

ACCESS TO JUSTICE FOR CHILDREN: TURKEY

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant international instruments in the national legal system?

The Republic of Turkey signed the CRC on 14 September 1990 and ratified it with the decision of the Council of Ministers dated 9 December 1994, No. 4058.¹ International treaties “duly put into effect”, including the CRC, have the force of national law.²

B. Does the CRC take precedence over national law?

International treaties on the subject of fundamental rights and freedoms, including the CRC, prevail over conflicting provisions in Turkish law.³

C. Has the CRC been incorporated into national law?

The CRC was automatically incorporated into national law following ratification (see part I.A). However, Turkey maintains reservations to Articles 17 (access to appropriate information), 29 (aims of education) and 30 (children of minorities or indigenous populations) of the CRC, which it will interpret and apply “according to the letter and the spirit of the Constitution of the Republic of Turkey and those of the Treaty of Lausanne of 24 July 1923”.⁴

The Child Protection Law, in force since 2005, is the only Turkish law that explicitly references the CRC’s general principles and umbrella rights. However, these principles and rights are not always formulated in the same way as under the Convention.

In addition, a small number of other laws have sought to introduce the general principles and certain provisions of the CRC (see part V below). However, a 2011 study prepared by human rights lawyers at Bilgi University and the Turkish Bar Association reveals inconsistencies between Turkish law and the CRC, finding that 12 clauses in the Constitution and 95 national laws would need to be changed to be brought into compliance with the CRC.⁵

D. Can the CRC be directly enforced in the courts?

¹ International Children’s Center, UNICEF Turkey and Lawyers Network for Children contributed to this report. Comments on this report provided by the Government of Turkey, October 2015.

² Constitution of Turkey, Article 90.

³ Ibid.

⁴ UN Treaty Collection, ‘Convention on the Rights of the Child’, available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en.

⁵ Tarhanlı, T., Gül, İ. I., İnceoğlu, A. A., Tokuzlu, L. B., Başalp, N., Karan, U., et al. (2011). Birleşmiş Milletlerin Çocuk Haklarına dair Sözleşmesi ile Türk Hukuk Mevzuatı Karşılaştırmalı Analizi. Ankara: UNICEF. (Comparative Analysis of UNCRC and Turkish Laws). Retrieved from <http://www.unicef.org.tr/files/bilgimerkezi/doc/yoneticiozeti.pdf> (16 March 2015).

The CRC is enforceable in domestic courts as it is possible to bring a case to challenge any law as incompatible with an international human rights treaty, including the CRC.⁶

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

There are decisions of the Supreme Court of Appeals (*Yargıtay*) and the Constitutional Court referring to the CRC. However, the majority of these decisions are about parental custody. To give an example, the 2nd Civil Chamber of the Supreme Court of Appeals has a steady precedent for overruling decisions of courts of first instance on the grounds that the courts of first instance did not take into account the will of the child when deciding on the parental custody of the child, citing the corresponding provision in the CRC.⁷ There are also decisions of the Supreme Court of Appeals referencing the CRC on the grounds that the best interests of the child shall be the paramount consideration when deciding on the parental custody of the child.⁸

The Supreme Court of Appeals has referred to the CRC in cases other than parental custody cases. For example, a recent Grand Chamber Decision of the Supreme Court of Appeals about child abduction referenced both the CRC and the Hague Convention on the Civil Aspects of International Child Abduction.⁹ In decisions No. 2012/7546E and 2012/1601K, the Supreme Court of Appeals referred to the CRC in cases concerning article 40 on protective measures for children.

The Constitutional Court referred to Articles 28 and 32 of the CRC about children's right to education in its decision dated 20 September 2012.¹⁰

The Supreme Administrative Court has made a few decisions citing the CRC. See, for example, No. 2012/617 concerning article 16 of the CRC on the right to privacy and respect for family life.

There is a limited number of decisions from local courts citing the CRC.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

The Turkish Civil Code sets the general age of majority at 18, at which point a person has full capacity to act, including before national courts.¹¹ There are some circumstances when majority is achieved before the age of 18, such as upon marriage. Regarding civil law cases, children must bring cases in domestic courts to challenge violations of their rights with the assistance of their representatives. The exceptions to this rule can be

⁶ Constitution of Turkey, Article 90(4).

⁷ Decisions of the 2nd Chamber of the Supreme Court of Appeals No E.2004/3590 and K. 2004/4216 dated 5 April 2004; No E.2008/389 and K. 2009/4250 dated 10 March 2009 and No. E. 2014/2973 and K.2014/5025 dated 10 March 2014.

⁸ Decisions of the 2nd Civil Chamber of the Supreme Court of Appeals, dated 20 February 2007; Decision Nos. E. 2007/2045 and K. 2007/2362.

⁹ Decision of the Grand Chamber of Supreme Court of Appeals, dated 11 November 2013; Decision No. E 2013/2-1772 and K. 2013/1557

¹⁰ Decision of the Constitutional Court, dated 20 September 2012; Decision No. E. 2012/65 K. 2012/128.

¹¹ Turkish Civil Code, Article 11.

found under part II.B below.

A child whose rights has been violated by an administrative act may file an action to annul the act in an administrative court with the assistance of his/her representative.

In addition, a child of any age who has been a victim of crime may request that the public prosecutor file a criminal case. Some crimes require a criminal complaint to be made by the child or his/her parent or legal guardian.¹² Adults who witness a child being victimised by a crime are legally obliged to report the crime to the public prosecutor and can be punished for not doing so, especially if the witness is a public servant, a teacher, a doctor, or a person in a similar profession.¹³ Victims can intervene in criminal proceedings,¹⁴ and child victims wishing to do so are automatically appointed representatives.¹⁵

Any person, including a child, who is arrested or detained must be brought before a judge within 48 hours.¹⁶ Any person, including a child, whose liberties are restricted for any reason can apply to the court for their immediate release if their detention is unlawful. He or she may report their situation to a prosecutor as a crime against liberty under the Turkish Criminal Code.¹⁷

Any person, including a child, may directly challenge a violation of their rights set forth in the European Convention on Human Rights (ECHR) before the Turkish Constitutional Court after exhausting other administrative and judicial remedies.¹⁸ Representatives of the children may apply to the Constitutional Court on their behalf.

Judicial and administrative authorities, law enforcement officers, health and educational institutions, and NGOs are obliged to report a child in need of protection to the General Directorate of Child Services. In addition, people who are responsible for the care of the child may apply to the General Directorate of Child Services with a view to putting the child under protection. The General Directorate of Child Services will carry out an investigation regarding the events reported and apply to a juvenile judge for protective or supportive measures to be taken.

B. If so, are children of any age permitted to bring these cases by themselves in their own name/on their own behalf, or must the cases be brought by or with the assistance of a representative?

Under the Turkish Civil Code, it is possible for children aged 15 and over to attain majority and act as full legal adults subject to a court decision.¹⁹ This would allow them to make legal transactions without permission of a parent or legal guardian, including bringing a case before a civil court.

¹² For example, see Criminal Code, Articles 86/2 (intentional injury), 89/5 (negligent injury), 102 (sexual assault), 104/1 (sexual intercourse without violence or threat or manipulation with children over 15), 105 (sexual harassment), 116/1, 117/1, 123, 125-131, 139, 144, 146, 151, 155, 156, 159, 160.

¹³ Turkish Penal Code, Articles 278 to 280.

¹⁴ Turkish Criminal Procedure Law, Article 234 (2).

¹⁵ Ibid., Article 234.

¹⁶ Constitution of Turkey, Article 19.

¹⁷ Turkish Criminal Code, Chapter 7.

¹⁸ Constitution of Turkey, Article 148.

¹⁹ Turkish Civil Code, Article 12.

There are a number of more specific instances in which children who have the “ability to distinguish”²⁰ would be able to bring a case:²¹

- Legally, children do not need the consent of their legal representatives in order to pursue uncovered earnings, enforce rights that are strictly personal²² or file lawsuits for non-pecuniary damages; and
- Children who have the ability to distinguish who are given permission to carry out the activities of a profession or art may file lawsuits regarding the said profession or art.²³ Children who have the ability to distinguish may file lawsuits regarding the properties provided to them by their parents in order for them to carry out activities of a profession or art, and they may file lawsuits regarding properties remaining at their disposal, including alimonies.²⁴ If a child is entitled to file a lawsuit, he/she can designate a lawyer or choose to be represented by his/her legal representative before the courts.²⁵ Aside from these circumstances, children, even when they have the ability to distinguish, are required to have parental consent to file a lawsuit.

C. In the case of infants and young children, how would cases typically be brought?

Young children will usually be represented by their parents. Where the legal representative of a child is his/her parent or guardian, no other legal representative will be appointed unless the judge specifically orders otherwise.²⁶ Where the parent or guardian is the legal representative, the court can appoint a third party representative if there is a conflict of interests between the parent and the child.²⁷

D. Would children or their representatives be eligible to receive free or subsidised legal assistance in bringing these kinds of cases?

In criminal cases, the appointment of legal counsel for children as suspects, defendants and victims is mandatory.²⁸

The legal aid system proposed in the Civil Procedure Law is applicable in civil and administrative cases. Individuals must meet certain conditions in order to receive legal aid (see part IV.B below).

E. Are there any conditions or limits on children or chosen legal representatives bringing cases (e.g. would a child’s parents or guardian have to agree to a case being brought)?

The permission of a parent or legal guardian is generally required for children to proceed with a court case.²⁹ This permission is not required for criminal cases, nor

²⁰ The “ability to distinguish” is defined in Article 13 of the Turkish Civil Code as the capacity to act rationally.

²¹ Turkish Civil Code, Article 13.

²² Ibid., Article 16.

²³ Ibid., Articles 359 and 455.

²⁴ Ibid.

²⁵ Turkish Civil Procedure Law, Article 71.

²⁶ Turkish Civil Code, Articles 335 and 342.

²⁷ Ibid., Article 376.

²⁸ Turkish Criminal Procedure Law, Articles 150(2) and 234(2).

²⁹ Turkish Civil Code, Article 342.

where the parent or guardian is the person alleged to have violated the child's rights,³⁰ as the prosecution will act even with respect to crimes that would require a complaint.

III. How can children's rights violations be challenged before national courts?

A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international instruments, how can a legal challenge be brought?

As mentioned above, any person may directly challenge violations of their fundamental rights contained in the Constitution and/or the ECHR before the Constitutional Court. This process can only be used to address violations of rights by public authorities, not individuals. In order to make an application, ordinary legal remedies must be exhausted.³¹

Alternatively, where a court hearing a case finds that the law or the decree having the force of law to be applied is unconstitutional, or is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, it will refer the case to the Constitutional Court for a decision as to the constitutionality of the provision.³²

The Supreme Court of Appeals may also review cases that involve violations of international instruments,³³ and the Supreme Court of Appeals would review similar administrative decisions.³⁴ However, these courts are seldom used for these purposes. In practice, recourse to the European Court of Human Rights has been the most widely used method for Turkish advocates to challenge rights violations (see below).

Ombudsman Institution

Any person, including a child, or organisation that is aware of a violation of children's rights by a public administrative body³⁵ may submit a complaint to the Ombudsman Institution.³⁶ Therefore, if the complaint is about a child rights issue, the applicant does not have to be a child who is directly affected. Applications must be kept confidential upon the request of applicants.³⁷ Created in 2012 with a specific ombudsman for women's and children's rights issues, disability and education, the Ombudsman Institution is responsible for examining and investigating complaints received by it about acts of public administrative bodies and giving recommendations to such bodies.³⁸ In 2014 the Ombudsman Institution created a website designed for children through which children can directly submit complaints.³⁹ Collective complaints are not defined in the Law on the Ombudsman, however joint complaints by NGOs may be possible.

³⁰ Turkish Criminal Procedure Law, Article 90.

³¹ Constitution of Turkey, Article 148

³² Ibid., Article 152.

³³ Ibid., Article 154.

³⁴ Ibid., Article 155.

³⁵ This includes the public administration under the central government, social security institutions, local administrations, affiliated administrations of local administrations, local administrative unions, public organisations, professional organisations with public institution status, and private legal entities providing public services: Law on the Ombudsman Institution, Law No. 6328 Official Gazette dated 29 June 2013 and no. 28338), Article 3(e), available at: http://www.ombudsman.gov.tr/en/custom_page-325-law.html.

³⁶ Ibid., Article 17.

³⁷ Ibid.

³⁸ However, the Ombudsman Institution cannot review acts of the President, acts concerning the execution of legislative or judicial power, or acts of the Turkish Armed Forces, which are purely of a military nature: Ibid., Article 5.

³⁹ www.kdkcocuk.gov.tr.

This has yet to be tested.

Before any application is filed with the Ombudsman Institution, the administrative remedies listed in the Administrative Jurisdiction Procedures Law⁴⁰ and the mandatory administrative remedies specified under special laws must be exhausted, though this requirement may be waived in cases where damage is difficult or impossible to compensate.⁴¹

National Human Rights Institution of Turkey

Any person, including a child, or organisation who claims to have suffered damages due to a human rights violation may apply to the National Human Rights Institution of Turkey for remedies. The Institution, established by Law No. 6332 of 2012,⁴² is entrusted with the duty of examining, investigating and evaluating all claims of human rights violations on the basis of individual applications or ex officio; notifying relevant persons, institutions and agencies of the results of such procedures and following up with them; and initiating legal action against persons identified to be responsible for confirmed violations. If deemed necessary, it will report the crime in the case to the public prosecutor. It is also designated with overseeing the Optional Protocol to the Convention Against Torture. Applications pertaining to disputes arising from private law matters between persons may not be evaluated as they cannot be addressed within the scope of human rights.⁴³

The website of the National Human Rights Institution of Turkey also lists other complaints mechanisms.⁴⁴

European Court of Human Rights

The European Court of Human Rights decides cases concerning alleged violations of any of the rights contained in the ECHR.⁴⁵ Any individual, group of individuals or an NGO who is a victim of a violation of one of these rights may submit a complaint to the Court,⁴⁶ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁷ Anonymous complaints are not permitted.⁴⁸ The procedural rules for the Court do not make any child-specific provisions. Persons may initially present an application themselves or through a representative, however, all applicants must be represented at hearings thereafter.⁴⁹ After examining the case, the Court renders a judgment which is binding on the State⁵⁰ and also has powers to award monetary compensation to the victims of human rights abuses.⁵¹

⁴⁰ Dated 6 January 1982, no. 2577.

⁴¹ Law on the Ombudsman Institution, Article 17.

⁴² <http://www.tihk.gov.tr/en/legislation/law-on-thri>.

⁴³ <http://www.tihk.gov.tr/en/application/>.

⁴⁴ <http://www.tihk.gov.tr/en/application/other-institutions-and-agencies-for-application>.

⁴⁵ European Convention for the Protection of Human Rights and Fundamental Freedoms (“European Convention on Human Rights”), 1950, Articles 19 and 32, available at:

http://www.echr.coe.int/Documents/convention_ENg.pdf.

⁴⁶ Ibid., Article 34.

⁴⁷ Ibid., Article 35.

⁴⁸ Ibid.

⁴⁹ Rules of Court, July 2014, Rule 36, available at: http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁵⁰ European Convention on Human Rights, Article 46.

⁵¹ Ibid., Article 41.

It is also worth noting that the Court has an established practice of referring to other international human rights instruments, including the CRC, as guides to interpretation of the European Convention.⁵²

B. What powers would courts have to review these violations, and what remedies could they offer?

Civil Courts may order that compensation be provided for monetary damages and they may impose some protective measures. The protective measures may be taken *ex officio* by the judge without a request.⁵³

In administrative proceedings, courts may annul the administrative act in violation of the applicant's rights and award compensation for the damages arising from the administrative act.⁵⁴

If the Constitutional Court finds that there has been a violation of rights, it can provide remedies to correct the violation. If the violation arises from a court decision, the case is referred back to the court whose decision is declared unconstitutional, for retrial. The Constitutional Court may rule upon compensation in favor of the applicant in the cases where there is no legal interest for retrial.⁵⁵

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Under Turkish legislation, it is not possible to file a case before civil or criminal courts without naming a specific victim.⁵⁶ In practice, the name of the complainant must be submitted to the Criminal Court in order to start a prosecution against a third party.

However, it is possible for hearings to be closed to the public or to prohibit examination of files by third parties.⁵⁷ In civil cases where a hearing is closed to the public, initials of the child's name are used to refer to the child, including in the minutes of the hearings and in the judgment. The same procedure applies to administrative cases filed upon violation of the rights of specific individuals. The minutes of the hearings closed to the public can only be accessed with the permission of the judge.⁵⁸ For criminal cases, unless otherwise provided, procedural actions in the investigation phase must be confidential.⁵⁹ The court may rule that the hearing be conducted partially or entirely in closed session.⁶⁰

D. Is any form of collective action or group litigation possible, with or without naming individual children?

⁵² *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, ECHR 2010; *Darren Omoregie and Others v. Norway*, no. 265/07, 31 July 2008.

⁵³ Turkish Civil Procedure Law, Article 406; Turkish Civil Code, Article 346.

⁵⁴ Turkish Administrative Procedure Law, Article 2.

⁵⁵ Constitution of Turkey, Article 152.

⁵⁶ Code of Civil Procedure, Article 119.

⁵⁷ Turkish Criminal Procedure Law, Articles 157 and 182; Turkish Civil Procedure Law No. 6100, Article 28.

⁵⁸ Regulation on the Turkish Civil Procedure Law, Article 42.

⁵⁹ Turkish Criminal Procedure Law, Article 157.

⁶⁰ *Ibid.*, Article 182.

In civil law, parties sharing mutual interests may jointly file a lawsuit where the grounds of the claims and the legal reasons are the same or similar to each other. However, the judge may order separation of the lawsuits if there is not enough evidence illustrating similarity of the grounds on which the claims are based. Although the lawsuit is jointly filed, the parties may act individually - they may appoint different representatives and may individually perform procedural requirements.⁶¹

In criminal proceedings, it is at the prosecutor's discretion whether to file a joint lawsuit. Two cases may be joined if there is a substantial connection between them – that is, if one person is suspected of committing several crimes or multiple people are suspected of committing one crime.⁶² The courts may also decide to join the lawsuits if a connection is considered to exist.

E. Are non-governmental organisations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Non-governmental organisations (NGOs) can initiate or intervene in a case, but the court has the discretion as to whether or not to allow the organisation to do so in any particular case.⁶³

In civil courts, the claimant must have a legal interest in the result of the lawsuit in order to file a case.⁶⁴ Also, a party with an interest can intervene in a case but the court has the discretion as to whether or not to allow this intervention. Legal persons - including NGOs - may also initiate or intervene in a case if it has a legal interest in the result.⁶⁵

In administrative courts, in terms of actions for annulment, there must be a violation of a legal interest to file a lawsuit against the administrative act.⁶⁶ A violation of one's interest is widely interpreted by the Council of State. Therefore, duly established legal persons may file actions for annulment if their interests are violated. The administrative courts follow the same criteria as applied in the civil courts regarding intervention.⁶⁷

In criminal courts, NGOs, such as bar associations, cannot be a party to a lawsuit for violations against children. However, NGOs may denounce the violation before the public prosecutor, and subsequently, the prosecutor will proceed with an investigation regarding the alleged violation regardless of the claims or requests of the parties.⁶⁸ In practice, bar associations act as denouncers, then a lawyer is legally appointed from the bar association to represent the child.⁶⁹

Also in cases concerning children, in practice the Ministry of Family and Social Policies, bar associations and related NGOs often apply to become an intervening party.

⁶¹ Turkish Civil Procedure Law, Articles 166 and 57.

⁶² Turkish Criminal Procedure Law, Articles 8-11.

⁶³ Turkish Civil Code, Articles 1 and 4.

⁶⁴ Turkish Civil Procedure Law; Article 114(1)(h).

⁶⁵ Ibid., Article 66.

⁶⁶ Turkish Administrative Procedure Law, Article 2.

⁶⁷ Decision of the 6th Chamber of Council of State No. E. 2003/5595 and K. 2004/179 dated 14 January 2004; Decision of the 14th Chamber of Council of State No. E. 2012/9094 and K. 2013/7096 dated 24 October 2013.

⁶⁸ Turkish Criminal Procedure Law, Article 161.

⁶⁹ Ibid., Article 150(2).

The court has the discretion as to whether or not to allow their request for intervention.⁷⁰

IV. Practical considerations

A. Venue: In what courts could a case be filed (e.g. civil, criminal, administrative, etc.)? What would the initial filing process entail?

Civil cases are filed before the courts of first instance. The Civil Procedure Law provides extensive guidance on how to initiate civil proceedings.

Cases regarding the annulment of an administrative act violating the rights of children shall be filed before Administrative Courts. Each petition should include the names, addresses and, if available, Turkish ID numbers of the applicant and their representatives, the subject of the complaint and their evidence.⁷¹

For child victims of crime and children in conflict with the law, lawsuits can be filed by anyone, including social services or law enforcement authorities,⁷² or brought to children's courts following a request for decision correction by the prosecutor. Cases are then prepared, filed and referred to an appropriate court. The public prosecutor has the discretion to choose which court to file a case in, but this decision can be reviewed and rejected by the presiding judge.⁷³ Children's courts hear cases concerning children in conflict with the law.⁷⁴ Children's heavy penalty courts deal with cases that concern crimes with heavy penalties.

An application to the Ombudsman Institution must be made via a petition in Turkish with the following details: full name, signature, residence or work address; citizenship ID number for citizens of the Republic of Turkey; passport number for foreign persons; if the applicant is an organisation, the title and residence of the organisation, and the title of the authorised person, and if any, central legal person number and authorisation certificate. Applications are free of charge.⁷⁵ Children must provide their national ID number, address, telephone number and e-mail address when they submit complaints online. Hard copy applications should be sent to the Ombudsman's office within 15 days of online applications, otherwise the complaint will be dropped.⁷⁶

An application to the National Human Rights Institution of Turkey must be made by petition and can be made in person, by post or by fax. Petitions must include the name, surname, signature and business or residential address of the petitioner.⁷⁷ It must briefly describe the alleged perpetrator, the relevant institutions and agencies, and the incidents related to the claim; specify his/her exact request clearly; and attach the copies of relevant documents to the application. Applications are free of charge.⁷⁸

⁷⁰ Ibid., Article 237.

⁷¹ Turkish Administrative Procedural Law, Article 3.

⁷² Child Protection Law, Articles 29 and 30.

⁷³ Turkish Criminal Procedure Law, Article 161.

⁷⁴ Child Protection Law, Article 26.

⁷⁵ Law on the Ombudsman Institution, Article 17.

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<http://www.ombudsman.gov.tr/contents/files/985Regulation-on-Procedures-and-Principles-Concerning-the-Implementation-of-Law-on-the-Ombudsman-Institution.pdf>.

⁷⁷ Law No. 3071 on the Right to Petition, Article 4.

⁷⁸ <http://www.tihk.gov.tr/en/application/>.

Insufficient online data protection and privacy laws and a lack of a visible privacy disclaimer for children when they provide their personal details to the Ombudsman or National Human Rights Institution of Turkey may be factors affecting access to justice without fear of reprisal.

B. Legal aid / Court costs: Under what conditions would free or subsidised legal aid be available to child complainants or their representatives through the court system (i.e. would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

As above, children in conflict with the law are automatically provided with legal assistance and representation from the local bar association.⁷⁹ The costs of this assistance are borne by the government in accordance with the Code of Criminal Procedure Law and the Child Protection Law. Fees for social and other professional services are also covered.⁸⁰ Cases in the criminal courts are exempt from fees; all costs, including the costs of bringing a complaint, and filing and serving notices, are compensated by the State.⁸¹ However, if the child is found guilty, the lawyer's fees and expenses must be borne by the child.⁸² In practice, whether these fees are to be paid by the child is subject to the lawyer's follow up. However, lawyers become unwilling to take cases on behalf of children for fear of losing the case, and they are not compensated for the time they spend on the case. Consequently, this is a huge burden on children, their families, and lawyers, and therefore a barrier to access to justice.

Notably, cases are randomly assigned to lawyers, and hence the lawyer selected may not have any experience or training in working with children as there are no conditions regarding the assignment of lawyers. In its review of Turkey in 2012, the Committee on the Rights of the Child expressed concern over the "[p]oor quality of legal assistance provided to children under the free legal aid programme, due to the low compensation for lawyers", and urged the government to "[t]ake measures to provide incentives for lawyers to work on cases involving children".⁸³

Although the right to remedy is established in Turkish law, the new Code of Civil Procedure requires applicants to pay for many of the costs of bringing a case, including court expert fees, case investigation, and the filing of certain written notices.⁸⁴ These costs are calculated in accordance with the Advance of Costs Regulation published by the Ministry of Justice.⁸⁵ In practice, depending on the case these costs often amount to roughly 1500 Turkish Lira (about €600), which can prove prohibitively expensive.

In civil proceedings, a legal aid request must be submitted to the court, which can authorise legal aid provided that two conditions are met: (1) The defendant will suffer

⁷⁹ Turkish Criminal Procedure Law, Article 150.

⁸⁰ Child Protection Law, Article 43.

⁸¹ Turkish Criminal Procedure Law, Article 324.

⁸² Ibid., Articles 324-325.

⁸³ UN Committee on the Rights of the Child, *Concluding observations on the combined second and third periodic report of Turkey*, CRC/C/TUR/CO/2-3, 20 July 2012, paras 66(b) and 67(b). Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUR%2fCO%2f2-3&Lang=en.

⁸⁴ Turkish Civil Procedure Law, Article 120.

⁸⁵ Latest Advance of Costs Regulation was published on the Official Gazette No. 29133 dated 28 September 2014.

from economic difficulties if he/she pays the court expenses; and (2) The defendant can demonstrate the likelihood of success. Where these criteria are met, the judge may rule in favour of legal aid for the defendant and order: a temporary exemption from all court expenses; a temporary exemption from submitting securities for court expenses; provision of necessary court expenses by the State; and appointment of a lawyer to be paid later, if representation is necessary. Expenses incurred by the State would be collected from the losing party after the close of the case.⁸⁶

C. Pro bono / Financing: If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organisation, or under an agreement that does not require the payment of legal fees up front?

The following organisations may offer representation and legal assistance to child complainants or their representatives:

- All Bar Associations provide limited legal support and aid to child victims of crime, children in conflict with the law and children in need. For example, Ankara BAR Association Child Rights Commission (the website contains documentation on children's rights and contact details for legal aid consultations; available in Turkish)⁸⁷ and Bursa BAR Association Child Rights Commission (the website contains news on national child rights agendas, including topics related to child-friendly justice, and contact details for legal counselling; available in Turkish).⁸⁸
- Lawyers Network for Children is a new network which has started offering legal representation to a limited degree. It is working towards establishing a lawyer-driven system to provide legal aid and support to children.⁸⁹
- International Children's Center (ICC) had a project with Human Rights Joint Platform, named Justice for Children Towards a Paradigm Change. It has reports, policy documents, brochures on child-friendly justice including access to justice and age discrimination. ICC also supports child rights networks to provide legal aid and strategic litigation.⁹⁰
- Agenda Child Association (Gündem Çocuk) provides legal aid, litigation support and monitoring of court cases for certain high profile lawsuits in issues around deaths in schools, workplaces and demonstrations.⁹¹
- Progressive Lawyers Association provides free legal aid and support in certain cases involving children accused of terrorism and other matters.⁹²
- Human Rights Foundation of Turkey provides lawyers to children who are

⁸⁶ Turkish Civil Procedure Law, Article 334 to 340.

⁸⁷ <http://www.ankarabarasu.org.tr/Merkezler/CHM/tr-TR/>.

⁸⁸ <http://www.bursabarasu.org.tr/sayfalar.php?sayfa=33>.

⁸⁹ <http://cacav.net/en/>.

⁹⁰ http://www.icc.org.tr/index_eng.php.

⁹¹ <http://www.gundemcocuk.org/>.

⁹² <http://www.chd.org.tr>.

tortured in prisons or who have been maltreated during protests.⁹³

- Human Rights Association has over 20 branches across Turkey providing free legal aid to children who are tortured or maltreated.⁹⁴
- Istanbul Bilgi University law school has a recently established legal clinic that offers legal aid but not representation.⁹⁵

D. Timing: How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

In civil courts, lawsuits requesting compensation must be filed within two years of the date on which the effects of the act are known and within 10 years of the event.⁹⁶ Since the children do not usually have the capacity to be a party to a lawsuit, such lawsuit can be filed by their representatives within the time limits determined by legislation. However, it is possible to bring a lawsuit against a representative who failed to file a lawsuit on behalf of a child.

Where the alleged crime was committed by a parent, grandparent or person who had control over the child, the limitation period does not start running until the child turns 18.⁹⁷

In administrative courts, cases must be filed within 60 days, however, the commencement of the period depends on the type of case to be filed. For the annulment of secondary legislation or administrative acts, the period starts after the written notification or publication. In actions for damages arising from administrative acts, the case must first be referred to the administrative body for compensation. In case of rejection or failure to answer within 60 days, the period to file a lawsuit starts from the end of the 60-day period.⁹⁸

Applications to the Ombudsman Institution must be filed within six months of the date the public administrative body provides its response to the applicant or after 60 days if such body fails to respond to the application.⁹⁹

The time periods within which to file applications with the National Human Rights Institution of Turkey are not specified in the regulation.¹⁰⁰ Article 8/3 of the regulation indicates that if the application is submitted online through the form on the website, or by telephone or fax, hard copies should be sent within 15 days.

E. Evidence: What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is

⁹³ <http://tihv.org.tr/?english-1>.

⁹⁴ <http://ihd.org.tr/en/>.

⁹⁵ <http://www.bilgi.edu.tr/en/programs-and-schools/undergraduate/faculty-law/law/page/bilgi-legal-clinic/>.

⁹⁶ Turkish Code of Obligations, Article 72.

⁹⁷ Turkish Criminal Code, Article 66(6).

⁹⁸ Turkish Administrative Procedure Law, Article 7.

⁹⁹ Law on the Ombudsman Institution, Article 17(7).

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<http://www.tihk.gov.tr/tr/mevzuat/insan-haklari-ihlali-iddialarina-iliskin-basvurularin-incelenmesine-dair-usul-ve-esaslar-hakkinda-yonetmelik>.

produced or presented by children?

There is no limitation as to the admissibility of evidence to prove violations of children's rights so long as it is legally obtained. The rules setting out criteria for admissibility of evidence are contained in the Code of Criminal Procedure Law.¹⁰¹

Civil Procedure Law allows various types of evidence to be submitted, including documents, oath, testimony, investigation and expert testimony.¹⁰² In Turkish legal practice, the freedom of evidence rule allows evidence to be supplied in any appropriate form. Children may testify before the courts. However, children who are under 15 or who cannot distinguish between right and wrong and therefore cannot understand the meaning and nature of the oath must testify without taking the oath.¹⁰³

In administrative procedures, the freedom of evidence rule applies as well. Moreover, unlike civil procedure, evidence may be submitted at every level of litigation and the judges may also request evidence *ex officio*. In most circumstances, administrative cases are resolved without witness testimony. In addition, oaths cannot be made in administrative cases.¹⁰⁴

The freedom of evidence rule applies in criminal prosecutions as well. Children may serve as witnesses, however, their testimony will be evaluated by the court, which will consider the characteristics of the case and may allow the child to testify without taking an oath.¹⁰⁵ Where a child victim gives testimony during criminal proceedings this must be recorded.¹⁰⁶ Furthermore, a child who becomes psychologically depressed under the impact of the crime committed can be heard only once as a witness in the investigation or prosecution process concerning the crime. An expert must be there for the child.¹⁰⁷ In the course of the hearing of children who are victims, a person who is a specialist in the field of psychology, psychiatry, medicine or training will be present.

Special procedural rules under the Child Protection Law will be followed for the prosecution of children in conflict with the law. According to this law, children must be prosecuted by a separate division in the Office of the Prosecutor and tried in specialised courts. They must not be handcuffed, and will be questioned only once before the court.¹⁰⁸

E. Resolution: How long might it take to get a decision from the court as to whether there has been a violation?

The legislation does not provide a specific time limit for courts to render decisions. In 2014, average trial periods were 228 days for children's heavy penalty courts and 241 days for children's courts.¹⁰⁹ In most circumstances, due to the excessive workload of the courts, it takes approximately one-and-a-half years to get a decision from the court

¹⁰¹ See Articles 116 to 134, 138 to 140, 148, and 206 to 218.

¹⁰² Turkish Criminal Procedure Law, Article 192.

¹⁰³ Turkish Criminal Procedure Code, Articles 50(1)(a) and (b).

¹⁰⁴ Decision of Council of State No. E. 2003/3369 and K. 2004/917 dated 25.2.2004.

¹⁰⁵ Turkish Criminal Procedure Law, Article 50(1)(a) and (b).

¹⁰⁶ Ibid., Article 53(3).

¹⁰⁷ Ibid., Article 236.

¹⁰⁸ See Child Protection Law, section 2.

¹⁰⁹ Justice Statistics of the Ministry of Justice, available at: http://www.adliscil.adalet.gov.tr/istatistik_2014/37.pdf.

of first instance. If the decision is appealed, the Supreme Court of Appeal renders a decision in approximately one-and-a-half years. In case the decision in the court of first instance is reversed and the court of first instance insists on its former decision, the process may be twice as long.

G. Appeal: What are the possibilities for appealing a decision to a higher court?

Courts of first instance decisions, other than provided for in Articles 362 and 428 of the Civil Procedure Law No. 1086,¹¹⁰ are reviewed by the Courts of Appeals. For lawsuits filed before the civil courts, an appeal request petition must be submitted to the relevant court within 15 days of the notification date.¹¹¹ This time period is eight days for the civil court of peace (*Sulh Hukuk Mahkemesi*). For criminal courts the time period is limited to seven days. In most circumstances, the appellate court is limited to reviewing the decision of the court of first instance and may affirm or set aside the decision of the court. Decisions in civil and criminal cases can then be appealed to the Supreme Court of Appeals, which is the court of last resort for appellate review of decisions by ordinary courts.

Decisions of the administrative courts are subject to review by either the Regional Administrative Courts or the Council of State,¹¹² depending on the type of the case. In terms of decisions rendered by administrative courts, an appeal request petition must be submitted within 30 days of the notification date.¹¹³ The Council of State is the court of last resort for appellate review of decisions by administrative courts.

In addition, as stated above, after exhausting legal remedies, another lawsuit may be filed before the Constitutional Court for the violation of constitutional rights or rights under the European Convention on Human rights. However, such a claim cannot be considered a form of appeal. At the national level, the decisions of the Constitutional Court are final.¹¹⁴

Additionally, further review may be sought with the European Court of Human Rights once a claimant has exhausted all possible domestic remedies (see part III.A above).

H. Impact: What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

The Turkish judicial system is based on the civil law system, therefore technically courts are not bound by their own decisions. Still, higher courts' decisions play an important role and courts tend to follow such decisions. In practice, one specific exception is the unification of the precedent decisions of the Supreme Court of Appeals. The Supreme Court of Appeals and the Council of State create precedents, unifying conflicting decisions on a subject after which the lower courts become bound by such a

¹¹⁰ According to the Turkish Civil Procedure Law No. 6100, Provisional Article 3; New amendments in the appeal process in the Turkish legal system establishing regional courts of justice provide for new appeal rules and two appeal stages. However, as the operation of these courts has been delayed, the provisions of the previous Code of Civil Procedure No. 1086 regarding the appeal process are still in force.

¹¹¹ Turkish Civil Procedure Law, Article 361.

¹¹² Turkish Administrative Procedure Law, published in the Official Gazette No. 17580, dated 20 January 1982, Article 45.

¹¹³ Ibid., Article 46(2).

¹¹⁴ Constitution of Turkey, Article 153.

unification decision.¹¹⁵ In addition, judges of the courts of first instance apply the decisions of the appeal courts in order to avoid reversals, despite the court of first instance's right to insist. This can be observed from the fact that in their decisions judges refer to the decisions rendered by the higher courts. Therefore, a negative decision rendered by a high court may cause long lasting effects since the creation of a new precedent requires many cases to be filed and appealed.

Generally speaking, a negative decision handed down by the Supreme Court of Appeals, Administrative Court, Constitutional Court or Ombudsman would deepen the culture of impunity. It would create false jurisprudence and interpretation regarding the rights of children. It would make it harder for lawyers to advocate on the issue at the local courts, for NGOs to advocate for change on the issue, and for other similar cases to be brought to courts. It may be used by government offices to continue or worsen the rights violations, and may discourage victims from making claims regarding their rights or discourage NGOs from helping the victims.

I. Follow up: What other concerns or challenges might be anticipated in enforcing a positive decision?

The decisions of the civil courts may be enforced through execution offices after the finalisation of the decision. Specific enforcement related issues are governed by the Enforcement and Bankruptcy Law. For example, rulings of the civil courts shall be submitted to the execution office within 10 years following the finalisation of the decision.¹¹⁶

If the actions for annulment result in the annulment of the violating administrative act or a provision of a regulation, the act is cancelled and the Administration shall issue another act for the person concerned. When a provision of a regulation is annulled, it is declared null and void *erga omnes* and *ex nunc* – that is, the effects of the decision apply to everyone despite their not being a party to the action, and the regulation is considered as if it had never entered into force. However, administrative acts issued based on the annulled regulation before the annulment still remain valid, unless an action for annulment is filed against the said acts.¹¹⁷

There are risks and challenges associated with enforcement of decisions. For example, there is a lack of implementation of administrative court decisions, and bypassing of these decisions through the creation of new by-laws. Decisions of the Ombudsman and the National Human Rights Institution of Turkey are rarely respected and implemented. Following Constitutional Court decisions, amendments to laws are not made immediately and this creates gaps in legal implementation. These factors contribute to a culture of impunity.¹¹⁸

V. Additional factors. Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a

¹¹⁵ Supreme Court of Appeals Law, Article 45; Council of State Law, Article 17.

¹¹⁶ Enforcement and Bankruptcy Law No. 2004, Article 39.

¹¹⁷ Turkish Administrative Procedure Law, Article 7(4).

¹¹⁸

<http://www.hurriyetdailynews.com/turkish-ombudsman-complains-of-insufficient-authority.aspx?pageID=238&nID=65157&NewsCatID=338>.

violation of children's rights.

Legislation

The Constitution

The Constitution of the Republic of Turkey contains provisions protecting children's rights. Article 41 states that "every child has the right to be protected, taken care of, have and maintain a personal and direct relationship with his/her parent if it is in the best interest of the child" and "the State shall take necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially the protection of the mother and children, and for family planning education and application." Article 42 is about access to education for children, and Articles 61-62 are about protection of the social welfare of children in need. Finally, Article 10(3) ensures affirmative actions taken for children do not violate the equality of the citizens.

Child Protection Law

Since its publication in the Official Gazette on 3 July 2005, Child Protection Law No. 5395 has been in force to ensure the rights and wellbeing of children. It regulates the procedures and principles of protecting children, as well as the security measures for children in need of protection. Article 4 provides basic principles to ensure a child's protection and re-adaptation to social life. It prohibits discrimination and emphasises ultimate attention during the investigation and prosecution of the child. It provides that measures which restrict the freedom of children, such as imprisonment, shall be used only as a last resort. Likewise, any court sanctions shall ensure the education, medical examination, protection and support of minors. It also ensures medical or psychological treatment of children who need it. Although it provides for the establishment of juvenile courts in every city centre, this requirement has unfortunately not been fully met in practice.

Article 5 of the Child Protection Law stipulates protective measures not only for children in conflict with the law but also all children in need.

Other related legislation

Criminal Procedure Law No. 5271 is applicable to children who are the subject of a criminal prosecution or a case as defined under this law. A child might be kept under probation by the decision of the court if the court convicts him/her of a crime. Expenses of guardianship and supportive measures are to be covered by the State.

Other legislation regulating issues related to the rights of children include:

- Juvenile Protection Law No. 5395 and regulations to implement the Juvenile Protection Law (Regulation regarding the Procedures and Principles Concerning the Implementation of Juvenile Protection Law; Regulation regarding the Implementation of Protective and Supportive Injunctions Given in Accordance With Juvenile Protection Law; Regulation regarding the Protection, Maintenance and Rehabilitation Centers of the General Directorate of Social Services and Child Protection; and Regulation regarding the Working Procedures and Principles Concerning the Child Houses of the General Directorate of Social Services and Child Protection.

- Turkish Penal Code No. 5237 which came into force on 1 June 2005;
- Law No. 5275 on the Execution Of Penalties And Security Measures;
- Law No. 5402 on the Establishment of Probation, Help Centres and Protection Boards.
- Labor Law No. 4857;
- Basic Law of National Education No. 1727; and
- Law on Social Services No. 2828.

For a complete list of related law in the area of child protection and access to justice (in Turkish), see:

http://www.cocuklaricinadalet.org/resources/ckeditor/kcfinder/upload/files/ULUSAL%20%C3%87OCUK%20MEVZUATI_SON.pdf.

Barriers to access to justice in existing legislation

Legislation concerning children is highly scattered. This creates a disadvantage for children to access justice. Because it is not harmonised in line with the Convention on the Rights of the Child and Child Protection Law, there are even problems regarding the definition of the child.

The current legal framework does not recognise the child as an independent person with agency; its protectionist nature protects the family or the state, not the child in particular. For example, because the Convention on Cybercrime is not integrated into Turkish law, there are obscenity clauses in the Turkish law.

Turkish legislation itself discriminates against children on the basis of their age. For example, Article 323(2) of the Turkish Penal Code gives parents or guardians a right to discipline.

Government ministries

The Ministry of Family and Social Policy is responsible for the application and the monitoring of children's rights. The General Directorate of Child Services is the responsible branch under the Ministry. There are directorates of social service and child protection institutions founded in every province that are responsible for the safety and welfare of children as set out in the Child Protection Law. The Ministry has an "ALO183 helpline for family, women, children and disabled".

There is also a Child Rights Monitoring and Evaluation Council made up of representatives of government agencies and NGOs, established in 2012.

In accordance with the Child Protection Law, there is a central coordination mechanism under the Ministry of Justice with members from the Ministry of Family and Social Policy, Ministry of Interior, Ministry of Health, Ministry of Labour and Social Security, and Union of Bar Associations of Turkey. It is linked to provincial child protection coordination committees. NGOs have been recently called in to be part of provincial committees in some towns.

NGOs specialising in child rights

Notable NGOs and sponsored projects that specifically focus on the protection of the

rights of children are as follows:

- International Children's Center;¹¹⁹
- Istanbul Bilgi University Child Studies Unit (ÇOÇU);¹²⁰
- Agenda Child Association (*Gündem Çocuk*);¹²¹
- Association for Solidarity with Freedom-Deprived Children and Youth (OZGEDER);¹²² and
- Justice For Children;¹²³

International instruments

Other international instruments adopted by Turkey in the field of the rights of the child are as follows:

- Convention concerning the establishment of maternal filiation of children born out of wedlock on 26 March 1987;
- European Convention on the Recognition and Enforcement of Decisions Regarding the Custody of Children and European Convention on the Re-establishment of the Custody of Children adopted on 04 August 1999;
- Hague Convention on the Civil Aspects of International Child Abduction adopted on 03 November 1999;
- European Convention on the Exercise of Children's Rights adopted on 18 January 2001;
- Convention No. 182 on the Worst Forms of Child Labour adopted on 25 January 2001;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography adopted on 28 June 2002;
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime adopted on 30 January 2003;
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict adopted on 16 October 2003;
- Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption adopted on 14 January 2004; and
- Convention on the Protection of Children against Sexual Abuse and Exploitation adopted on 25 November 2010.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

¹¹⁹ <http://www.cocukhaklariizleme.org/>; www.icc.org.tr.

¹²⁰ <http://www.cocukcalismalari.org/>.

¹²¹ www.gundemcocuk.org.

¹²² www.ozgeder.org.tr.

¹²³ www.cocuklaricinadalet.org.