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Research Article

EXAMPLE OF GOOD PRACTICE OF VICTIM RIGHTS: COMPARISON OF STUDIES IN CANADA AND TURKEY

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ABSTRACT

Victim rights is a concept that has been at the agenda in recent years. This issue, which first came as a sub-title of criminology, then came to life in many developed countries, including the United States and Canada, and important steps were taken about it. All cases of violence against children, including sexual abuse, especially against women and to support the needs of victims in cases of domestic violence, especially psychological, medical and legal aspects to be given to victims who have been assaulted in healing process is very important. Organizations in the developed countries are paying attention to this subject matter.

In this study, the practices in Canada that have done important work on Victim Rights will be described as examples of good practice and the situation in our country will be evaluated in terms of Victim Rights by comparing them with the studies in Turkey.

Keywords: *Victim rights, Child monitoring centers, Help Lines*

Introduction

The concept of victim is defined as someone who has been wronged. Victimization resulting from crime and unlawful acts is the subject of criminal law, while victimization resulting from contract constitutes the subject of private law. Although victims of crime come to mind first when they are called victims, many types of victims such as victims of honor killings, victims of natural disasters, victims of credit, victims of contract can be mentioned.

Victim rights gained importance in the world after the 1980s. Our country has started to give the necessary importance to the victims of crime since the 2000s. (TBMM, 2014)

The concept of victim in our legislation was first made in the supervision services regulation published in the Official Gazette No. 28578 dated March 5, 2013, which is a secondary regulation. (Ministry of Justice, Victim Rights Department)

In paragraph (p) of the first paragraph of Article 4 of the regulation on definitions, the victim is defined as “the person who needs support due to the physical, emotional or material consequences of the crime committed against him or one of his family members in the first degree”. (Yönetmelik)

“Dated 40/34 of 29 November 1985, In United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” a victim is defined as: “because of actions that violate the criminal law in force in the member states; anybody who suffers a loss of fundamental rights as well as economic losses individually or collectively; physically, mentally, or emotionally”. (Decl. of basic principles- 20)

In the Recommendation No. 8 of the Council of Europe Committee of Ministers on assistance to victims of crime, the victim is defined as “a real person who has suffered damage including physical or mental injury, emotional pain or economic loss due to acts and omissions resulting in a violation of the criminal law of a member state”. (direct. 2012 european parl.-er.22)

When the old criminal law period is examined, “Code of Hammurabi”, one of the most important regulations known as the sanctions for revenge, as well as the elimination of the victim's grievance was given importance, and also the provisions for compensation of the damages arising from the crime by the state if the perpetrator is not known. (Holstein 1990)

In Criminal Procedure Law, all attention was focused on the defendant, which resulted in the disregard of the rights of the victim and the victim. In the period from the 1960s to the present day, the role of the victim, considered to be the neglected and forgotten side in criminal procedure, began to change. (Polat_Kriminoloji)

In the evaluation of criminal laws, penalties for crimes have been the main focus and all work has been carried out on the subject matter over the years. However, in recent years it has come to be accepted by all that the concept of crime and criminality alone is not enough and that the victim must be studied.(strang 2002)

Victims of crime are no longer the forgotten or neglected side of criminal proceedings. The fact that criminal prosecution systems are more victim-centred has essentially been achieved in two ways. The first is to give victims of crime the right to appearance in hearing, to express themselves and to take this into account during reaching a verdict process of the criminal trial; the second is to start providing programmes and services that compensate victims for their damages. (wemmers 2008)

In this study, the practices in Canada that have taken very important steps on the rights of victims will be explained, and then the practices in Turkey will be given and the things to be done in our country will be evaluated in the light of the examples of good practices.

Canada

The Canadian Victim Rights Act came into force on July 23, 2015. It states that crime has a detrimental effect on victims and society, that victims of crime and their families deserve to be treated with kindness, compassion and respect, including respect for their dignity, that it is important to consider the rights of victims throughout the criminal justice system, that victims of crime have “rights guaranteed under the Canadian Charter of Rights and Freedoms”. (manikis 2015)

In Canada, a victim is referred to as a “person who has suffered physical or emotional harm, property damage or economic loss due to a crime”. Prominent victims' rights in Canada are the rights to obtain information, protection, participation and compensation. (Canadian resource center).

- 1. Right to information:** The right to information is one of the most important rights. Especially when the victim has the right to information on the status of the crime against himself on the criminal justice system, their rights to be complaining about crime developing on any situation related to the status and results of the investigation and also has the right to obtain information about the steps that have arrived at the proceedings with. The right to information about the proceedings and proceedings to be held against the perpetrator in accordance with the Penal Code in the court in the following stages, especially in the case of investigations relating to the disclosure of the term and conditions of the prisoner's parole, and in the case of the absence of criminal responsibility is one of the most natural rights of the victim. (Mağdur Hakları Dairesi-Canada)
- 2. Right to protection:** One of the most important issues for every victim who has been subjected to crime is that they can be protected and feel safe. It is one of the most important rights of the victim to demand that the security of the victim be ensured by the competent authorities, especially against the attacker. Ensuring privacy and confidentiality is also very important. He/She also has the right to request the protection of his identity and to request of witnesses to be listened to in criminal complaints.
- 3. Right to participate:** It is very important that the victim be able to express his / her opinion and that this right is indispensable for the rights of the victim. Every victim has the right to inform the authorities in the criminal justice system of his or her opinion regarding acts affecting his or her rights and to demand that his or her views be taken into account.
- 4. Right to compensation:** Every victim has the right to claim compensation from the perpetrator for the crime in court. It is observed that persons convicted of the crimes specified in the law have a responsibility for compensation against every victim who has suffered emotional distress or bodily harm because of the crime they have committed. In addition, in cases of domestic violence, the victim is entitled to compensation for physical, sexual or emotional abuse and violence that he or she has experienced.

When we look at the implementation of these rights granted to the victim in Canadian law, it is seen that organizations of victim support offices are prominent. These victim support offices provide services specifically for victims of crimes such as domestic violence, sexual assault and hate crime, as well as children. (Canadian crime victim foundation)

The offices of support for victims of crime have two primary tasks. The first of these is the provision of information, protection and support services to victims within the scope of the rights mentioned above. The second is to support the promotion of Victim Rights in all parts of society and to hold meetings and activities to ensure this. In particular, the main objective is to introduce the Victim/Witness Assistance Program (V/WAP).

In these support offices, professionals, especially social workers, are employed, but they work in closely cooperation with non-governmental organizations.

Employees in these offices and programs need to have knowledge of issues related to victims of crime, particularly in cases related to domestic violence, sexual assault and child

abuse, murder, death, and legislation governing court proceedings, protocols and procedures. They also need to be equipped with risk measurement and safety planning and trauma crisis management. There are 12 sub-offices focused on providing different target groups and different services. These offices are separated by their time, staff structure and services.

The offices were formed as follows;

1. *Victim Crisis Assistance Program (VCAO)*: It is available 24/7 in Ontario and there is also an Alo Distress Line. Its employees are of both staffed and volunteers. Early intervention is being carried out for victims at this centre. The working model of the center is to provide short-term support services to the victim, witness or victim's relatives by going to the crime scene with information from the police, as well as to direct them to relevant NGOs for long-term assistance. (Mağdur Hakları DAiresi-kanada)
2. *Sexual Assault Centers (SACs)*: These centers provide services to victims of sexual assault over the age of 16. In this context, to accompany the victim to court, hospital or police station supportive peer counselling, sexual violence training for professionals and the public, legal advice, information and guidance services are provided, they also offer 24-hour Crisis Line.
3. *The Internet Child Abuse Counselling Programme* is a short-term counselling programme for children and young victims who have been abused through the internet and for family members affected by this crime.
4. *Local Victim Services* include a variety of culturally sensitive services offered by indigenous organisations and the First Nations, Inuit and Metis communities, adapted to meet the needs of Indigenous crime victims and their families.
5. *Family Court Support Program (FCSWP)* if victims of domestic violence are at risk of further violence, this program provides support services to the family court during the proceedings. It is aimed to make it easier for victims to understand the judicial process in the family court through support staff within the family court. It provides the services of informing family court support staff about the family court process and directing them to related NGOs, making security planning, including security planning related to participation in courts, and making needs assessment.
6. *Partner Assault Intervention Program (PAR)* for individuals who attack their partners, a 12-session Group Training/Guidance Program is provided by court order. A separate component of the programme provides victims with assistance in security planning, referral to community resources and information on the progress made by those who commit the crime.
7. *Child Victim Witness Program (CVWP)* This program is a program that works within the framework of Victim-Witness Assistance Program. Victim and witness children under the age of 18 are provided with support to reduce the trauma they have experienced during the court process. Information and support services are provided to children, ensuring that they are as little affected by the judicial process as possible. Under this program prepared by the children's court process and in order to introduce the process to them a booklet titled "What are you doing in the court?" was prepared. For the same purpose, child-friendly environments are tried to be created in court buildings.
8. *Rapid Response Program for Victims (VQRP)* This program provides emergency assistance to victims of violent crime for damages that cannot be covered from any source. The program will include: to ensure the safety of the victims to meet emergency expenditures, household repairs to be taken under the emergency law

- immediately, safe housing options for those who have emergency accommodation / dining and diapers, personal care items, such as clothing, replacement of spectacles / contact lenses damaged or destroyed during a crime, paying the transportation fee for a family member who goes to identify the victim who died as a result of a murder or a victim seriously injured, the removal of hate crime graffiti from the property and / or vehicle with crime scene cleaning requiring special services, contribution to funeral expenses to help the family of the person who died as a result of a murder.
9. *Fragile Victims and Their Families Fund (VVFF)* This program aims to provide assistance to relatives of victims who have to come from other places to support the victim. In this context, victims of violence are also assisted. Financial assistance, mainly for travel costs, is being provided to ensure that the families of those who have died as a result of the murder are more able to participate in the judicial process.
 10. *Financial Assistance Program for the Families of Those who die as a Result of Murder (FAFHV)* This program provides assistance up to \$10,000 per murder to the eligible families and spouses/partners whose relatives die as a result of murder.
 11. *Criminal Injuries Compensation Board (CICB)*: It is an independent panel of judges established under the law on compensation to victims of crime. It assesses the payment of financial compensation to the victims of violent crimes and to the families of those who died as a result of the act. In this context, compensation can be paid to victims for pain and suffering, loss of income, treatment costs, funeral costs, and other costs associated with being a victim of crime.
 12. *Legal Aid Services for LGBTQ Clients*: Client-oriented legal aid services are offered to LGBTQ individuals. Giving the client the assurance that his/her privacy will be protected is at the forefront of keeping his / her sexual orientation / identity confidential. The client or his conduct should not be prosecuted, his individuality should be respected. HIV-related issues should be addressed sensitively.

TURKEY

Victims ' rights were first raised in our country in 2005. The Criminal Procedure Code published that year included articles on victims' rights. (Code of Penal Procedure, 1929)

One of the most striking tasks is the right to request a lawyer from the bar if the victim does not have a lawyer. This applies only in cases requiring sentences of more than 5 years and for sexual assault offences. (Code of Penal Procedure, 1929)

Another notable practice for victims is the child monitoring centres (ÇİM), which became operational in 2010. In recent years, these centers have been implemented to provide a multidisciplinary approach to the escalating child abuse cases and to protect the child from trauma as much as possible. (UNDP Turkey, 2014)

In Article 103 of the Turkish Penal Code No. 5237, “sexual abuse of children” and in Article 104, “sexual intercourse with a minor” crimes are regulated. The frequency of sexual abuse of children varies between 10-44%. But most of these incidents remain hidden, with only 5-10% occurring revealed. (Turkish Penal Code, 2004)

Organizations called “Child Monitoring Center (ÇİM)” have been implemented in order to protect the sexually abused children from secondary abuse within the system. The purpose of the foundation of ÇİM is to prevent secondary trauma of the child who has been sexually abused, to reduce the effects of trauma on the child, to ensure that all judicial, medical and social procedures are performed in one center at a time, to determine risk by consulting with the family, to give counseling, to provide shelter, protection and nutrition needs of the child until a convenient environment is provided. Within the scope of activities to effectively combat

child abuse; “Child Monitoring Center” (ÇİM) was established to increase the protection of children against sexual assaults and minimize their harassment. (Poole,1998)

Pediatricians, psychologists, psychological counselors, social workers, Child Development Specialists and nurses work in ÇİM; forensic specialists and child psychiatrists also provide counseling services. Forensic interview, Family interview, forensic examination and psychiatric evaluation procedures are carried out in ÇİM centers. Aiming to eliminate secondary attacking forensic interviews about the incident, receiving information from the children, fault detection or for clarification, each type of maltreatment the child faced with who witnessed to or suspected to be abused by preparing the rest of the report based on the received information and the record of the negotiations is the implementation of the organization.(Polat, 2007)

Family meetings are about gathering information about the incident from the child and about family life and obtaining information about the child event-related response and in the attitudes of the solution evaluation, needs to identify appropriate institutions and organizations to be directed to, the family to be informed about the judicial process, keeping informed about operations carried out on the need to demonstrate the attitudes and behaviors to the child, meeting report and interviews are laid out.(Krahenbuhl, 2006)

A forensic examination is the examination in which the entire body, including the genitals, is identified in detail, the necessary evidence and findings are collected, recorded when necessary and presented as a report.

The victim child will be transported to ÇİM by a civilian team and a civilian vehicle without any interviews by law enforcement agencies. If the received statement has been done to ÇİM, the preliminary interview is obtained as a result of suspected child sexual abuse on the observation that in the direction of a psychiatric examination without forensic or any situations that require emergency response when the situation immediately reported to the Public Prosecutor on duty and the legal process will be started.

Children admitted or brought to the center are welcomed by a trained nurse, psychologist, psychological counselor, child development or social worker, and they are taken to pre-interview in the waiting area arranged for the children to undergo the preparation process, and during this time, registration procedures are made urgently. The child's medical care during his / her stay in ÇİM is provided by the hospital to which ÇİM is affiliated, and the real needs are met by the provincial and District Organization of the Ministry of Family and Social Policies.

When the child is in the centre, it is possible to have a relative with him so as not to violate the confidentiality of the investigation. Except for those who are suspected of abusing or abusing the child, family interviews are conducted by expert staff and necessary counselling and guidance services are provided to their family and relatives. In accordance with the orders and instructions of the public prosecutor, after the declaration of the victim child is taken, an external or internal body examination is performed on the body by obtaining the consent of the victim or his / her guardian in ÇİM as stipulated in the relevant legislation, samples are taken from his / her body, psychiatric examination is carried out and images of physical findings are recorded.

The declaration of the victim child shall be taken in accordance with the relevant legislation by means of the public prosecutor, an expert who is employed in ÇİM and trained on this subject, in a mirrored room, by making audio and video recording. Maximum attention will be paid to the victim's privacy during this whole process. After the interviews and examinations are completed, all the information and documents obtained are made into a report

and sent to the attorney general of the Republic together with audio and video recordings. (Ministry of Health)

It should be noted that this service provided for the abused child is a turning point for Turkey in terms of Victim Rights. But looking at the empty side of the cup, it appears that there has been no service to date to the very different fragile groups, such as women, the elderly, refugees, ethnic, LBGTQ groups, that we have seen on the Canadian application. In our country, which has a large floor area and a large population in the second dimension, the presence of only 4 victim service centers is also a problem in terms of not being able to take the service.

In order to provide psychological, sociological and legal counselling services to the victims after the crime, to improve the rights of the victims in general and to remedy the harm of the victims, a victim rights law must be adopted in its own right. The Department of Victim Rights established under the Ministry of Justice carries out studies on the issue. (Ministry of Justice, Victim Rights Department)

In the second paragraph of Article 209 of the Code of Criminal Procedure, it is arranged that the court may decide to read documents containing personal data belonging to the accused or the victim in a closed session if they explicitly request it. However, there is a lack of regulation regarding the retention of the victim's personal information from the accused. For this reason, there should be legal regulation regarding the withholding of the victim's personal information, especially address information, from the defendant. (Code of Penal Procedure, 1929)

If the victim does not know the rights granted to him, it will not be possible for him to benefit from these rights and these rights will have no meaning. It is therefore of great importance that the victim is informed about her rights. These brochures should also be in Turkish and other languages.

As the risk of similar crimes is higher than that of other individuals after the release of persons who commit sexual assault or sexual abuse, it would be appropriate to register them in a special register and make this register open to the administrators of institutions where schools and dormitories are collectively located and to law enforcement officials in that region.

It is understood that statistical data has been obtained from the UYAP system since 2009, but since the UYAP system cannot obtain healthy data on the victims, statistical information about the victims of crime and those who have been harmed by crime cannot be presented. In our country, the lack of records regarding the number of suspects/defendants makes it difficult to determine the number of victims, as opposed to keeping records about the victims in a healthy way. For this reason, records regarding victims should be kept in a healthy manner in the UYAP system. (Ministry of Justice, Victim Rights Department)

When reporting on victims in the media, it should be done in a way that does not harm the dignity and reputation of the victims and care should be taken to be sensitive to the victim. In this context, it is of great importance that the identity of the victim should be kept confidential and that the photographs and images should not be published. This is particularly important in sexual and violent crimes. The danger that the constant display of crimes committed against the victim in the media can make the crime commonplace and create insensitivity to the victim should not be forgotten. Mobese recordings, especially broadcast after the main news bulletin on television channels, cause the victim of bodily harm to experience the incident again and again and the psychology of the relatives of the victims to be affected badly if the victim dies. In order to eliminate these secondary grievances, legislation must be made to prevent the publication of mobese records, particularly those relating to crimes that bring bodily harm.

A “ Victim Hotline” should be established, which can be reached by victims in emergency situations and provides services only for victims. There should also be different practices and media channels where victims can be informed about their rights.

The Directorate of Judicial Support and Victim Services, which supports vulnerable groups such as women, children and the elderly who are subjected to violence and sexual abuse, operates in Istanbul, Izmir, Adana and Samsun.

These centres aim to provide information to criminal victims about judicial processes. It is also aimed to assess children and women who are victims of domestic violence who are monitored at a high level in crime.

The Centers will provide professional support according to the needs of the victim through individual evaluation process, Family Support Plan and case management techniques.

The draft law on the right of victims has been prepared as 35 articles and is awaiting enactment in Parliament.

As a result, when we look at practices in countries such as Canada, it is seen that the individual is given all possible support and expertise in every case and every stage. In our country, the rights of victims, which are just beginning and pioneered by the Ministry of Justice, seem to be getting better every day.

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