in the solution of the given problem. In the present study, it has been proposed that further research for eliminating this deficiency is required.

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