

Summary

Silent Victims, Difficult Trials: Mental Retardation and Sexual Abuse in the Case Law of the Court of Cassation

Nedim Havle

One of the fundamental missions of the criminal justice system is to protect the most vulnerable members of society and to effectively investigate criminal acts targeting them, ultimately punishing the perpetrators following a fair trial. In this context, individuals with intellectual disabilities present a particular sensitivity, both in terms of their risk of victimization and the unique challenges they face in their quest for justice. Communication barriers, societal prejudices, the traumatic effects of abuse, and difficulties in comprehending legal processes further complicate the position of this victim group within the justice mechanisms. When extremely intimate and traumatic crimes such as sexual abuse are involved, these difficulties multiply, necessitating the establishment of a delicate balance between victim protection and the right to a fair trial.

However, there is a clear need for comprehensive and in-depth analyses regarding how this vulnerability and these unique challenges are reflected in Turkish criminal trial practice, particularly in the decisions of the Court of Cassation (Yargıtay), which holds the duty of establishing jurisprudence and ensuring legal uniformity, and what systematic difficulties and established trends are encountered. Sexual abuse cases involving victims with intellectual disabilities encompass many intricate legal and ethical issues, ranging from the determinative role of Forensic Medicine Institute (ATK) reports to the assessment of the victim statement's credibility, nuances in the legal classification of the crime, and potential flaws in ensuring procedural safeguards. The approach of the Yargıtay in such cases is critically important, not only determining the outcome of individual cases but also shaping the legal interpretations, standards of proof, and application of procedural guarantees that guide lower courts. Therefore, revealing the trends, problems, and potential pitfalls in Yargıtay practice will shed light on both academic discussions and practical improvements.

Precisely to address this gap and based on the aforementioned critical importance, this study scrutinizes recent Yargıtay decisions concerning sexual abuse

crimes where the victims are individuals with intellectual disabilities. Through qualitative content and legal analysis of publicly available Yargıtay decisions within a specific timeframe, this research attempts to decipher the main problems encountered, established practices, and potential systemic challenges specific to these types of cases. The study revolves around key axes such as the weight and contestability of ATK reports in trials, dilemmas in the value attributed to the statements of victims with intellectual disabilities, obstacles in proving and classifying the crime, and procedural issues experienced during the trial process.

The short-term primary aim of this study is to systematically reveal Yargıtay's current approaches in this area, the main problem areas reflected in its decisions (especially the role of ATK reports, evaluation of victim statements, determination of the crime's classification, and procedural matters), and established trends. In the long term, the aim is to make an original contribution to the existing academic literature with the findings obtained, draw attention to potential areas for improvement in judicial practice with concrete data, increase awareness among legal practitioners (judges, prosecutors, lawyers) and forensic medicine experts, and ultimately, lay the groundwork for developing policies and practical recommendations that will strengthen access to justice for individuals with intellectual disabilities, one of society's most sensitive groups, in the face of sexual abuse crimes.

Method

This study is based on a qualitative research design aimed at analyzing the legal assessments in Yargıtay decisions concerning sexual abuse crimes involving victims with alleged intellectual disabilities. The primary data source consists of case files accessed through the Yargıtay's publicly available decision search platform (www.yargitay.gov.tr). The study is a legal situation analysis limited by a specific timeframe and subject focus.

Data Collection Process

The population of the research comprises files related to sexual abuse involving allegations of intellectual disability, decided by the total of 23 Criminal Chambers operating within the Yargıtay between July 1, 2023, and January 1, 2025. From this population, 140 files accessed publicly via the Yargıtay's official website (www.yargitay.gov.tr) within the specified dates, resulting from a search using the keywords "cinsel istismar" (sexual abuse) and "zeka" (intelligence), were deemed sufficient for analysis and constitute the research sample. The keyword search aimed to identify cases where the victim's intellectual status was discussed within the case file or considered a factor influencing the decision. The selected 140 files were considered a sample offering sufficient diversity and depth to examine the legal reflections of intellectual disability allegations in sexual abuse cases, aligning with the research objective. Data were compiled entirely from the publicly available decision texts of the case files on the Yargıtay's official website. These files contain essential information such as the summary of the event, decisions of the first instance court and (if applicable) the appellate court, grounds for appeal, the Yargıtay Criminal Chamber's decision (affirmation, reversal, dismissal, etc.), and its reasoning.

Data Analysis

Qualitative content analysis and legal analysis were applied to the 140 Yargıtay case files to systematically examine several key areas. This included analyzing how victim intellectual disability (ID) was presented and evidenced; the role, detailed content (including assessments of capacity, credibility, and observability), and judicial impact of Forensic Medicine Institute (ATK) reports; the influence of ID on the legal classification of crimes (such as TCK Art. 103 vs. 104) and associated consent evaluations; considerations of the defendant's awareness or potential mistake regarding the victim's condition (TCK Art. 30); the specific grounds for Yargıtay's decisions, particularly focusing on ID-related factors like report contradictions, victim statement evaluation, evidence sufficiency, and procedural errors; and the impact of procedural challenges including legal representation and statutes of limitations. Key variables from each case were coded, and findings were synthesized thematically to identify systemic trends while maintaining data confidentiality.

Findings

This section presents the data obtained from the examined case files:

ATK Reports

In the examined files, courts refer to ATK reports (mostly from the 6th Specialization Board, or the 1st Specialization Upper Board if reports are contradictory) for matters concerning the victim's age, the degree of intellectual disability (mild, moderate, severe), the ability to comprehend the legal meaning and consequences of the act, the capacity to mentally resist the act (resistance), the reliability of their statements, and whether the intellectual disability could be understood by non-physicians (i.e., the defendant) (File 5, 20, 27, 58, 62, 70, 76, 78, 89, 135).

Contradictions were observed between initial reports issued by different health institutions (local state hospital, university hospital, ATK branch directorate) and subsequent reports prepared by ATK Specialization Boards or the Upper Board (e.g., File 62 - Training and Research Hospital reported mild, ATK Branch Directorate reported moderate ID; File 70 - Local hospital reported mild, ATK 6th Specialization Board reported moderate ID, leading to referral to ATK 1st Upper Board). Contradictions also exist between reports issued by the same ATK Specialization Board at different times (File 5). When contradictions exist between reports, the Yargıtay requests a report from the ATK Upper Board to resolve the conflict and reverses the local court's decision on grounds of "insufficient investigation." The inadequacy of ATK reports in terms of explanation or justification regarding the victim's comprehension capacity, resistance ability, or statement credibility was also identified as a reason for reversal (File 2, 5, 17, 85, 124). ATK reports include an assessment of "whether the intellectual disability can be understood by non-physicians" (File 2, 74). The examined Yargıtay decisions contain no discussion on how this conclusion is reached or the criteria used. Determining whether the victim's mental health was impaired due to the incident becomes difficult, especially with multiple perpetrators or acts (File 1, 4, 5, 8, 16, 75, 85, 86, 94, 97, 104, 105, 108, 130, 131). The inability to prove this impairment can result in outcomes favoring the defendant based on the "benefit of the doubt" principle (File 4, 86, 94).

Evaluation of Victim Statements

Due to sexual crimes often being committed without witnesses, victim statements hold a central evidentiary position in investigations and prosecutions; sometimes they are the sole evidence (File 13, 110, 125). Contradictions, inconsistencies, or changes over time in the statements of victims with intellectual disabilities (considering the victim's age as well) are evaluated as factors affecting the statement's credibility, potentially leading to the defendant's acquittal or the reversal of

a conviction (File 4, 5, 22, 28, 38, 39, 40, 44, 59, 69, 81, 91, 102, 105, 106, 107, 112, 118, 120, 137). In cases where a victim with intellectual disability withdraws their complaint, there are files where dismissal decisions were made without sufficiently questioning the legal validity of the withdrawal and whether the victim's will was impaired (due to age and intellectual status) (File 22, 43, 80).

Proof of Crime and Legal Classification

Difficulties arise in proving the crime defined in TCK Art. 103/2 involving "insertion of an organ or other object into the body." When conclusive medical evidence (hymen/anal tearing, semen, DNA, etc.) cannot be obtained due to the passage of time or delayed reporting, conviction decisions based solely on the victim's statement are reversed by the Yargıtay due to insufficient evidence (File 28, 40, 67, 71, 117, 140). Problems are observed in the legal classification of the act. Particularly for victims who have completed age 15 but not 18 and lack capacity for consent or comprehension of the act's meaning due to intellectual disability, discrepancies were noted regarding whether the act should be evaluated under TCK Art. 103 (sexual abuse) or TCK Art. 104 (sexual intercourse with a minor) (File 16, 32, 43).

Classification errors were observed based on the nature of the act, distinguishing between molestation (TCK Art. 103/1, second sentence) (File 64, 110) and simple sexual abuse (TCK Art. 103/1, first sentence) (File 15, 21, 25, 30, 36, 39, 48, 59, 64, 67, 69, 72, 74, 78, 90, 91, 95, 97, 115, 124, 131, 133). Classification errors were also identified based on the nature of contact, distinguishing between simple sexual abuse and aggravated sexual abuse (TCK Art. 103/2) (File 15, 16, 28, 36, 38, 43, 47, 51, 53, 67, 73, 75, 77, 83, 90, 92, 103, 115, 131, 133).

The existence of aggravating circumstances such as force, threat, deceit (TCK Art. 103/4) or deprivation of liberty for sexual purposes (TCK Art. 109) generally relies on the victim's statement. There are discrepancies in Yargıtay decisions regarding whether the crime of deprivation of liberty committed during or for the purpose of sexual abuse should be punished separately (File 9, 13, 25, 31, 33, 73, 75, 76, 91, 92, 94, 98, 133).

Procedural Barriers in the Trial Process

The representation of minors or victims with limited legal capacity due to intellectual disability in trials is crucial. In situations where the parent is the defendant, does not complain, or there is a conflict of interest, a curator/guardian must be appointed for the victim under the Turkish Civil Code (TMK) (File 3). Failure to appoint a curator/guardian in a timely manner, improper

notification to the appointed representative, or failure to ensure their participation in the case are procedural errors considered grounds for reversal by the Yargıtay (File 3, 24, 45, 49, 84, 101, 108). Cases were observed to be dismissed due to the expiration of the statute of limitations under the TCK because the victim reported the incident late due to factors such as age, intellectual status, trauma, fear, or coercion (File 91, 106). Instances were identified where courts issued verdicts on acts not described or charges not included in the indictment (violation of CMK Art. 225). This situation violates the principle of "adherence to the indictment" and the defendant's right to defense (File 90, 95).

Discussion

This analysis of 140 Yargıtay cases concerning sexual abuse victims with intellectual disabilities reveals significant systemic challenges within Turkish criminal trials. A primary issue is the judiciary's profound reliance on Forensic Medicine Institute (ATK) reports, often granting them near-absolute authority on critical matters like victim comprehension, resistance capacity, statement credibility, and even the external observability of disability. This reliance raises concerns about the delegation of core judicial functions to forensic experts, potentially limiting independent judicial assessment, especially when courts treat ATK's Upper Board as the final arbiter in cases of conflicting or inadequate reports (Beran, 2009; Ryan & Westera, 2018; Costanzo et al., 2024). Frequent contradictions between reports, necessitating further referrals to ATK, not only prolong proceedings and risk retraumatization but also highlight issues in evaluation standardization. Furthermore, the ambiguity surrounding the criteria for assessing the external observability of intellectual disability—a subjective matter noted in literature (Cummins et al., 2011; Davison et al., 2022)—creates potential for misapplying the *in dubio pro reo* principle regarding the defendant's awareness (TCK Art. 30). Establishing causation for psychological harm also remains a significant hurdle in complex cases.

Beyond forensic evidence, judicial practice demonstrates a critical dilemma in evaluating statements from victims with intellectual disabilities. Although victim testimony is central (Lyon et al., 2012; Bacaksız & Bayzit, 2019; Swardhyana & Irawan, 2022), inconsistencies or changes in narrative—potentially attributable to trauma or cognitive factors (Otgaar et al., 2017; Ahmed Abdelaziz, 2025)—are frequently used to undermine credibility, leading to acquittals or reversals. This suggests insufficient judicial awareness of how disability and trauma affect testimony. Significant difficulties also persist in proving aggravated sexual assault (TCK

Art. 103/2) without medical evidence, often resulting in disproportionately lenient outcomes. Critical errors and inconsistencies occur in legal classification, notably the failure to prioritize TCK Art. 103 (recognizing lack of capacity) over TCK Art. 104 for victims aged 15-18 unable to consent due to ID (Candan & Candan, 2022), alongside other classification errors and inconsistent application of related offenses like TCK Art. 109. Lastly, procedural failures, including inadequate legal representation, statutes of limitations expiring due to delayed reporting (Toler, 2024), and violations of the indictment principle (CMK Art. 225), constitute significant barriers to accessing justice and ensuring fair trials for this vulnerable group.

Ek A: Kodlama Anahtarı/Analiz Çerçevesi**I. Dosya Kimlik Bilgileri ve Genel Özellikler**

- * Dosya No:
- * Yargıtay Ceza Dairesi:
- * Karar Tarihi:
- * İncelenen Anahtar Kelimelerle İlişkisi: (“cinsel istismar”, “zekâ”)

II. Mağdura İlişkin Temel Bilgiler

- * Mağdurun Yaşı:
- * Mağdurun Cinsiyeti:
- * Zekâ Geriliği Durumu:
- * Zekâ geriliği iddiasının ortaya konuluş şekli
- * Zekâ geriliği düzeyi
- * Zekâ geriliğine eşlik eden başka bir engel durumu (varsâ):

III. Adli Tıp Kurumu (ATK) Raporlarına İlişkin Değişkenler

- * ATK Raporunun İstendiği Kurum/Kurullar:
- * ATK Raporunun Tarihi/Sırası:
- * ATK Raporunda Değerlendirilen Hususlar:
- * Fiilin hukuki anlam ve sonuçlarını kavrama yeteneği
- * Fiile ruhsal yönden direnme yeteneği
- * Beyanlarının itibara uygunluğu / Beyan güvenirliği
- * Zekâ geriliğinin hekim olmayanlarca (sanık tarafından) anlaşılıp anlaşılamayacağı
- * Olay nedeniyle ruh sağlığının bozulup bozulmadığı
- * Raporlar Arası Çelişki:
- * Çelişki var mı?
- * Çelişki hangi kurum/raporlar arasında?
- * Çelişkinin giderilmesi için yapılan işlem
- * Raporların Yeterliliği ve Gerekçesi:
- * Mahkeme/Yargıtay tarafından raporun yetersiz/gerekçesiz bulunduğu durumlar
- * Yetersizlik/gerekçesizlik nedenleri

IV. Mağdur Beyanlarının Değerlendirilmesine İlişkin Değişkenler

- * Mağdur Beyanının Delil Niteliği
- * Beyanlarda Tutarlılık Durumu:
- * Beyanlarda çelişki, tutarsızlık veya zamanla değişiklik var mı?
- * Bu durumun Yargıtay kararında değerlendirilme şekli
- * Şikâyetten Vazgeçme Durumu:
- * Mağdur şikâyetinden vazgeçmiş mi?
- * Vazgeçmenin hukuki geçerliliği ve mağdurun iradesinin sorgulanma durumu

V. Suçun İspatı ve Hukuki Nitelendirilmesine İlişkin Değişkenler

- * İsnat Edilen Suç/Suçlar (TCK Maddeleri):
- * Suçun Vasıflandırılmasına İlişkin Sorunlar:
- * TCK m.103 ve TCK m.104 ayrımı
- * Eylemin niteliğine göre vasıflandırma hataları
- * Temasın niteliğine göre vasıflandırma hataları
- * Suçun İspatında Yaşanan Zorluklar:
- * Özellikle TCK m.103/2 için kesin tıbbi bulgu eksikliği ve bunun Yargıtay kararına etkisi
- * Nitelikli Haller:
- * Nitelikli hallerin varlığının dayanağı
- * Kişiyi hürriyetinden yoksun kılma suçunun ayrıca cezalandırılıp cezalandırılmadığına dair Yargıtay yaklaşımı
- * Sanığın Savunmaları ve Değerlendirilmesi:
- * Sanığın mağdurun zekâ geriliği durumunu bilip bilmediği/bilebilecek durumda olup olmadığı

VI. Yargılama Sürecindeki Usuli Engellere İlişkin Değişkenler

- * Mağdurun Yasal Temsili:
- * Vasi/kayım atanmış mı? Atanma gerekçesi
- * Temsilde usul hataları ve Yargıtay’ın bozma nedeni olup olmadığı
- * Zamanaşımı:
- * Dava zamanaşımı nedeniyle düşme kararı var mı?
- * Geç bildirimde etkili faktörler
- * İddianame ile Bağlılık İlkesi:
- * İddianamede tarif edilmeyen fiillerden/gösterilmeyen suçlardan hüküm kurulmuş mu?
- * Bu durumun Yargıtay kararındaki yansımaları

VII. Yargıtay Kararının Sonucu ve Gerekçesi

- * Yargıtay Kararı:
- * Kararın Ana Gerekçesi/Gerekçeleri:
- * Özellikle zekâ geriliği ve buna bağlı hukuki değerlendirmelerle ilgili gerekçeler
- * Sık rastlanan bozma nedenleri

VIII. Diğer Notlar ve Gözlemler

- * Dosyaya özgü dikkat çeken diğer önemli hususlar.