

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. International treaties, including the CRC, have the force of national law.¹

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.²

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”.³

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. 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.⁴

¹ Constitution of Turkey, Article 90.

² Ibid.

³ 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.

⁴ 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).

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

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.⁵

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.⁶

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.⁷

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.⁸

A decision of the 7th Penal Chamber of the Supreme Court of Appeals extended the application of the provisions of Establishment, Jurisdiction and Rules of Procedure of Children's Courts Law to children aged between 15 and 18 by referencing Article 1 of the CRC.⁹

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

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?

⁵ Constitution of Turkey, Article 90(4).

⁶ 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.

⁷ 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.

⁸ Decision of the Grand Chamber of Supreme Court of Appeals, dated 11 November 2013; Decision No. E 2013/2-1772 and K. 2013/1557

⁹ Decisions of the 7th Chamber of the Supreme Court of Appeals, dated 20 February 2007; Decision Nos. E. 2003/10073 and K. 2004/11328.

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

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 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 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. 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.¹² Victims can intervene in criminal proceedings,¹³ and child victims wishing to do so are automatically appointed representatives.¹⁴

Any person, including a child, who is arrested or detained must be brought before a judge within 48 hours.¹⁵ 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.¹⁶

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.¹⁷ Representatives of the children may apply to the Constitutional Court on their behalf.

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 act as full legal adults subject to a court decision.¹⁸

There are a number of more specific instances in which children who have the “ability to distinguish”¹⁹ would be able to bring a case:²⁰

- Legally, children do not need the consent of their legal representatives in

¹¹ Turkish Civil Code, Article 11.

¹² Turkish Penal Code, Articles 278 to 280.

¹³ Turkish Criminal Procedure Law, Article 234 (2).

¹⁴ Ibid., Article 234.

¹⁵ Constitution of Turkey, Article 19.

¹⁶ Turkish Criminal Code, Chapter 7.

¹⁷ Constitution of Turkey, Article 148.

¹⁸ Turkish Civil Code, Article 12.

¹⁹ The “ability to distinguish” is defined in Article 13 of the Turkish Civil Code as the capacity to act rationally.

²⁰ Turkish Civil Code, Article 13.

order to pursue uncovered earnings or enforce rights that are strictly personal;²¹ and

- Children who have the ability to distinguish are given permission to carry out the activities of a profession or art may file lawsuits regarding the said profession or art.²² 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.²³ 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.²⁴

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.²⁵ 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.²⁶

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 a defence counsel for child suspects or defendants is mandatory.²⁷

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.²⁸ This permission is not required for criminal cases, nor where the parent or guardian is the person alleged to have violated the child's rights, as the prosecution will act even with respect to crimes that would require a complaint.²⁹

²¹ Ibid., Article 16.

²² Ibid., Articles 359 and 455.

²³ Ibid.

²⁴ Turkish Civil Procedure Law, Article 71.

²⁵ Turkish Civil Code, Articles 335 and 342.

²⁶ Ibid., Article 376.

²⁷ Turkish Criminal Procedure Law, Article 150(2).

²⁸ Turkish Civil Code, Article 342.

²⁹ Turkish Criminal Procedure Law, Article 90.

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 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.³⁰ 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.³¹

The Supreme Court of Appeals may also review cases that involve violations of international instruments,³² and the Supreme Court of Appeals would review similar administrative decisions.³³ 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 or organisation that is aware of a violation of children's rights by a public administrative body³⁴ may submit a complaint to the Ombudsman Institution.³⁵ Applications must be kept confidential upon the request of applicants.³⁶ Created in 2012 with a specific ombudsman for women and child rights issues, 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.³⁷ In 2014 the Ombudsman Institution created a website designed for children through which children can directly submit complaints.³⁸

Before any application is filed with the Ombudsman Institution, the

³⁰ Constitution of Turkey, Article 148

³¹ Ibid., Article 152.

³² Ibid., Article 154.

³³ Ibid., Article 155.

³⁴ 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.

³⁵ Ibid., Article 17.

³⁶ Ibid.

³⁷ 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.

³⁸ www.kdkcocuk.gov.tr.

administrative remedies listed in the Administrative Jurisdiction Procedures Law³⁹ 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.⁴⁰

The Directorate for Human Rights

The Directorate for Human Rights was established in 2001 under the office of the Prime Minister. The Directorate has provincial and local Human Rights Boards which can review and investigate breaches of human rights.⁴¹

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.⁴² 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,⁴³ but the complaint will be admissible only if all domestic remedies have been exhausted.⁴⁴ Anonymous complaints are not permitted.⁴⁵ 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.⁴⁶ After examining the case, the Court renders a judgment which is binding on the State⁴⁷ and also has powers to award monetary compensation to the victims of human rights abuses.⁴⁸

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.⁴⁹

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.⁵⁰

³⁹ Dated 6 January 1982, no. 2577.

⁴⁰ Law on the Ombudsman Institution, Article 17.

⁴¹ Child Rights International Network, 'Turkey: Children's Ombudsperson'.

⁴² 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.

⁴³ *Ibid.*, Article 34.

⁴⁴ *Ibid.*, Article 35.

⁴⁵ *Ibid.*

⁴⁶ Rules of Court, July 2014, Rule 36, available at:

http://www.echr.coe.int/documents/rules_court_eng.pdf.

⁴⁷ European Convention on Human Rights, Article 46.

⁴⁸ *Ibid.*, Article 41.

⁴⁹ *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, ECHR 2010; *Darren Omoregie and Others v. Norway*, no. 265/07, 31 July 2008.

⁵⁰ Turkish Civil Procedure Law, Article 406; Turkish Civil Code, Article 346.

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.⁵¹

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.⁵²

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.⁵³ 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.⁵⁴ 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.⁵⁵ For criminal cases, unless otherwise provided, procedural actions in the investigation phase must be confidential.⁵⁶ The court may rule that the hearing be conducted partially or entirely in closed session.⁵⁷

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

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.⁵⁸

⁵¹ Turkish Administrative Procedure Law, Article 2.

⁵² Constitution of Turkey, Article 152.

⁵³ Code of Civil Procedure, Article 119.

⁵⁴ Turkish Criminal Procedure Law, Articles 157 and 182; Turkish Civil Procedure Law No. 6100, Article 28.

⁵⁵ Regulation on the Turkish Civil Procedure Law, Article 42.

⁵⁶ Turkish Criminal Procedure Law, Article 157.

⁵⁷ Ibid., Article 182.

⁵⁸ Turkish Civil Procedure Law, Articles 166 and 57.

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. The courts may also decide to join the lawsuits if a connection is considered to exist.⁵⁹

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.⁶⁰

In civil courts, the claimant must have a legal interest in the result of the lawsuit in order to file a case.⁶¹ 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.⁶²

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.⁶³ 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.⁶⁴

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.⁶⁵ In practice, bar associations act as denouncers, then a lawyer is legally appointed from the bar association to represent the child.⁶⁶

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. The court has the discretion as to whether or not to allow their request for intervention.⁶⁷

⁵⁹ Turkish Criminal Procedure Law, Articles 8-11.

⁶⁰ Turkish Civil Code, Articles 1 and 4.

⁶¹ Turkish Civil Procedure Law; Article 114(1)(h).

⁶² Ibid., Article 66.

⁶³ Turkish Administrative Procedure Law, Article 2.

⁶⁴ 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.

⁶⁵ Turkish Criminal Procedure Law, Article 161.

⁶⁶ Ibid., Article 150(2).

⁶⁷ Ibid., Article 237.

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.⁶⁸

For child victims of crime and children in conflict with the law, court cases are brought by social services or law enforcement authorities through the children's division of the office of the public prosecutor.⁶⁹ 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.⁷⁰ Children's courts hear cases concerning children in conflict with the law.⁷¹

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.⁷²

- 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.⁷³

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.⁷⁴ Notably, cases are randomly assigned to lawyers, and hence the lawyer selected may not have any

⁶⁸ Turkish Administrative Procedural Law, Article 3.

⁶⁹ Child Protection Law, Articles 29 and 30.

⁷⁰ Turkish Criminal Procedure Law, Article 161.

⁷¹ Child Protection Law, Article 26.

⁷² Law on the Ombudsman Institution, Article 17.

⁷³ Turkish Criminal Procedure Law, Article 150.

⁷⁴ Child Protection Law, Article 43.

experience or training in working with children as there are no conditions regarding the assignment of lawyers.

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.⁷⁵ These costs are calculated in accordance with the Advance of Costs Regulation published by the Ministry of Justice.⁷⁶ In practice, depending on the case these costs often amount to roughly 1500 Turkish Lira (about €600), which can prove prohibitively expensive.

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.⁷⁷

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 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.⁷⁸

- 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:

- [Gündem Çocuk \(Agenda: Child!\)](#): The website provides documentation on children's rights, information on how to file a complaint and a link to seek free legal help online. Available in Turkish.⁷⁹
- [Ankara BAR Association Child Rights Commission](#): The website contains documentation on children's rights and contact details for legal aid consultations. Available in Turkish.⁸⁰
- [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

⁷⁵ Turkish Civil Procedure Law, Article 120.

⁷⁶ Latest Advance of Costs Regulation was published on the Official Gazette No. 29133 dated 28 September 2014.

⁷⁷ Turkish Criminal Procedure Law, Article 324.

⁷⁸ Turkish Civil Procedure Law, Article 334 to 340.

⁷⁹ <http://www.gundemcocuk.org/>.

⁸⁰ <http://www.ankarabaru.org.tr/Merkezler/CHM/tr-TR/>.

Turkish.⁸¹

- [Child Rights Monitoring Committee](#): The website of the Turkish Parliament contains international and national legislation on children's rights. This parliamentary body has been established to monitor and represent child rights concerns within the Parliament, notably through the receipt of suggestions, comments or complaints from children on its website. Available in Turkish and English.⁸²
- [Ministry of Family and Social Policies](#): The website includes a helpline for children providing information on services to contact for legal advice. Available in Turkish, English and Arabic.⁸³

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.⁸⁴ 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 18.⁸⁵

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.⁸⁶

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.⁸⁷

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 produced or presented by children?

There is no limitation as to the admissibility of evidence to prove violations of

⁸¹ <http://www.bursabarosu.org.tr/sayfalar.php?sayfa=33>.

⁸² <http://www.cocukhaklari.gov.tr/tr>.

⁸³ <http://www.aile.gov.tr/>.

⁸⁴ Turkish Code of Obligations, Article 72.

⁸⁵ Turkish Criminal Code, Article 66(6).

⁸⁶ Turkish Administrative Procedure Law, Article 7.

⁸⁷ Law on the Ombudsman Institution, Article 17(7).

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.⁸⁸

Civil Procedure Law allows various types of evidence to be submitted, including documents, oath, testimony, investigation and expert testimony.⁸⁹ 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.⁹⁰

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.⁹¹

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.⁹² Where a child victim gives testimony during criminal proceedings this must be recorded.⁹³

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 separate courts. They must not be handcuffed during the trial, and will be questioned only once before the court.⁹⁴

F. 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 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 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?

⁸⁸ See Articles 116 to 134, 138 to 140, 148, and 206 to 218.

⁸⁹ Turkish Criminal Procedure Law, Article 192.

⁹⁰ Turkish Criminal Procedure Code, Articles 50(1)(a) and (b).

⁹¹ Decision of Council of State No. E. 2003/3369 and K. 2004/917 dated 25.2.2004.

⁹² Turkish Criminal Procedure Law, Article 50(1)(a) and (b).

⁹³ *Ibid.*, Article 53(3).

⁹⁴ See Child Protection Law, section 2.

Courts of first instance decisions, other than provided for in Articles 362 and 428 of the Civil Procedure Law No. 1086,⁹⁵ 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.⁹⁶ 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,⁹⁷ 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.⁹⁸ 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.⁹⁹

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 unification decision.¹⁰⁰ In

⁹⁵ 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.

⁹⁶ Turkish Civil Procedure Law, Article 361.

⁹⁷ Turkish Administrative Procedure Law, published in the Official Gazette No. 17580, dated 20 January 1982, Article 45.

⁹⁸ Turkish Administrative Procedure Law, Article 46(2).

⁹⁹ Constitution of Turkey, Article 153.

¹⁰⁰ Supreme Court of Appeals Law, Article 45; Council of State Law, Article 17.

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.

- 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.¹⁰¹

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.¹⁰²

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 violation of children's rights.

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

¹⁰¹ Enforcement and Bankruptcy Law No. 2004, Article 39.

¹⁰² Turkish Administrative Procedure Law, Article 7(4).

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 conflict with the law. 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.

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.

Besides the Child Protection Law, there is other legislation regulating issues related to the rights of children, such as Labor Law No. 4857, Basic Law of National Education No. 1727, and Law on Social Services No. 2828.

Ministry of Family and Social Policies

The Ministry of Family and Social Policy is responsible for the application and the monitoring of children's rights. General Directorate 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.

Project Gelincik

Ankara Bar Association has launched a project in which women and children who are subjected to violence are to be supported by voluntary lawyers, with the goal of reducing women and children who are victims of violence. The phone line - +90 312 444 43 06 - can be reached 24/7 to ensure the safety of women and children. The line is answered by lawyers whose area of expertise covers children's and women's rights. The Ankara Bar Association offers its own means of transportation to the victim of violence so that the victim can be moved to Gelincik Center. If needed, the victim is examined by an institution of forensic medicine and supported by psychological treatment. Lawyers involved in the project carry out the necessary legal actions.¹⁰³

NGO's specialising in child rights

Aside from the project explained above, there are also other NGOs and

¹⁰³ <http://www.gelincikprojesi.com/AnaSayfa.aspx>.

sponsored projects that specifically focus on the protection of the rights of children. The most notable ones are as follows:

- UNICEF Turkey National Committee;¹⁰⁴
- Istanbul Bilgi University Child Studies Unit (ÇOÇA);¹⁰⁵
- International Children's Center;¹⁰⁶
- Children First: Towards Good Governance, Justice and Protection for Children in Turkey;¹⁰⁷ and
- Foundation for the Protection of Children in need of Protection (Koruncuk Foundation).¹⁰⁸

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

¹⁰⁴ <http://www.unicefturk.org/>.

¹⁰⁵ <http://www.cocukcalismalari.org/>.

¹⁰⁶ <http://www.cocukhaklariizleme.org/>.

¹⁰⁷ http://www.unicef.org/turkey/hm/hm5_oc.html.

¹⁰⁸ <http://www.koruncuk.org/vakfimiz/aboutourfoundation>.