

CHILD IN TURKISH CRIMINAL LAW AND CRIMINAL PROCEDURE LAW (*)

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1. Introduction

The United Nations have announced the year 1979 as 'Children's Year'. The meaning of this is that within this year all efforts should search for the wellbeing of children. Child and infant in a society symbolize purity, nature, being far away from artificial attitudes and in a way they are beings in need of protection and care for their growth.

Turkish Constitution of 1961 has accepted the rule of being a "social state" and has given the state the duty of creating living standards in accordance with human dignity for all. Besides this, again in the Constitution the family has been accepted as the foundation of the Turkish society and the State is in charge and has the duty to take necessary precautions for the protection of the family, the mother and the child.

With these main points in sight the position of the child and infants can be considered from various aspects. For example when education is chosen, one can understand that elementary school education is held obligatory for boys and girls and are to be actualized in State schools free of charge. Here it would be useful to

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ask how this rule of the Constitution is being materialized in real life and the percentage of this limited aim reached. If we approach the subject from the point of law, the situation within various parts of law can be considered or the competence of the existing rules can be argued. For example, the work conditions of children can be considered from the point of labor law and civil law and the situation of apprenticeship can be considered as well. To consider the subject from the point of Criminal Law, Criminal Procedure Law and Prosecution Law is also necessary.

2. Child in Criminal Law

The first point attracting attention is that the Turkish Criminal Code have fixed the age of 11 as a corner stone in criminal liability, so that those below this age at the date of crime can neither be prosecuted nor punished. Although, a child committing a crime, which has a penalty of more than 1 year imprisonment, before the age of 11 is to be given to the custody of parents, a guardian or is to be sent to a state body until the age of 18. The purpose of this is education and correction.

If the child committing a crime is older than 11 years of age but is within the age limit of 11 to 15, as long as he or she is smaller than 18 years they serve a diminished sentence. This is a point differing grown-ups and children. Turkish Criminal Code holds in sight the power of discernment between the ages 11 to 15, if lacking discretion those children are to be punished as the ones between the age group 0 to 11.

The Turkish Criminal Code contains rules for deaf-mute children as well. With such, 15 is the starting age for prosecution. Besides this, these children are to profit from diminished sentence and certain other preventive measures until the age of 24.

In this area with the rules in force, the position of children carries a special meaning in two points. First, eventhough in Turkey there exists no rules for each accused to have the service of a defender, according to the law the court is to appoint a defender for accused children below the age of 15. The second point is that the trial of children below age of 15 are to be done in sessions closed

to public and the sentence of the court should also be delivered in a secret session. With this the rule of public sessions is left aside for children below the age of 15.

3. Child in Prosecution Law

One of the most important points in the area of Prosecution Law is that the imprisonment up to 6 months, of those who were not yet 18 at the date of crime, are to be changed to fines, like paying an indemnity or they are to attend an educational or correctional institution or they are to be forbidden in attending certain places or from doing certain activities. The second most important point is that children use the possibility of a suspended sentence in more favorable limits considered to grown-ups. The act have considered the age groups as 0 to 15 and 15 to 18 and have accepted different limits for these groups in case of suspending a sentence.

One other thing in this field is that it is accepted for children same as grown-ups to have open, half-open and closed correctional institutions, and while serving a sentence it is also accepted for children to be transferred between these institutions; but for this, improvements in attitude is to be considered. During prosecution especially for disciplinary measures a child can be sent back from an open institution to a closed one.

The age of 11 accepted as a starting point for prosecution by the act should be considered normal. In setting such rules in Criminal Laws sociological factors and biological structures of persons are to be held in sight. In Turkey the above mentioned age is to be accepted as normal considering development of persons. The point I find nonsufficient is that the act as a rule accepts only the possibility of diminishing a sentence for those children above the age of 11. This is certainly beyond modern progress. Today the basic rule for juvenile delinquentis to accept measures other than imprisonment. For this judges must have competent power and especially the idea should be to take the delinquent child away form his neighborhood and to send him to institutions for education. Care must be shown for the child to learn a profession. Since a profession will help him to adjust to the society.

From this point of view the above mentioned limit of alternating sentences up to 6 months to fines or other measures should not be applied. The time limits for certain measures, like six months for being sent to an educational institution or one year for being prohibited to go to certain places or to do certain activities should be left aside as well and these should be left to the judge's discretionary power.

The limit for the suspension of a juvenile's sentence being held high in the act may seem sufficient. But when the sentence of a juvenile is suspended, he will be left in the same neighborhood, the high limit will prevent him to be sent to a correctional institute but this will not serve the purpose of picking him out from his old surroundings. For this reason the right to sentence to preventive measures other than penalties should be widened.

4. Child in Criminal Procedure Law

This area seems to be the most insufficient considering rules concerning children.

Some of the possibilities in this area could be not to have a prosecution for every crime of juveniles, to leave aside the rule of compulsive judgement, to give discretionary power to the prosecutor. The prosecutor could decide whether to take a juvenile delinquent to court or not after an evaluation on how to regain the juvenile to society.

While the legal proceeding is being carried out concerning a juvenile, a special police force is usually accepted which is not very strict and wears no uniforms. It will also fit the purpose if the defendant of a juvenile could be someone who is competent in pedagogy.

In the area of prosecution the necessity of having juvenile courts are widely accepted. The judges being specially trained is also a leading rule. A juvenile's judge is expected to know psychology, sociology, anthropology and psychiatry. But in certain countries the difficulty of having judges so trained leads to mixed courts where some experts help the judge.

During a trial, sessions are usually held closed to public and especially during a juvenile's trial an open to public session is believed unacceptable.

Consideration and evaluation of all these points would lead to legislative changes in a wide scale.

5. Draft Act of Juvenile Courts (1979)

Article 135 of the Turkish Constitution has required special rules for the trial of juveniles. To fulfill this requirement the government prepared a draft bill and have sent it to the parliament. This draft have been discussed in the House of Representatives and is to be discussed in the Senate.

In this draft within five sections the organisation of juvenile courts, the duties of these courts, penalties and preventive measures to be used for juveniles, rules of preliminary investigation and prosecution and the duties of observers are set forth.

Main characteristics of the draft are such as:

The foundation of juvenile courts are set in cities and counties. Those courts in cities consist of three judges and those in counties are to have only one judge. It is decided that rather important crimes are to be tried in cities.

In order to be a judge in a juvenile court one has to be above the age of 30 and preferably be a parent.

Authority in the investigation of juvenile delinquents are given to some prosecutors pointed out.

Measures to be used for juveniles are:

To be given into the custody of parents, a guardian or a relative who accepts to look after the child.

To be given into the custody of a confident family.

To be sent to an educational institution, to a factory, agricultural organisation or to a craftsman workshop.

Sending the juvenile to official or non official hospitals or to schools for problem children.

No prosecution takes place for juveniles who are smaller than the age of 12 at the time of crime. But if the penalty is more than one year of imprisonment than those measures mentioned above are to be applied.

If the juvenile delinquent is between the ages of 15 to 18 than the penalty is to be diminished by half.

For those juveniles who have tendency towards crime, preventive measures can be applied beforehand, and they remain effective until the age of 18. The juvenile court has the power to change or cancel preventive measures being applied.

No preliminary investigation is held in cases which are handled by juvenile courts.

Court sessions of juveniles are held closed to public and the sentence is also to be declared in a closed session.

Officials of social help organisations or volunteers help the juvenile during trial.

A juvenile to whom a preventive measure is applied or his sentence is suspended, he or she is to be held under observation. The duration of observation is decided by the juvenile court. Officials working within the system of juvenile courts carries on the observation, they submit their opinions in a report.

Penalties of juveniles are carried out in special correctional institutions or in penitentiaries for children.