

# A Possible Cause of Trauma for Children in Justice System of Turkey: Attitudes of Prosecutors and Judges

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## ABSTRACT

A possible cause of trauma for children in justice system of Turkey: attitudes of prosecutors and judges

**Objective:** Inappropriate procedures or settings may cause secondary traumas in children and adolescents who are involved in justice systems. For improving the quality of assessments and preventing court-induced traumas, it is necessary to determine the existing problems. The aim of this study was to examine the problems with forensic assessments of children and adolescents, their causes, and possible solutions from the prosecutors' and judges' points of view. We also aimed to determine the collaboration problems from the legal authorities' perspective.

**Method:** The present study was conducted in the City of Erzurum, which is one of the metropolitan cities of Turkey. Thirty-five prosecutors and 14 judges filled out a questionnaire assessing their problems in child assessments.

**Results:** The results indicate that 87.8% of the prosecutors and judges had difficulties at child assessments but none of the participants had an education on child evaluation in law school while only 18.4% participated a post-graduate education program. 61.2% of the respondents indicated that there were problems in the application of the current law.

**Conclusion:** Court induced trauma is a challenging issue for child and adolescent psychiatry. The skills of legal authorities on child evaluations and their cooperation with mental health professionals may directly influence the quality of legal processes. Vocational training programs, creation of direct channels to reach the mental health specialists, and reorganizing the faculty of law education programs may be useful in terms of prevention.

**Key words:** Judge, juvenile justice, prosecutor, secondary trauma

## ÖZET

Türkiye'de adli sistemdeki çocuklar için muhtemel bir travma kaynağı: Hakim ve savcıların tutumları

**Amaç:** Adli değerlendirmeler sırasında uygun olmayan ortam veya prosedürlere maruz kalmak çocuklarda ikincil travmalara yol açabilmektedir. Bu bağlamda çocukların adli değerlendirmeleri sırasında yaşanan sorunların tespit edilmesi, değerlendirmelerin kalitesinin artırılması ve mahkeme sürecine bağlı travmaların önlenmesi açısından önem arz etmektedir. Bu çalışmada hakim ve savcılarının çocuk ve ergen olgular değerlendirirken yaşadıkları sorunların, bu sorunların nedenlerinin ve muhtemel çözüm yollarının incelenmesi amaçlanmıştır. Çalışmada ayrıca hakim ve savcılarının, ruh sağlığı çalışanlarıyla işbirliği konusunda yaşadıkları sorunların değerlendirilmesi de hedeflenmiştir.

**Yöntem:** Çalışma kapsamında Erzurum il ve ilçelerinde çalışan 35 savcı ve 14 hakimle görüşülerek çocuk ve ergen olgular değerlendirirken yaşadıkları sorunları sorgulayan bir anket doldurmaları sağlanmıştır.

**Bulgular:** Çalışmaya katılan hakim ve savcılarının %87.8'i çocuk ve ergen olgular değerlendirirken sorun yaşadığını belirtmiştir. Katılımcıların hiçbirisinin hukuk fakültesi eğitimi sırasında çocukların değerlendirilmesi konusunda bir eğitim almadığı, %18.4'ünün bu konuda bir mezuniyet sonrası eğitim programına katıldığı anlaşılmıştır. Çalışmaya katılan hakim ve savcılarının %61.2'si mevcut yasal düzenlemelerin uygulama zorlukları bulunduğunu belirtmiştir.

**Sonuç:** Mahkeme kaynaklı travmalar, çocuk ve ergen ruh sağlığı alanında önemli bir sorundur. Hakim ve savcılarının konudaki bilgileri, becerileri ve ruh sağlığı çalışanlarıyla işbirlikleri adli değerlendirmelerin kalitesini doğrudan etkileyebilmektedir. Meslek içi eğitim programlarının düzenlenmesinin, hakim ve savcılarının ruh sağlığı profesyonellerine direk ulaşımını sağlayacak kanalların oluşturulmasının ve Hukuk Fakültesi Eğitim Müfredatlarının bu konuyu kapsayacak şekilde yeniden düzenlenmesinin ikincil travmaların önlenmesi açısından faydalı olabileceği düşünülmüştür.

**Ahtar kelimeler:** Savcı, mahkeme, hakim, ikincil travma



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## INTRODUCTION

Forensic evaluation of children is a challenging issue for both mental health professionals and legal authorities, and it therefore requires a multidisciplinary approach (1,2). Prosecutors and judges are important actors in children's experiences in court; the attitudes of these professionals on child evaluations may directly influence the re-traumatization of children in the system and the quality of mental health examinations carried out during court processes (3,4). Although the importance of judges and prosecutors in forensic assessments of children is widely discussed in the literature (4-8), only a few studies have addressed the problems and collaboration issues from the perspective of these professionals (2,9).

Turkey has the youngest population in the European Union (EU) region; approximately 25 million people in the country are under the age of 19 (10,11). It is not possible to know the exact number of children involved in the legal system because there are no statistics on child victims, but the data indicating that nearly 180.000 youths were judged in the year 2009 may help us to see the magnitude of the problem (12). According to the current Turkish law, children under the age of 12 are not held criminally responsible, while the responsibility of children 12 to 15 years of age is assessed on the basis of a psychiatric evaluation of their ability to understand the consequences of their actions. Youths between the ages of 16 and 18 are directly charged with reduced penalties. Sentences of crimes towards all people under the age of 18 are lengthened if the physical or mental health of the victimized children is also affected. Because of the law mentioned above, during their legal processes, prosecutors and judges refer the vast majority of children to the nearest child and adolescent psychiatrists, if there is not a child and adolescent psychiatrist in that particular province, to adult psychiatrists for a psychiatric evaluation. Child and adolescent psychiatrists are obligated by law to evaluate forensic cases. In recent times, certain problems mentioned in scientific congresses and e-mail groups by child and adolescent psychiatrists nationwide (such as demands for forensic evaluations at midnight, demands for

completing the assessments in one session, directing the cases to the police, but without any relatives and/or any detailed documents, and referring the offender and the victim of the same crime to the same individual to be evaluated together) have aggravated the debate on the attitudes of prosecutors and judges on evaluating children as well as concerns over court-induced traumas. Conversely, prosecutors now consider mental health evaluations the most problematic part of child and adolescent assessments due to the long duration of assessments and the lack of communication with child and adolescent psychiatrists. Considering the issues mentioned above, identifying the problems objectively has become a necessity for developing effective solutions.

The aim of this study was to examine the problems with forensic assessments of children and adolescents, their causes, and possible solutions from the prosecutors' and judges' points of view. We also aimed to determine the collaboration problems from the legal authorities' perspective.

## METHOD

This was a descriptive questionnaire-based explanatory survey conducted at the Ataturk University's Faculty of Medicine in the Department of Child and Adolescent Psychiatry. The University is located in Erzurum, which is the center of the Northeast Anatolia Region of Turkey, and serves approximately about one million people under the age of 18 living in the seven surrounding cities. The city has the region's sole university hospital, which has a child and adolescent psychiatry department; approximately 40 forensic cases are evaluated monthly in our unit. There is a juvenile court and three criminal courts in the city center and one court in each of the 14 towns located around the city.

## Sample

Our aim was to reach all judges and prosecutors working in Erzurum. After receiving permission from the local authorities, we contacted all of the prosecutors

and judges in the city center and nearby towns by telephone and provided them with information about the study. For all who agreed to participate in the study, we offered to send and collect the questionnaire either by a courier, fax, or e-mail.

### Measures

The data were collected via a structured 19-item questionnaire, which was prepared by a multidisciplinary team from different areas of medicine and law, namely, a juvenile court prosecutor, an academician from the school of law, two child and adolescent psychiatrists, and a forensic medicine doctor.

The present questionnaire contains three parts. The first part contains the socio-demographic questions. The second part consists of questions assessing the respondent's education level, current practice issues, and attitude toward child assessment. The third part includes questions about the prosecutor's or judge's level of knowledge about the psychiatric examination of children and problems they have encountered when collaborating with child and adolescent psychiatrists. There is also a question regarding the respondent's solution(s) to the current problem(s). The questionnaire was designed so that all of the questions had closed and open-ended choices, giving each respondent the opportunity to state his/her personal opinion while also providing all of the required information. The respondents were asked to choose and rate the five choices of the questions asking for the most common reasons that they had to confront the children, the most challenging situations during their assessments, and the most preferable solutions for their problems. For detailed information, see the English translation of the questionnaire at the end of the text.

### Ethical Issues

Due to the sensitive position of the respondents' occupations, we preferred not to ask direct information that would reveal their identities in the first part of the questionnaire. For example, we preferred to ask their age and experience level in intervals rather than with

direct questions investigating their date of birth and date of appointment. Required authorization for attendance was given by the City Prosecution Office. All judges and prosecutors were informed of the nature of the study. The name of the public prosecutor in our team was also kept confidential.

### Statistical Analysis

The data were analyzed using SPSS, version 18.0 for Windows. Frequencies and percentages of the categorical variables were calculated. Fisher's exact test was performed to examine the significance of the association between variables when required. P values less than 0.05 were considered significant.

### RESULTS

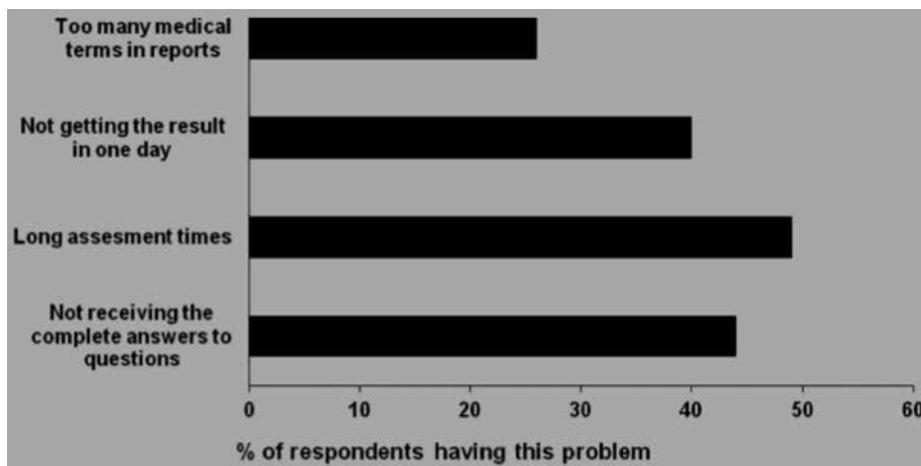
Of the 47 prosecutors and 27 judges working in the city center and nearby towns, 35 prosecutors and 14 judges accepted our invitation to participate in the study, which was a total response rate of 66% (74% for prosecutors and 51% for judges). Twenty-seven of the respondents (55.1%) were between 25 and 35 years old, and 28 (57.1%) had less than five years of work experience in their current role. None of the participants had obtained any education on child evaluation during university while 18.4% (n=9) had participated in a postgraduate education program.

Upon assessing the practical issues, we found that all respondents encountered children in their routine practice. Forty-three (87.8%) of them indicated that they were having problems working with children, while six (12.2%) said that they had no problem in that area. There was no significant association between receiving some form of postgraduate education (Fisher's exact test,  $p=1.00$ ) or the level of experience (Fisher's exact test,  $p=0.67$ ) and problems with child assessments. The most common reasons that the prosecutors and judges reported having to confront child victims or offenders were sexual abuse (87.8%,  $n=43$ ), physical assault (81.6%,  $n=40$ ), and theft (79.6%,  $n=39$ ).

When considering the age groups, we realized that both the judges and the prosecutors who stated that

**Table 1: Most common problems prosecutors and judges encounter in child and adolescent assessments**

| Problems in child and adolescent assessments                             | % of respondents having this problem | % of respondents marking this item as most problematic |
|--|--------------------------------------|--|
| Problems occurring from applicability of the law                         | 61.2                                 | 29.6   |
| Time shortage  | 53.1                                 | 12.5   |
| Problems regarding the child's security                                  | 53.1                                 | 20.8   |
| Workload   | 49.0                                 | 18.2   |
| Decision making when there are concerns over a child's cognitive ability | 63.3                                 | 23.3   |
| Decision making when there are concerns over a child's reliability       | 61.2                                 | 14.8   |
| Age-appropriate communication  | 57.1                                 | 35.7   |



**Figure 1: Prosecutors' and judges' problems collaborating with mental health professionals**

they had problems when assessing children and adolescents were mainly having trouble with the 12- to 15-year-olds' assessments (53.4%, n=23), followed by 16- to 18-year-olds (18.6%, n=8), 7- to 11-year-olds (18.6%, n=8), and 0- to 6-year-olds (4.6%, n=2). Twenty-eight (57.1%) of the participants also mentioned that they often had trouble with age-appropriate communication. The most challenging situations participants reported encountering during assessments were confusion about the children's reliability (61.2%, n=30) and the children's cognitive ability to understand the effects and implications of crimes (63.3%, n=31). The application of Turkish law was found to be problematic by thirty (61.2%) of the respondents. Table 1 summarizes the most common problems involved in child and adolescent evaluations reported by the participants of this study.

Another aim of this study was to examine the problems judges and prosecutors encounter when

collaborating with child and adolescent psychiatrists. Five (10.2%) of the prosecutors and judges mentioned that they were aware of the requirements for a forensic mental health evaluation, while 24 (49.0%) had partial awareness, and 20 (40.8%) had no knowledge on this subject. Twenty-six (53.1%) of respondents were aware that there were child and adolescent psychiatrists in their city, and 42 (85.7%) did not know anything about their working system (e.g., hours and days of availability). Fifteen (32.6%) mentioned that they did not have trouble when they referred their cases for psychiatric evaluation, while 26 (56.5%) sometimes had trouble, and five (10.9%) very often had trouble. The most common problems they reported were that the assessments took a long time to complete and were often not completed on the same day that they had referred cases for evaluation; they also complained that they often received incomplete answers to their questions (Figure 1).

We also asked about possible solutions to the problems described by the prosecutors and judges in our study. The establishment of vocational training programs was the widely preferred choice. The creation of direct channels to reach mental health specialists was the second, and reorganizing the faculty of law education programs was the third.

## DISCUSSION

To our knowledge, this is the first study reflecting the problems related to forensic evaluations of children and to collaboration with mental health workers, from the perspective of judges and prosecutors. Studies examining legal authorities' attitudes on child evaluation are rare. The existing studies mainly focus on particular groups, such as sexual abuse cases, or programs focused on educating prosecutors and judges on child evaluation. For example, Bumby and Maddox (9) conducted a study with a 54-item questionnaire measuring the attitudes and opinions of 42 judges regarding issues related to sexual offenders prior to an education program. Similarly, Schiller and Spies (2) explored the perspectives and knowledge of 26 public prosecutors working with sexually abused children. The prosecutors attended an education programme on this subject. The programme was evaluated using pre- and post-test questionnaires prepared for this study.

Involvement in the justice system in general is a stressful experience for children. The negative effects of the investigation and adjudication processes on children have been confirmed by previous studies (13-15). Prosecutors and judges are key actors in these processes. Despite the fact that numerous authors have mentioned that these professionals typically do not have the specialized training required to deal with the complex and difficult issues that arise in these disputes, we could not detect a direct data link supporting this idea in the literature (2,16,17). To the best of our knowledge, the present findings that 81.6% of prosecutors and judges have not received any education regarding forensic evaluation of children seem to be the first statistical data on the rate of this educational deficit. More specifically, age-appropriate communication is essential for a reliable

and non-traumatic investigation. However, we found out that most of the prosecutors and judges had problems with age-appropriate communication. Schiller and Spies (2) suggest that legal authorities often hurt young people in their attempt to help them. Considering the educational deficit and communication problems together, this may apply in Turkey as well.

The Minimum Age of Criminal Responsibility (MACR) is another controversial issue. Whilst there are different applications worldwide, the median MACR appears to be 12 to 13 years of age. A similar application is also in effect with certain modifications in Turkey. The current Turkish law ties the criminal responsibility of 12- to 15-year-olds to mental health assessments rather than stating clear borders. Although there are certain studies supporting the theoretical bases of this application, such as Grisso et al.'s (18) study in which one-third of children between the ages of 11 and 13 were found to be incompetent to stand trial, our finding, which shows that the assessments of 12 to 15-year-old children are the most problematic among all age groups, indicates that theoretical bases cannot contribute to feasibility as expected. This finding can be taken into consideration in further efforts to develop policies. Moreover, in our opinion, applications that have clear borders may be preferred instead.

Theft and violence against another person were reported to be widespread in our study. This finding was in parallel with the official record of the Turkish Ministry of Justice, as well as with crime statistics from the English Ministry of Justice and statistics from the United States (19,20). The interesting point here was the fact that the most common reason that prosecutors and judges had to confront children was sexual abuse. The prevalence of sexual abuse among adolescents was found to be 13.4% in a previous study in Turkey (21). However, considering the official number of juvenile theft and physical assault cases, which is approximately 40.000 cases per year for each, the true rate of sexual abuse among children was expected to be higher (12).

Our findings also shed light on the problems involving collaboration between mental health professionals and legal authorities. The inadequate

knowledge level of prosecutors and judges on the requirements of mental health examinations and the working system of mental health professionals could potentially be a reason for their inappropriate assessment demands, which inspired us to conduct this study. On the other hand, long assessment durations seem to be the most important problem reported by prosecutors and judges. A previous study reported that there is 0.2 child and adolescent psychiatrists per 100.000 people in Turkey (22). This insufficient number of child and adolescent psychiatrists gives rise to the increase in their workload. This workload may negatively influence the duration of such assessments. Another important point that the respondents addressed was that they often did not receive complete and detailed answers to their questions. This problem was also mentioned by Firestone and Weinstein (16) in the 'Model Standards' paper of Association of Family and Conciliation Courts and said to be typically related to the lack of communication between mental health professionals and legal authorities.

There are several limitations of this study that temper the strength of the conclusions that can be drawn from this work. Although Erzurum is one of the major metropolitan cities in Turkey, the sample size is insufficient to represent the whole country. It must also be mentioned that it is quite difficult to enter the legal domain to do empirical research; thus, the sizes of samples including law professionals remain small in many studies (2,9). Additionally, public prosecutors and judges in Turkey are overloaded with cases.

Therefore, it is difficult to get a large group together to take part in studies such as ours.

Gathering more demographic information could give us the opportunity to see the effects of individual differences, although asking questions that could address a person could aggravate the occupational concerns, such as promotions, thus decreasing reliability and response rates.

In spite of its limitations, this is the first study in Turkey to examine the problems in forensic evaluations of children from the judges' and prosecutors' perspectives. It may also be useful for researchers from other developing and undeveloped countries engaged in court-induced traumas and collaborative problems. There are many conclusions that can be drawn from our findings. Despite some positive attempts to rectify the situation, such as the increase in the number of juvenile courts in recent years, the justice system in Turkey seems to have the potential for causing court-induced trauma in children. The first steps to prevent re-victimization include the establishment of a countrywide vocational education program for prosecutors and judges and programs regarding child evaluations in law schools. Local solutions, such as brochures or websites (which may also contain simple telephone directories for cities) explaining the locations and working systems of mental health professionals as well as procedures for forensic mental assessments can improve interdisciplinary communication, and thus may help to solve these collaboration problems.

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## QUESTIONNAIRE

Current age range

- 25-30     31-35     36-40     41-50     51-60     over 60

Occupation

- Judge     Prosecutor

Years of experience

- 0-5 years     6-10 years     11-15 years     16 years and over

How often do you have to face children and adolescents (0-18 years) in your daily practice?

- Never     Sometimes     Often     Very Often

What are the most common reasons that you have to confront child victims or offenders?

Please rank up to 5 items where 1 is the most often confronted.

Sexual abuse

Sexual assault

Murder

Physical assault

Kidnapping

Threatening

Theft

Other: .....

Do you encounter difficulties when you are assessing children and adolescents?

- No, I do not  
 Yes, a little  
 Yes, a medium amount  
 Yes, a great deal

What challenges you the most in child and adolescent assessments?

Please mark the 5 most challenging items.

Age-appropriate communication

Problems occurring due to the law's limited applicability

Decision making when there are concerns regarding a child's cognitive ability

Decision making when there are concerns regarding a child's reliability

Time constraints

Problems regarding the child's security

Workload

Other: .....

With which age group do you encounter the most difficulties when working with children and adolescents?

- 0-6     7-11     12-15     16-18

Have you had any education on child evaluation during college and/or graduate school?

- No       Yes       I do not remember

(If your answer is yes, please continue to the next question; otherwise go to the 8<sup>th</sup> question.)

Was this education enough to help you solve the problems you face in your daily practice?

- No       Partially       Yes

Have you participated in any postgraduate education programs (e.g., vocational education, congresses, conferences) on child evaluation?

- No       Yes       I do not remember

(If your answer is yes, please continue to the next question; otherwise go to the 11<sup>th</sup> question.)

Was this education enough to help you solve the problems you face in your daily practice?

- No       Partially       Yes

Is there a child and adolescent psychiatrist in your city?

- No       Yes       I do not know

Do you know the working system (e.g., hours and days of availability) of this child and adolescent psychiatrist?

- No       A little       Yes

Do you know the requirements for a forensic psychiatric evaluation of a child or adolescent?

- No       Partially       Yes

Do you experience difficulties when you refer your child and adolescent cases for psychiatric evaluation?

- No       Yes, sometimes       Yes, frequently

What are the most frequent difficulties you encounter when referring your child and adolescent cases for psychiatric evaluation?

Please rank up to 5 items where 1 is the most frequent.

Not receiving complete answers to questions

Long assessment times

Not getting the results in one day

Too many medical terms in the reports

Other: .....

Which of the following can be useful to solve the problems with child and adolescent assessments in the legal system?

Please rank up to 5 items where 1 is the most useful

Vocational training programs

Informational web sites

Informational brochures

Phone lines for consultation

Establishing direct channels to reach mental health specialists

Reorganizing the faculty of law education programs

Other: .....

We would like to thank you for your participation.