

Turkey's Constitutional Court stirs outrage by annulling child sex abuse clause



The Constitutional Court discussed the issue upon an application from a district court, which complained that the current law does not discriminate between age groups in cases of child sexual abuse and treats a 14-year-old as equal to a four-year-old.

The local court said the law does not provide legal consequences for the "consent" of victims in cases where the child victim is from 12 to 15 years of age and able to understand the meaning of the sexual act. "This creates an imbalance between legal benefits and sanctions that should be preserved in crime and punishment," the application stated.

With seven votes against six, the Constitutional Court agreed with the local court and decided to annul the provision. The decision will come into effect on Jan. 13, 2017.

The local court's argument and the Constitutional Court's endorsement have drawn a backlash from academic and human rights circles, which underlined that all individuals under the age of 18 are considered children according to international conventions to

which Turkey is a party.

"First of all, every individual under the age of 18 is a 'child' according to international conventions. Seeking a child's consent in cases of sexual abuse is out of the question," the chair of the Association to Prevent Child Abuse and Neglect, Professor Bahar Gökler, told Turkey's state-run Anadolu Agency.

Gökler said this "calamitous" decision was in violation of child rights.

The general secretary of the same association, Professor Aysun Baransel, said consent could be sought in cases of sexual intercourse between peers, but it was impossible to speak of consent if the case involves a 60-year-old and a 15-year-old child.

"The most important point is that unless this provision is urgently addressed, child abusers will start walking around freely because there is no new regulation [to fill the void]," Baransel said.

She added that child sexual abusers will be tried with provisions related to the sexual abuse of adults following the ruling, as there will be no special law in place after Jan. 13.

The head of the Child Rights Center of the [Ankara](#) Bar Association, Sabit Aktaş, also warned that many children will suffer from the decision.

"We can foresee what this decision will bring about. Those jurists who are distant from society in their ivory towers should go to courtrooms to see and hear what those children go through when describing their experiences. They should only make a ruling on this issue after doing that," Aktaş said. The coordinator of the Istanbul Women's Associations, lawyer Nazan Moroğlu, challenged the argument of the local court that made the appeal in the first place, underlining that every judge has the option to choose between the legal upper limit or the lower limit, based on the nature of each case.

"To ignore [a judge's discretion] and annul this provision will create big problems. It will lead to children being vulnerable to sexual abuse and rape, and will lead to more female children getting married at an early age without getting an education," Moroğlu said.

She highlighted that the already acute problem of child brides in Turkey, of whom there are already around 3.5 million, would deepen following the ruling.

Activists are likely to seek a reversal of the Constitutional Court's ruling. The head of the Turkey Federation of Women's Association (TKDF), Canan Güllü said they are now considering bringing the case to the attention of the European Court of Human Rights.

"This decision will lead to unwanted marriages. People will be able to kidnap and rape children, marry them at an early age, and prevent them from going to school," Güllü said.

"We are looking to see whether we can make an appeal to annul the decision. We could go to the European Court of Human Rights," she added.

Six members of the Constitutional Court dissented from the ruling, saying it would "cause public indignation."

The Court has recently also annulled a provision that foresees at least 16 years of imprisonment in cases of child rape for the same reasons. That annulment is set to come into effect on Dec. 23, 2016.