



Joint Submission to the UN SRVAW thematic report
on rape as a grave and systematic human rights
violation and gender-based violence against
women

Cases of Women with Disabilities in Turkey

20.05.2020

* This written submission is jointly submitted by the following organizations:

Van Hearing Impaired Children and Their Families Association (Van İşitme Engelliler ve Aileleri Derneği):

Van Hard of Hearing People and Their Families Association was established in 2007 with the coming together of hearing impaired children and their families. Mothers struggling for their hearing-impaired children became the biggest supporters during the establishment phase of the association. The association is the first and only civil society organisation in Van working for the rights of people with hard of hearing. The association is working for the advocacy and monitoring for the rights of people with disabilities in Van and in the eastern part of Turkey.

Contact Information:

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Association of Women with Disabilities (Engelli Kadın Derneği):

Association of Women with Disabilities is a nationally recognized civil society organization established in 2011 in Ankara, Turkey and it is run by women with disabilities for women with disabilities. Its membership is open to both disabled and non-disabled women. Association of Women with Disabilities have been carrying out projects to inform women with disabilities on the subjects of discrimination, disability rights, gender, violence against women and possible protection mechanisms, thus, they aim to empower women with disabilities to be organized in their locals to demand their rights. They are also carrying out monitoring and reporting activities on the rights of women with disabilities and sharing our outputs with national and international organizations and human rights mechanisms to make the problems of women with disabilities visible in the public and to be included in the human rights agenda!

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Social Rights and Research Association (TOHAD):

Social Rights and Research Association was established in 2008 and it is a civil society organization working in Istanbul, Turkey for the rights of people with disabilities, chronic patients, elderly, women, children, people who are living in social, economic and psychological victimization and limitations, and social groups at risk of discrimination, violation and loss of rights. TOHAD has been carried out projects and activities to monitor and report the rights of the above mention groups and to strengthen their organizations in terms of informing about how to exercise, protect and develop their rights arising from national and international law.

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Questionnaire on criminalization and prosecution of rape

Definition and scope of criminal law provisions

1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal code and the Criminal procedure code.

In the Turkish Penal Code, the crime of rape is regulated under crimes against sexual inviolability in section 6, article 102/2. However, the important point to be mentioned here is that rape is not explicitly defined or mentioned in the law. In other words, the law does not spell out the word rape explicitly, but we know that there are different forms of rape and if this not defined well, it leads to impunity. Also, conflict related rape is not defined here in this law or not in the military criminal law as well.

The Turkish Penal Code says:

Article 102- (Amended 18/6/2014-6545/58 art.) (2) Should the act take place in a manner involving the penetration of the body with an organ or other object, the length of imprisonment can be no less than sixteen years. If the act is committed against the spouse, an investigation and legal proceedings take place pending a complaint being filed by the victim.

The crime of rape against children is regulated in article 103/2 of the Turkish Penal Code numbered 5237.

Article 103- (Amended: 18/6/2014-6545/59 art.) (1) (2) (Reformulated: 24/11/2016-6763/13 art.) Should sexual exploitation take place in a manner involving the penetration of the body with an organ or other object, the length of imprisonment can be no less than 16 years. If the victim is younger than 12, the length of punishment may not be less than 18 years of imprisonment.

2. Based on the wording of those provisions, is the provided definition of rape:
 - a. Gender specific, covering women only : NO
 - b. Gender neutral, covering all persons : YES
 - c. Based on the lack of consent of victim: NO, consent is not defined in Turkish law.
 - d. Based on the use of force or threat : YES
 - e. Some combination of the above. :YES
 - f. Does it cover only vaginal rape? : NO
 - g. Does it cover all forms of penetration? :YES. If yes, please specify.

Yes. According to article 102/2 of the Turkish Penal Code numbered 5237:

All types of penetration are covered by the scope as per the statement "Should the act take place in a manner involving the penetration of the body with an organ or other object, the length of imprisonment may not be no less than 12 years".

- h. Is marital rape in this provision explicitly included?: YES
- i. Is the law silent on marital rape?: NO
- j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?: YES, but only if the victims file a legal complaint. Investigation and legal proceedings of spousal rape requires a legal complaint of the victim. However, many victims would not be able to do that. If the victim is disabled, complaint can be much more difficult.
- k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? : NO

3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.

No. There is none. However, the "consent of the relevant party" is a material element of the crimes regulated under the title Crimes Against Sexual Inviolability and if valid consent within the limits determined by the law is established, the act does not constitute a crime.

4. What is the legal age for sexual consent?

Legal age for sexual consent is 18.

5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.

No. There is none. The Turkish Penal Code does not clearly regulate the crime of sexual activity among peers. However, if the victim is a minor, it is considered an aggravating circumstance.

6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.

Article 102/2 of the Turkish Penal Code numbered 5237 foresees a prison sentence of no less than 12 years for the perpetrator of the crime of rape.

Also, according to article 102/3 of the Turkish Penal Code, the duration of imprisonment is to be increased by half if the crime has been committed against a victim who is bodily or mentally incapable of defending herself/himself. Although women with disabilities are not explicitly mentioned in this article, this clause is taken into account in court proceedings for the rape of women with disabilities.

According to article 102/3-b of the Penal Code, if the crime is committed by legal guardians, the duration of imprisonment is to be increased by half. This clause is of significance, especially for women with intellectual and/or psychosocial disabilities.

Also, in accordance with 102/3 c of the Turkish Penal Code, the penalties imposed in accordance with the above paragraphs are increased by half if committed against a person with a blood kinship or kinship by marriage including third-degree ones or by the step-father, stepmother, step-brother, adopter or adopted child.

If the crime of rape is committed against a child, Article 103/2 of the Turkish Penal Code numbered 5237 stipulates prison sentences of no less than 16 years if committed against children older than 12 and no less than 18 years if committed against children younger than 12.

7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?

Cases for pecuniary and non-pecuniary damages may be filed with civil courts. The victims may file for pecuniary and non-pecuniary damages at Civil Courts of First Instance if the perpetrator has been found guilty and punished by a local court and the punishment was approved by higher courts.

Aggravating and mitigating circumstances

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?

Yes. Article 102/3 of the Turkish Penal Code stipulates that the punishment is increased by half its length if the crime is committed:

- a) Against a person who is bodily or mentally incapable of defending herself/himself;
- b) Through abuse of influence arising from the position of a public employee, legal guardian or provider of services;
- c) Against a person who is related by blood or marriage up to the third degree or be committed by a step-father, step-mother, step-sibling, foster parent or foster child;
- d) By threat/use of weapons or by multiple persons;
- e) By taking advantage of environments where many people have to live together.

Aggravating circumstances for the crime of rape committed against children, which if obtain, the sentence will be increased by half its length are listed in article 103/3 of the Turkish Penal Code numbered 5237 as follows:

- a) Be committed together by more than one person;
- b) By taking advantage of environments where many people have to live together;
- c) Be committed against a person who is related by blood or marriage up to the third degree or be committed by a step-father, step-mother, step-sibling or foster parent;
- d) Be committed by a person who acts as custodian, teacher, trainer, caregiver, foster family, health service provider or a person with protection, care or observation responsibilities;
- e) Through abuse of influence arising from the position of a public employee, legal guardian or provider of services.

- a. Is rape by more than one perpetrator an aggravating circumstance? : YES
 - b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference):YES
 - c. Is rape by spouse or intimate partner an aggravating circumstance?: YES
9. Does the law foresee mitigating circumstances for the purposes of punishment?

YES.

The extenuating circumstances regulated by article 62 of the Turkish Penal Code are sometimes taken into account by local courts when deciding on prison sentences for the crime of rape. The legally admissible consent of the relevant party, the crime not going past the stage of an attempt or the perpetrator's decision to claim effective remorse or withdrawal from the act clauses sometimes result in shorter sentences.

Article 61 of the Turkish Penal Code regulate the matters to be considered when determining the penalty.

Article 61: - (1) A judge takes into consideration the following in a concrete case and determines the main penalty between the lower and upper limits stipulated in the legal definition of the crime committed:

- a) The way the crime is committed,
- b) Instruments used in the crime,
- c) Time and place of the crime,
- d) The importance and value of the subject of crime,
- e) the severity of the occurring harm or danger,
- f) The severity of the fault resulting from the perpetrator's intent or negligence,
- g) The purpose and motive of the perpetrator

(2) The penalty is reduced or increased due to the commission of the crime with possible intent or deliberate negligence under the provisions of the first paragraph.
(5) The penalty determined according to the above paragraphs are subject to the application of the provisions related to attempt, complicity, successive crime, unjust provocation, young age, mental illness and personal reasons that require a reduction in penalty, respectively, and discretionary reduction reasons leading to final penalty.

According to Article 62, the perpetrator may receive less penalty if the relevant person gives their legal consent, if the crime is left at the attempt stage, or if the perpetrator benefits from effective repentance-voluntary abandonment provisions. The important point here is that in such cases the consent of the person concerned can turn it into an element that decriminalizes the act rather than being a reason for reduction. Commitment of such crime against a child changes its nature and turns the rape crime into "crime of sexual relationship with a minor", leading to a lesser penalty for the perpetrator.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?

NO.

As a rule, reconciliation for sexual crimes is not allowed. However, the investigation/prosecution of sexual crimes against the spouse require the victim to file a complaint.

a. Regardless of the law, is reconciliation permitted in practice?: YES

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.

NO.

However, in cases of marital rape, the criminal procedure for the perpetrator depends on the spouse's complaint. On the other hand, situations such as the management of processes in isolated institutions (nursing homes, retirement homes, rehabilitation centers, etc.) and whether the complaints of women with intellectual disabilities are observed are not sufficiently known. Likewise, there are no special additional measures that allow prosecution of the perpetrator if women under guardianship are raped by their guardians.

a. if the perpetrator marries the victim of rape? : NO

b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? :NO

Prosecution

12. Is rape reported to the police prosecuted ex officio (public prosecution)? : YES

13. Is rape reported to the police prosecuted ex parte (private prosecution)? : NO.

14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women?: NO

15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children?: NO

16. Please provide information on the statute of limitations for prosecuting rape.

As per the Turkish Penal Code, the statute of limitations for rape crimes is 15 years.

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? : YES

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

YES.

A health report including DNA testing and regarding mental state is required. In other word, health reports and forensic reports are required. If the alleged crime of rape has taken place recently, the victim is generally given a genital examination.

19. Are there rape shield provisions aimed at preventing judges and defence lawyers from exposing a woman's sexual history during trial? : NO
20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

NO, there are no criminal procedure provisions regarding this issue.

In practice, the situation is as follows:

A child psychologist or social worker is made available in the Child Monitoring Centers while taking the statement of the child victim of sexual abuse, and video and audio are recorded during the statement. When the indictment is issued and the trial phase begins, it is possible, during the hearing, to play the video taken previously during the testimony so that the victim child does not go through/become affected in the hearing.

The same sensitivity is not shown for adult victims. There are case files where the victim's testimony on the same subject is repeatedly taken. However, according to Article 184 of the Criminal Procedure Code No. 5271, a closed hearing is made upon request or if deemed appropriate by the court.

War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity?: YES

Yes. (Turkish Penal Code, article 77/1, paragraphs f, g & h)

The perpetration of the following acts systematically and according to a plan against a certain section of society with political, philosophical, racial or religious motivations constitute a crime against humanity:

- f) Sexual assault, sexual abuse of children;
- g) Forceful impregnation;
- h) Forcing into prostitution.

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?:
NO

NO. (Turkish Penal Code article 77/4). No statute of limitations applies to these crimes.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?: YES

YES. (Turkish Penal Code article 77/4). No statute of limitations applies to these crimes.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? : NO

NO. Turkey is not a member of the Rome Statute.

Data

25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.

Unfortunately, it is not possible to access real number of data on rape crimes suffered by women with disabilities. The most important reason is the lack of a special database on crime and penalty statistics regarding individuals with disabilities in the recording systems of judicial and administrative institutions. In existing databases, there are no categories allocated to disability. On the other hand, another problem concerns public institutions' wish to avoid sharing data occasionally. The main reason for this avoidance is the fact that the visibility of the events in public spaces will undermine the public reputation of an institution such as nursing homes, rehabilitation centers, boarding educational institutions and similar public institutions. For this reason, scanning media news is an important data collection method when examining disability-based violence cases. Media outlets cover not all but some incidents happening across the country in the claim, prosecution or court verdict stages and fill the gap arising from the data-recording system to some extent.

And the data presented below are related to the cases against women with disabilities detected by the media monitoring practices carried out by three civil society organisations between 2012 and 2020.

According to the data of Association of Women with Disabilities:

Type of Violence	Number of Cases in Years	
	2013	2014
Sexual abuse	12	8
Rape	19	12
Forced to prostitute	8	2

According to the data of Social Rights and Research Association:

Type of Violence	Number of Cases in Years				
	2012	2013	2014	2015	2016
Sexual abuse	32	31	13	19	46
Rape	6	4	3	1	10
Multiple abuse	8	6	10	14	9

According to the data of Van Hearing Impaired Children and Their Families Association:

Type of Violence	Number of Cases in Years		
	2018	2019	2020
Rape	4	15	9

The examination of the details of news stories leads to a striking situation. Because most of the violence cases covered by the news took place in isolated institutions such as nursing homes, retirement homes and inpatient rehabilitation centers. It was already known from different reports that isolated institutions produced violence for people with disabilities, but the failure to prevent violence in the institutions despite the news and reports shows that these institutions cannot be adequately monitored. Moreover, in some cases, victims may be put under state protection and placed in institutions because of the violence they face outside. In this case, the victim placed in an institution where violence is committed only moves to another environment of violence and unfortunately cannot avoid being subjected to violence. Moreover, the victim, known to be subjected to violence, also faces the risk of being exposed to more violence in such an environment.

However, Article 16 of the UN Convention on the Rights of Persons with Disabilities obliges States parties to ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities to prevent any form of exploitation, violence, and abuse. Besides, Article 33 of the UN convention invites States parties, under "National implementation and monitoring", to ensure the full participation of civil society, particularly persons with disabilities and their representative organizations. At this point, the cooperation between civil organizations and public institutions in the monitoring of isolated institutions will strengthen inter-institutional cooperation, and violence cases will be prevented when they are enabled to work with a more transparent structure.

An examination of the news content reveals that gang rapes of women with intellectual disabilities are common across the country. Also in rape cases, women with intellectual disabilities, women with hearing-impairments and women with speaking difficulties that cannot express themselves are the main groups revealed by such news as the victims.

The fact that women become pregnant especially after rapes and their abortion with a court order is one of the situations frequently encountered in the news. How much is the woman's decision about abortion being asked, unfortunately there is no clear information about the application. At this point, the principle of protecting personal integrity as stipulated in Article 17 of the UN Convention appears to be disregarded, and the physical integrity of women with disabilities is not preserved but violated again by different individuals and institutions.

Women with intellectual disabilities are the direct target of violence and abuse both inside and outside the home due to their vulnerable nature and this violence can last for years. The news also covers details about the threatening of other family members with death by the person committing violence. Therefore, violence aggrieves not only women with disabilities but also other people who, despite their desire to help, receives pressure and threats from the persons committing violence.

As the last word;

- An analysis of the media shows that women with disabilities from all ages and disability groups are the target of those committing sexual violence. However, especially women with intellectual disabilities appear to be victims of rape cases more than others.
- The person (or persons) committing violence is often someone known by the victim and mostly one of the family or community members (someone in the social cycle of the women) appears to the person committing violence.
- It is obvious that women with disabilities who stay in isolated institutions face a high risk of violence. When we look at the details of the violence cases in these institutions we see that those committing violence are generally their personnel. At this point, these institutions are considered to be inadequate in terms of monitoring and personnel training. The state of violence cases reveals the necessity of opening these institutions to monitoring by civil society and training institution personnel in cooperation with it.
- Another issue frequently covered by the media news is the judicial rulings in sexual violence cases. Unfortunately, most judicial rulings result in non-prosecution for people committing violence or reveal that criminals are released pending a trial. Such practices, unfortunately, lead to a continuous cycle of violence and cause both women with disabilities and those reporting the situation to face a high risk of violence again.

Other

26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.

Investigation of the rape crime suffered by persons with disabilities in isolated institutions is a very important problem. Also, if this rape crime is committed by the staff of an institution, its revelation becomes difficult and may cause victims to face the same risk again. The processes for reporting the raping of a person with disability in an isolated institution are quite difficult. In particular, women with intellectual disabilities, with hearing-impairment, and with psychosocial disabilities are much more disadvantaged in this regard and are at risk of violence again. According to Article 33 of the UN Convention on the Rights of Persons with Disabilities, States Parties shall ensure full participation of civil society, in particular, the persons with disabilities and the organizations representing them, in the monitoring process. However, institutions under the management of public and private affiliates providing services such as care and rehabilitation for people with disabilities cannot be monitored by civil society organizations and professional organizations.