



## **The Workshop: Promoting stronger forms of advocacy**

**Ankara, 19 October 2011**

**CRIN/International Children's Center (ICC)**

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### **1. Introduction**

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In October 2011, the Child Rights International Network (CRIN) and partner in Turkey - the International Children's Center (ICC) - staged the first of a series of workshops to encourage stronger, including legal, forms of advocacy to challenge violations of children's rights, and identify how CRIN might best support this work globally.

In every country, including the UK and Turkey, there are many persisting, serious violations of children's human rights (economic and social as well as civil and political). The fact that governments are not responding to conventional forms of advocacy or to repeated identical recommendations from the UN Committee on the Rights of the Child highlights the need to resort to stronger methods and to ensure that the Convention on the Rights of the Child (CRC) is used as the legal instrument that it is.

The range and scale of violations is now more visible globally - which is in itself a step forward. But in the 22 years since the CRC was adopted, there has been little use of legal action or regional and international human rights mechanisms to try to force a great respect for children's rights from governments.

While legal advocacy is not a new or revolutionary idea, it is evident that it needs to expand to involve more people and organisations - not only lawyers specialising in children's rights, but all those who work with and for children as well as children themselves.

With this in mind, in the course of the past few years, CRIN has been building a global network to encourage and support ever more effective advocacy, to move children's rights advocacy beyond its infancy.

The pilot legal advocacy workshop was held in Turkey not only because it is clear that serious violations children's rights persist there, as that is true of many other countries, but because organisations in Turkey have already made use of the European Court of Human Rights, which is regarded as one of the strongest human rights mechanisms. In addition, there is a strong children's rights community.

The aim was to discuss examples of persistent violations in the country that have not responded to conventional forms of advocacy and use this as a basis for exploring what

more legalistic forms of advocacy could be used to challenge these violations.

While the discussion focused on Turkey, the content is relevant to all countries. CRIN believes that every country needs to go through a similar sort of discussion or process in order to continue to address what more can be done to force governments to take the CRC seriously as a legal instrument, fulfil their obligations under it, and ensure that children in each country have effective, accessible remedies when their rights are violated.

This report will be built on as similar workshops are held around the world, with the hope of providing a template which can be used by organisations in other countries to replicate this experience.

### **Aims of the workshop:**

1. To review an agreed selection of identified serious violations of various rights affecting different groups of children and different settings in children's lives (child protection, health, education, juvenile justice, immigration and nationality, etc.) and "match" them with possible forms of legal or quasi-legal advocacy;
2. To identify what is needed to use these potential remedies: for example, do individual child victims have to be identified and "used"; are appropriately trained and experienced lawyers available; are sufficient resources available to support action;
3. What obstacles are there to using these and any other harder forms of advocacy;
4. What can CRIN do to encourage and support these forms of advocacy, in all countries, including writing up this exercise as a positive model to be followed elsewhere.

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## **2. How? Practical steps**

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Preparation for the workshop involved the following elements:

### **1. Identifying persisting violations of children's rights**

A range of persistent violations of children's civil, political, economic, social and cultural rights that have been challenged unsuccessfully by soft forms of advocacy was proposed as the basis for exploring possible forms of legal or quasi-legal advocacy. The goal was to select violations which appear to be permitted under Turkish law, rather than to challenge lack of enforcement for those violations that are clearly unlawful yet persist.

These were taken from three sources:

1. CRIN's [Children's Rights Wiki page on Turkey](#), which details recommendations made by more than one human rights mechanism.
2. An analysis of children's rights cases brought before the European Court of Human Rights.

3. Comments/suggestions by participants.

### **The proposed violations for detailed discussion were:**

- 1. Corporal punishment:** The practice remains lawful in the home and in alternative care. Participants could also explore any other particular child protection issues, e.g., lack of effective child protection response/investigation/intervention.
- 2. Discrimination in access to economic/social rights:** Participants could discuss particular examples of discrimination in access to economic/social rights, e.g., education and health, including issues of discrimination by gender, disability, ethnic group, or against internally displaced persons.
- 3. Discrimination against children of particular ethnic groups in terms of learning own language:** The issue of the right to religious education (or to opt out of religious education) may also be relevant as it has come up already in judgements of the European Court of Human Rights.
- 4. Negligence/injury, lack of compensation for child victims:** The existence of effective remedies in these sorts of cases could be discussed, for example when child protective services fail to provide effective protection despite knowledge of danger to a child's health.

### **Participants**

A number of criteria were applied for selecting the participants:

- Experience and expertise in children's human rights,
- Experience and/or willingness to adopt legal advocacy,
- Being part of a network (as a strategy to contribute to capacity building of the wider NGO community, supporting NGO coalitions and reaching higher number of stakeholders).

In addition, we invited a participant from a national NGO in Pakistan, Society for the Protection of the Rights of the Child (SPARC), to share their experience in undertaking strong forms of advocacy, with the idea that by being involved in this process, SPARC would play a role in organising a similar workshop.

### **2. Identifying ways of challenging violations of children's rights through use of domestic courts**

To ascertain what effective domestic remedies exist and would therefore need to be exhausted before regional or international human rights mechanisms can be used, a national lawyer prepared a briefing on the legal status of the child and what avenues exist to pursue challenges to violations of children's rights through national courts. *Note: This could also be done by a well-informed national children's rights advocate who is not necessarily legally qualified.*

CRIN prepared a template specifying what this should cover, including whether children have independent legal capacity, whether class actions or other forms of group litigation were possible for or on behalf of children, and what the status of the CRC and other relevant instruments is in national law. *This legal briefing template is attached as an annex.*

### **3. Identifying available regional and international human rights mechanisms that could be used to challenge violations**

Finally, a report was prepared to identify which regional and international human rights mechanisms/ communications procedures have been ratified by Turkey and what, if any, relevant use of them there has been, including the outcome of any proceedings. *This report is attached as an annex.*

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### **3. Summaries of working groups**

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The aim of each working group was for participants to respond to the following points for each violation about which they have particular knowledge:

1. Identify violations of children's rights.
2. Identify the sort of evidence that exists about the violation.
3. Identify why the violation is persisting, what forms of advocacy have failed to achieve subs going remedies.
4. Identify obstacles to legal advocacy.
5. Identify what forms of legal or quasi-legal advocacy could be used to challenge the violation (national constitution and legal system, regional or international human rights mechanisms).

#### **Working Group 1: Corporal punishment**

##### **1. Overview and violation to be discussed**

The working group discussed five settings where violence against children occurs as outlined in the United Nations Secretary-General's Study on Violence against Children. The group also discussed what legal advocacy entails. It was suggested that a clear explanation and methods of legal advocacy should be made available to participants of future workshops. The group used this definition: using law as an effective tool and to enforce rights enshrined in the CRC and other human rights treaties.

##### **2. Evidence**

- Medical records are lacking, doctors are not always willing to record incidents.
- In small villages, some families have a lot of influence; there is no consistent practice for collecting evidence.
- There are more than 1,200 legal decisions against Turkey from the ECHR
- The following mechanisms are available but are not used or are underused by children's organisations:
  - o The possibility of launching a criminal complaint
  - o Constitutional court (it is not clear how this will be structured as of autumn 2012)
  - o Legislative pressure and law reform
  - o ECHR and other international complaints mechanisms

##### **3. Why does it persist?**

- Violations continue because of lack of enforcement or knowledge about what is happening and other issues or violations which are still legal.
- There have been some attempts to lobby with government and parliament to end corporal punishment, but as yet there have been no proposals

drafted as to how the law should change.<sup>1</sup>

- No efficient and accessible complaints mechanism
- No collective complaints mechanism

#### **4. What is needed?**

- The European Court of Human Rights has already been used to challenge the legality of corporal punishment, but it seems to be about forcing governments to comply with a court judgement.
- Research whether it is possible to use the constitution to challenge the legality of corporal punishment without the need to identify individual victims.
- Legal advocacy on other human rights issues is advanced in Turkey, for example, on torture and terrorism related cases. However, few cases on other areas of children's rights are well known. Before undertaking advocacy work, capacity must be built.
- Law is an instrument, hurting people should become immoral; no matter how perfect laws are, some people will still beat their children. In Sweden, physical punishment of children is perceived as immoral; there, the law came first and public perceptions followed.
- The problem is also in mind sets. The approach should be broader: collect data, look at national remedies (including who has the responsibility to provide protection), use international remedies. During that process we should also look at legal reform.
- Multidisciplinary NGOs should work together. NGOs should use evidence when trying to change mentalities. It is not sufficient to refer cases to international courts, the process is also very expensive. Different remedies should be used together instead of prioritising one remedy. The media can also be used to publicise courts' decisions.
- Other options:
  - Collective litigation before the European court;
  - Alternative reporting to treaty bodies.

#### **6. Possible partners**

- Human Rights in Mental Health Initiative (RUHİSAK)
- Foundation for Society and Legal Studies (TOHAV) and Turkish Human Rights Foundation (TIHV)

#### **7. Plans, next steps**

- a. Identify where legal defences exist in law
  - i. article 232§2 of Turkish Penal Code
  - ii. assault law and how it applies to children; does it provide equal protection to children and apply principles of the best interests of the child □ it does not provide equal protection
- b. Have a legal opinion prepared on corporal punishment and its legality in Turkey
- c. Although child sexual abuse is being reported to the public prosecutor, other forms of violence against children are not reported in practice (discrimination in perceiving violence and response to it as well as reporting of incidents)

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<sup>1</sup> After the CRIN/ICC workshop, ICC facilitated a bill amending Turkish Penal Code Article 232§2 (protection from violence) to scrap disciplinary powers of adults over children. [http://www.tbmm.gov.tr/develop/owa/tasari\\_teklif\\_sd.onerge\\_bilgileri?kanunlar\\_sira\\_no=105229](http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=105229) (in Turkish)

- d. Highlight discrimination in protection<sup>2</sup>
- e. Divide work within the coalition
- f. Work with State authorities to mainstream child rights
- g. Campaign to remove all legal excuses concerning violence against children in Penal Code, repeal article 232§2 of Penal Code; take a case to the Constitutional Court (until July 2012 procedures for Constitutional Court complaints application; special procedures for children to apply to the court)
- h. Push for inclusion of total ban on corporal punishment in the new constitution<sup>3</sup>
- i. Take it to Turkish Parliament, have parliament discuss CRC and other CR treaties
- j. Take it to ECHR claiming discrimination against children in the application of articles 8 and 14 (rights to respect for family and prohibition of discrimination)

## **8. Opportunities**

- k. OPCAT, by 29 September 2012, an independent national monitoring mechanism must be established, TOHAV and TIHV are working on this, CR NGOs should contribute.<sup>4</sup>
- l. Opuz case from ECHR on violence against women is a pilot case, existing case law should be utilised.

## **Working Group 2: Economic and Social Rights**

Group 2 looked at the access of different groups of children in various social and economic conditions to education.

### **1. Violations of the right of children with disabilities to access education:**

- UN Convention on the Rights of Persons with Disabilities.
- Constitution: education is free for everyone, but children with disabilities are being sent to special centres. Even though the state pays for these, they are not monitored- so do not provide a real education in comparison.
- European Convention on Human Rights, Protocol 1 on the right to education.
- European Social Charter - right to education.
- International Covenant on Economic, Social and Cultural Rights (ICESCR), Article 13 - right to education.
- UN Convention on the Rights of the Child

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<sup>2</sup> Since workshop, ICC and Human Rights Joint Platform prepared a brochure on discrimination and children's rights (in Turkish) and also issued a policy brief on discrimination and children's rights (in Turkish)

<sup>3</sup> Since workshop, ICC presented its constitution and children's rights brief to the Constitution Drafting Committee at the Turkish Parliament in February 2012, including a total ban on corporal punishment in all settings.

<sup>4</sup> Since the workshop, ICC had meetings with human and children's rights organisations to discuss and determine next steps for children's rights organisations to be part of the OPCAT process

## **2. Evidence**

- Complaints from parents.
- Complaints which have been filed against school and/or municipalities.
- Newspapers and discussions; these refer to blind children in particular. For example, in one case, a 17-year-old blind child was not accepted by a public university because of the inaccessibility of some floors in the building.
- No central place exists where all information is collected systematically.
- Complaints which have been made to human rights committees at the provincial level.
- Complaints filed with the directorate for people with disabilities within the government.
- NGO reports on the gender gap in education for children with disabilities.
- Parents of children without disabilities have petitioned and formed resistance to the inclusion of children with disabilities (most of these cases have resulted in children with disabilities leaving school).
- Monitoring reports for each school can be reviewed. Where these reports do not cover discrimination against children with disabilities, that is also evidence of discrimination. There is a need for disaggregated data in those reports.
- The high dropout rates among children with disabilities.
- Entrance exams; is appropriate accommodation being provided? The length of such tests is the same, however, for blind children, the test is read aloud and the student must answer while the teacher records their response. This is not always taken into consideration.
- Test papers are not specifically prepared for blind children.
- Word choice alone can be discriminatory.
- In some cases a monitoring mechanism is established where there has been a consistent violation of children's rights, in fact, the Prime Minister can initiate a process to set up a monitoring council which reviews the case and publishes a report. This is not done consistently.
- Although complaints have been filed, evidence is scarce because nobody has so far considered collecting it.

## **3. Why advocacy has failed**

- The quality of education is not systematically monitored to review what kind of education children with disabilities are receiving from the state and private centres that are paid by the government.
- Other rights i.e. the right to health and to rehabilitation are not being fulfilled. These must also be considered in order for children to access the right to education.
- There is not enough data: in Turkey it is not possible to gather disaggregated data about certain groups of children, for instance, boys with a Roma background. Even if the information is available, it is not made public. This can lead to double discrimination for some specific minority groups.
- On a positive note, confederations for people with disabilities have successfully lobbied Turkey to ratify the disabilities convention. NGOs were able to mobilise a parliamentarian who was also disabled to advocate on behalf of persons (including children) with disabilities.
- In Turkey, there is a wide range of confederations for the rights of people with mental health problems, people with visual or hearing impairments

and people who experience physical disabilities. Although these were very active in previous years, this activity has slowed due to pressure from the government. The state did not provide these organisations with help because they were speaking out against the state for the advancement of rights

- There are problems with both legislation and its implementation. For example, legislation implementing the disabilities convention allows seven years before accommodations should be made. However, NGOs working on this issue focus on discrete issues rather than holistically; there is a need to involve larger, general human rights organisations. The seven-year period will end on July 7, 2012. After July, a complaints mechanism must be established. However, nothing has been done as yet and there is concern that if nothing has been done for seven years, progress is unlikely to be made in the next eight months. NGOs should have filed complaints earlier to ensure that the government was following up on its obligations.
- Advocacy attempts during the seven-year period have not been successful because evidence is not being collected, and monitoring and evaluation is not being carried out.
- Some cases have been brought on behalf of children who are not in schools for people with disabilities. This process takes at least 10 years, by which point they are not children anymore.
- There is no coordinating mechanism to monitor and implement children's rights. There are five ministries responsible for the rights of one child which means there is no holistic approach to children's rights. Roles must be more clearly delineated.

#### **4. What forms of legal advocacy could be used?**

- Lobbying of the Ministry of Education and the Ministry of Family and Social Protection.
- Advocacy at the legislative level to establish a coordinated mechanism/framework/structure -responsibilities and rules must be defined to establish who is accountable for what.
- The definition of discrimination must be clarified. The Constitution of Turkey is very narrow, it is therefore difficult to get a result that determines that there has been a violation of the right to non-discrimination. Courts tend to issue judgements that focus on issues other than discrimination.
- There is no ombudsperson, but there is an internal monitoring mechanism that may be used.
- In terms of collecting evidence for making a complaint, it may be possible to get a better result from focusing on the right to education rather than the right to non-discrimination.

#### **5. Obstacles to using legal advocacy**

- There is limited awareness of the European Convention on Human Rights and what is included in its protocols. For example, people may not be aware that they have extra protection under international law i.e. there is a specific provision on education which is not widely known. Associations working on children's rights are not certain which specific rights are being violated. Under international conventions are being violated. There is a need to go through national laws and be more outspoken about these violations.
- Cases involving children require special training and techniques. Many lawyers want to go faster allocate that time to other things. Just looking at

the conventions takes time; most lawyers do not have the time or interest to do this.

- The level of awareness of lawyers dealing with cases involving children must be raised.
- Human rights education in schools must be provided from an early age.
- There is no effective complaints mechanism for these kinds of violations.
- The litigation process is long.
- There is a limited number of courts dealing with children's cases concerning issues such as the right to health or education. Children's courts are generally used for juvenile justice issues, not violations of children's rights.
- In university law faculties, there are only certain credits for human rights classes. This is not an obligatory part of the curriculum.
- There is no consistent practice of gathering evidence for opening complaints based on evidence.
- Some mechanisms can initiate certain complaints; for example, school administration social workers child is not coming to school. This can start process. However, the social services are provided inside the school, so it can be hard children with disabilities to receive these services.
- People need to make a complaint to get a result. It is very hard to motivate parents of children whose rights have been violated; they are afraid they will face even greater discrimination if they make a complaint.
- NGOs do not have the capacity to gather enough evidence to bring legal claims.

## **National Advocacy Plan**

### Objective:

Eliminate discrimination in access to education for children with disabilities by using legal advocacy

### Opportunities:

## **Legislative Campaign**

1. New Constitutional review process within 1 year; promote the inclusion of a provision in the new Constitution banning discrimination and include children (age) and disability. The existing Constitution also covers the right to education.
2. Existence of right to education in national law and disability law; existing Constitution has a positive discrimination clause. Legislative campaign to push for providing reasonable accommodation; obligation of private and public entities within Penal Code Article 122.
3. Support anti-discrimination legislation currently being drafted by the government; bring through Parliament and make age one of the grounds (disability is currently in the draft, but not age). Make sure that an equality commission is established.
4. Law on the regulation of ombudsman; proposed to include children under the ombudsman's mandate. Is in the draft, but must cover children as a specific issue. Can also promote the inclusion of ombudsman in the Constitution – mainstream children's rights.

## **Judicial/Quasi-judicial Opportunities**

1. 2 years ago, a teacher submitted a complaint regarding an adult unable to access public transportation and won the case. Can be considered an example – gives encouragement that other complaints can be submitted and judgements can be obtained.

2. The public administration is not providing reasonable accommodation for these children; reasonable accommodation clauses exist in national disability law (implementation is the problem) and the failure to provide this can be challenged in court – open cases against the state government. Cases can focus on holding the government being accountable for not providing accommodation.

Government must provide services in an equal way and is not doing it. Potential defendant: Ministry of Education. This case would go to an administrative court. After a successful case, this must be shared with the disability communities to let them know of their rights under the case.

\*Using international law: When the local/national laws are limited, article 90 of the Constitution provides for supremacy of international conventions where there is a conflict with national law.

To be achieved: compensation for the children, amendments to national law.

Under Turkish law, depending on a judgement, all of the laws that are challenged or otherwise relevant must comply with the case – amendments must then be made. If the public administration is not making the changes, then they can be held liable and administrators can be brought to court for not complying with the court order. The court wouldn't change the law directly, but this pressure would encourage the government to do so. Each case will enhance the possibility of getting better judgements for other victims of discrimination.

- Two remedies: 1) material compensation; 2) force public authority to make adjustments
- Minimum 2 year process. Victims and the government can appeal if they lose and cite international law to Council of State, which is the final decision. Appeals from there can go up to the ECtHR using the Protocol of the Convention on education. Note that decisions from the Council of State are binding precedent on all administrative courts – important to take cases this far if you can; note that an appeal would take an additional 2 years.
- Problem: Judges are also public servants, so have an interest in protecting the public purse and tend to award low levels of compensation.
- Note that in July 2012, the government's obligation to meet the rights in the Disabilities Convention will vest and be ripe for challenging.
- Bar Association needs to be working on these issues; lawyers need to know how to bring these cases and to work with disability and children's rights organisations; there should be special experts on these subjects supporting this initiative (there are no experts in discrimination in Turkey as far as participants know). Must convince the court that it's not just a one-time thing, but a systematic violation. The Bar Association now has a hotline, and each caller can talk to a counsellor free of charge. Can do this for persons with disabilities and connect victims with lawyers who specialize in anti-discrimination. Identify particular bar associations who could be good partners; will take preparation to coordinate efforts and inform families of children with disabilities, experts, disability and children's rights organisations → work together, collect evidence, go forward with case. To get experts, may look to international community to see how anti-discrimination law can be used
- Strategic decision: pick cases that will lead to a good result

3. Individual applications to Constitutional Court will be available in 1 year – everyone will be able to make direct complaints to the Court. The Constitutional Court is still drafting how this process is going to go. Since this is under way, input can now be provided on how the Court will handle violations of children's rights and disability rights. Children's rights organizations must demand that children are able to bring complaints and demand that the mechanisms are helpful to advancing children's rights. Constitutional Court must consider international human rights because these have precedence over national laws.
- This is also a threat – the complaints mechanism is being established as a way to subvert cases from the European Court of Human Rights. It's also an opportunity, though – bring in international experts.

### **International Opportunities**

1. A state report on the Convention on the Rights of Persons with Disabilities is due, however children's rights organisations have not participated very much. Preparations can now be made by working with disability organisations try to alternative report.
2. Encourage Turkey to ratify the optional protocol to the Convention right as the disabilities as well as the Convention on the Rights of the Child optional protocol.
3. Universal Periodic Review: children's rights advocates missed this opportunity the first time around, but will be ready to submit information for the second round.
4. Continue to report to the UN the Committee on the Rights of the Child.
5. Promote the discussion of Turkey's state reports to the treaty bodies in the Turkish parliament. This will promote accountability and responsibility. State ministries should be held accountable to Parliament and people should be allowed to make complaints in order for this to happen.

### **Working group 3: Discrimination against minority groups - children's right to learn in their mother tongue and freedom of religion**

Two challenges faced by children of minorities in Turkey include accessing education in their mother tongue and the nature of compulsory religious education in schools.

N.B.: The Lausanne peace treaty defines minority ethnic groups in Turkey as Armenian, Greek and Jewish.

#### **1. Religion**

Religious education in Turkey is compulsory under the 1981 law. However, this only promotes one faith - the Islamic Sunni faith.

#### **Violations of children's freedom of religion in education:**

- UN Convention on the Rights of the Child: article 2 (non-discrimination), article 4 (best interests of the child), article 12 (right to be heard), article 13 (freedom of expression), article 14 (freedom of religion), article 17 (access to appropriate information), articles 28-29 (education and aims of education), article 30 (children of minorities).
- Turkey has entered reservations to articles 17, 29 and 30 of the CRC. These reservations are in conflict with the Turkish Penal Code:

**Article 112:** *Access to Education: a sentence is provided for in case a child is not allowed into the premises of the school.*

**Article 115:** *No one should be forced not to express his or faith or religion.*

**Obstacles to legal advocacy:**

- The government and the reaction of the Sunni majority
- The government also fears that a change in the curriculum will require investment.
- The lack of democratic environment.
- The legal aid system is not sufficient.
- There is a shortage of professional expertise in this area.
- Victims do not know their rights or how to seek redress.
- Lack of resources.
- The courts are more protective of state authorities than of individual victims.

**2. Language:**

**Context:**

According to Turkey's Constitution, Turkish is the only language permitted to be taught as a main language in schools.<sup>5</sup>

Participants considered that a change is needed to enable children to take certain courses in their own ethnic languages, rather than changing the entire curriculum.

It is now possible to discuss discrimination, however, progress remains slow. Kurdish, for example, is not considered a language. Kurdish children who do not speak Turkish are treated with discrimination: they are bullied and beaten by teachers, and are treated as though they have a disability.

Recent developments:

- Free private courses are provided but there is a lack of demand;
- It is now possible to access information in the media in different languages, including Kurdish;
- The exercise of Kurdish culture was forbidden after the coup d'état in 1981; this is no longer the case;
- There were reports that some Arabic speaking parents are afraid of speaking Arabic to their children;
- A Department of Kurdish language opened in Mardin Artuklu University in Mardin
- Armenian, Greek and Kurdish schools are starting to emerge.

**National Advocacy Plan**

**1. Who can be targeted to advocate for legal reform?**

- National Courts;
- European Court of Human Rights;
- The committee of the Turkish grand national assembly (an action can be started by a parliamentarian);
- Provisional and sub-provincial human rights boards. These meet every month but they are not efficient because the members lack human rights education (appointed civil servants);
- Provincial and sub-provincial coordination board for social support;
- Complaints offices;
- Child rights committees in 81 provinces: members are children supported

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<sup>5</sup> Since the workshop and announcement has been made that Kurdish may now be taught as an elective subject in schools: <http://www.crin.org/resources/infoDetail.asp?ID=28729&flag=news>

by UNICEF;

**Next steps:**

Improving cooperation between the bodies listed above and civil society organisations (CSO).

- Collective complaints: A new law in Turkey allows for collective complaints to the courts
- In the last few years CSOs have been stepping up pressure on the Parliament.
- The CSOs are more accepted and therefore more powerful.
- NGOs (mostly those in Ankara) are invited to law drafting committees and the inquiry commission in the parliament and have the right speak during the meetings.
- Advocate to amend the law on associations. Changes were made in 2005 but more needs to be done (for example to facilitate the formation of NGOs and to reduce the authorities' power to monitor and evaluate NGOs' work.)
- The Small Parliament initiative started by Sanar Yurdatapan as a platform to bring NGOs and parliamentarians together.
- Apply for more funding to do legal advocacy.
- Train activists on all procedures and remedies that exist.
- Legal aid services need to be provided and those who are providing it need to be trained.
- A democratic environment should be enforced so activists are less afraid.

**3. Efforts should focus on the following to resolve both issues:**

- Anti-discriminatory policies should be developed.
- An open discussion should be initiated to reach a consensus. Activists have different opinions on the way to tackle these issues.
- The NGO efforts in regards to the rights of children of minorities have been insufficient so far; activists in this field need to strengthen their efforts.

**Where should we start?**

- Look for existing research;
- Lobby for legal change with the parliament, government and community directly or through influential groups;
- Use international and regional courts;

**Action towards legal reform:**

- Turkey has reservations to articles 17, 29 and 30 of the CRC. should begin to have those reservations lifted.
- Lobby the parliament.
- A new Constitution is being drafted. A meeting should be held with the Constitution drafting committee to try to influence the change of provisions that discriminate against the right to freedom of religion and language of minorities. Participants thought that all parties except the Nationalist Party in the parliament will agree to such a change.
- Some participants thought that Turkish should remain the main language taught in schools and other languages should be taught as elective courses.
- The ECHR's decision requires changes to be made.

**Specific actions on the issue of religion:**

- Lobby for change in the curriculum for religious education to cover all religions and to be an elective course. The courses should include objective information about all religions.
- Prepare a draft law to amend existing ones.
- Target the following groups: the religious affairs presidency (public government agency responsible for religious affairs of Islamic Sunnite faith), the Ministry of National Education, relevant political party representatives.
- Raise public and media support.
- Initiate educational reform;
- Involve the Union of bar associations, Ankara child rights platform, and other relevant NGOs.

#### **Working group 4: Negligence/injury, lack of compensation for child victims**

##### **1. What are the violations?**

- Victims of crime and honour killings, and child abuse and neglect
- Early marriage, sometimes for children as young as 12; there is still a dowry system
- Violations of the right to protection and development (enshrined in the CRC, Turkey's child protection law, Turkish penal code, and the constitution), right to life and the right to health.

##### **2. What evidence exists about the violation?**

- There are many on-going cases of child abuse or neglect heard about through the courts. In terms of evidence, sometimes there are health records but these are not always kept, sometimes it is at the discretion of the family doctor (sometimes out of honour or shame no records are kept); sometimes teachers know, but there are no official records.
- Unless the violation is very serious (e.g. visible to the judge), it will not be defined as a violation by the authorities.

##### **3. Why are the violations persisting? What forms of advocacy have failed to achieve remedies?**

- In the case of early marriage, authorities sometimes turn a blind eye
- People don't have access to legal advice and there is a lack of legal aid, in particular with regards to child victims. Legal aid is only available in criminal cases, in which case it is paid for by the government. If it relates to child victims, the Bar Association will be contacted and very young and inexperienced lawyers will be appointed to represent the child.
- European Court of Human Rights cases were all brought by lawyers appointed by the parents.
- The legal status of the child is unclear.
- There is a lack of legal advocacy and lawmakers do not understand the point of advocacy
- Problem when a decision is based on the judge's interpretation
- The article about abuse and neglect (in the Turkish Penal Code) is very general and not sufficient.
- There is too much focus on punishment and not enough advocacy to secure restorative justice and rehabilitation.
- There is a lack of legal advocacy by civil society and others (and this is usually project based)
- Children are not seen as rights holders

- Professionals working with children do not always understand what their responsibilities are
- There is a lack of coordination between different sectors
- Cases typically take two years; there is therefore a backlog and this militates against the right to a fair trial.

#### **4. What forms of legal or quasi-legal advocacy could be used to challenge the violation - national constitution and legal system, regional or international human rights mechanisms**

*Note: The aim of this discussion was to discuss what forms of advocacy, including legal advocacy, have been or could be used. However, there was a tendency to focus instead on the lack of implementation of existing laws and need for awareness raising among legal professionals, the media, parents, etc.*

- Awareness raising and training of lawyers, judges, police, social workers, etc. to ensure decisions are consistent with children's rights.
- Identify shortcomings in laws
- Ensure supervision of professionals working with children
- Media should inform people about how to use legal remedies and ensure they do not re-victimise children (often happens)
- Establish child rights units in universities
- Lobby the Turkish government to ratify the CRC OP3

## Day 2

### Aim of discussion on day 2

1. Addressing the obstacles from a Turkish perspective: how to overcome them and encourage more legal/legalistic advocacy in Turkey to challenge the identified and other similar persisting violations; also how to ensure some ongoing system in Turkey to continue to identify persisting violations and to consider/pursue legal/legalistic advocacy.
2. Should there be advocacy for particular changes/improvements to provide children and their representatives with more effective remedies, both under national law and in the regional and international human rights mechanisms and conditions for their use?

### 1. Possible partners

- NGOs
- Parliamentarians, Ad Hoc Committees
- Bar Association
- Think tanks
- Media

### 2. Practical next steps: two aims for legal advocacy were identified within the area of child abuse

#### 2.1. Legal Reform

Need laws amended/clarified: laws are unclear and inconsistent (e.g. sex among peers, or consenting children is often confused with sexual abuse and children are often penalised as a result)

#### Steps for legal amendment

1. Legal definition of child abuse and incest needs to be improved; sexual relations between peers should be better defined.
2. Compile different laws, look at what other countries say
3. Propose amendments to a draft law currently being discussed or propose a new one but the problem is that the law proposed castration of perpetrators, whereas what is needed is a victim-centred approach
4. Get support from Bar Association and Physicians and universities working in penal code areas - universities child protection centres, etc. associations of psychiatrists, child psychiatrists and psychologists
5. Work in commissions, and ad hoc committees, groups, Minister of Justice and Family, get the support of the media

#### 2.2. File a complaint against media outlets who identify child victims

Media outlets are not legally entitled to reveal the names of child victims, but what many papers do is give the name of the father, the mother and, for instance, the school of the child. Usually all that happens is the papers pay a fine, but that is unsatisfactory as it does not serve as a sufficient deterrent.

#### Steps:

- Collect news stories of children who have been identified in this way in the

papers

- File a complaint with the Public Prosecutor
- Propose an amendment to the law
- If this is unsuccessful, file a complaint with the ECHR.

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#### **4. Advancing legal advocacy in Turkey.**

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General conclusions from workshop, then:

What more can be done?

- Develop a common understanding of the legal status of the child.
- Identify people to work with in a coalition, for example, the Bar Association, parliamentarians, etc.
- Interstate complaints: urge other states to name and shame Turkey
- Improve understanding of children's rights among professionals
- Investigate funding opportunities which will allow advocates to work on changing the system rather than time specific projects.
- Make more use of existing opportunities for legal advocacy at the national and international level, including: the Constitutional Court, UN mechanisms and European Court of Human Rights.
- The government looks at the decisions issued by the European Court of Human Rights as about individual issues, not as a systematic problem. The solution could be to bring more collective complaints. The European Court itself is now looking at cases differently; it is focusing more on the systemic level rather than individual violations.
- If the government wants to prohibit something and enforce it, this is possible. For example, the ban on cigarette smoke came into effect within 18 months.
- The problem with the executive branch in implementing court decisions. The need to change social attitudes and get people to accept the new law.
- Push for new monitoring mechanisms.
- The Constitutional Court will start considering individual applications from 12 July; this is another avenue through which advocates can start making preparations and filing cases concerning children.
- The European Social Committee is due to issue a recommendation to Turkey soon. Its last recommendations were issued in 2005, the new ones are due shortly.
- The optional protocol to the UN Convention against Torture has been ratified by Turkey . Turkey is obligated to establish a prevention mechanism by September 2012. This means that the situation of any child in detention must be monitored under an independent mechanism. The Turkish Foundation for Human Rights is working to establish a mechanism; child rights advocates can cooperate with them.
- The parliament, which has legislative power, is making policy decisions. However, the parliament has no idea whether it is fulfilling its obligations as this is not being discussed anywhere. Advocates must put pressure on Parliament so that children's rights are taken into consideration. Some parliamentarians have an interest in children's rights.
- Make use of research and case studies. UNICEF for example, published a study in which they found many inconsistencies between the Turkish constitution and Turkish laws. This is a good starting place for drafting complaints.
- The government is not open to direct contact with NGOs, so advocates should consider diversifying groups they work with to reach the government.

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## **5. What can CRIN do to encourage and support these forms of advocacy?**

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The second part of the workshop aimed to raise awareness about what resources CRIN can offer to organisations who are or want to be actively engaged in legal advocacy and to determine what more can be done to bolster this work.

Some of the tools CRIN currently offers:

- A guide to strategic litigation that aims to help those working for children's rights to understand what strategic litigation is and consider this form of legal advocacy as an option for advancing children's rights. The guide is aimed at legal and non legal NGO staff and can be adapted to local settings and procedures. An e-mail list -"CRINMAIL"- on children's rights in court, also covers examples of strategic litigation. [Subscribe here](#).
- A guide explaining how to use UN and regional human rights mechanisms to pursue children's rights advocacy.
- CRC in Court, a searchable database of examples of how the CRC has been used by high-level courts in all regions. Case summaries include CRIN's assessment of whether the decision is consistent with the CRC and why.
- The Children's Rights Wiki, which brings together a large volume of information about children's rights by country. It includes recommendations made by UN and regional human rights mechanisms, decisions by national courts, and advocacy work carried out by national child rights advocates. National law reports are also available on the wiki pages. These include a general overview of the country's legal system, the status of the CRC in national law, provisions for children's rights in the Constitution, a sense of relevant legislation/case law, a guide on how to conduct detailed legal research, and an analysis of the country's legal compliance with the CRC as assessed by the Committee on the Right Child.
- Other support for national organisations includes: providing toolkits on specific issues, such as child-friendly justice and ending the inhuman sentencing of children; hosting campaigns on the CRIN website, and providing news coverage of national advocacy efforts.

Suggestions from participants included:

- Translating more of CRIN's tools into Turkish and other languages.
- Conducting training activities for lawyers and other professionals working for NGOs.
- Providing more examples of successful legal advocacy from elsewhere.
- Documenting successful legal advocacy in Turkey and disseminating good practice.
- Compiling and disseminating relevant international legal opinions, decisions of ECHR and other human rights legal complaints mechanisms and international and national court decisions.
- Monitoring compliance with decisions of ECHR and other similar mechanisms in Turkey.

- Prepare for Constitutional Court individual complaints mechanism in Turkey (inform NGOs working with/for children, prepare a guide to use the mechanism, prepare possible cases to be submitted to the Constitutional Court), effective as of July 2012.
- Prepare for UN Optional Protocol to Convention against Torture (OPCAT) independent monitoring mechanism (inform NGOs working with/for children, prepare a guide to use the mechanism), effective as of 29 September 2012.

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## **6. Next steps**

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For CRIN:

- Publicise the report on the workshop and send this to participants
- Develop a legal advocacy toolkit to replicate this experience in other countries.
- Identify organisations in other regions with whom to plan the next workshops.
- Report back to participants in Turkey on progress and the workshops in other countries.

For participants:

- Discuss and share the report on the workshop.
- Secure a commitment from their organisation to consider/pursue legal advocacy as an option for challenging violations of children's rights.
- Develop timelines on the advocacy plans prepared during the workshop and share these with CRIN and ICC.
- Share the content of the workshop discussion with advocates beyond Ankara and invite them to participate in ongoing discussions to advance legal advocacy.

# **LEGAL BRIEFING ON CHILDREN'S RIGHTS IN TURKEY**

## **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 ratified international instruments in the national legal system?**

Article 90 of the Turkish Constitution states that international treaties, including the CRC, have the force of national law.

### **B. Does the CRC take precedence over national law?**

Under Article 90 of the Turkish Constitution, international treaties on the subject of fundamental rights and freedoms, including the CRC, prevail over conflicting provisions in Turkish law.

### **C. Has the CRC been incorporated into national law?**

The CRC has not been directly incorporated into national law, nor has national law been fully harmonised with the Convention. A small number of laws have sought to introduce the general principles and certain clauses of the CRC, but all have fallen short of fully reflecting the object and purpose of the Convention.

The UNICEF country office for Turkey has produced two reports that assess the compatibility of Turkish law with the CRC. The first, prepared by the Ministry of Justice with the assistance of a UNICEF consultant, suggests that the Turkish national legal framework is compatible with the CRC. The second, 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 change to be brought into compliance with the Convention.

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, and the law allows for children in conflict with the law to be charged in adult criminal courts.

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

The CRC is theoretically enforceable in domestic courts, and international treaties cannot be challenged as unconstitutional. It is possible to bring a case to challenge any law as incompatible with an international human rights treaty, including the CRC, but in practice this can be very difficult.

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

Human rights treaties are not generally referenced in national courts. There have been only a few lawsuits filed to challenge national laws as incompatible with international treaties, and a small number of court decisions cite the CRC. Several experienced child rights lawyers have reported that public prosecutors and judges are reluctant to refer to the CRC and shy away from raising it in domestic courts.

As regards other children's rights treaties, including the European Convention on the Exercise of Children's Rights, these are not generally used by criminal courts but have on occasion been referenced in civil matters.

## 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?

Article 11 of the Turkish Civil Code sets the general age of majority as 18, although Article 12 raises the possibility for children aged 16 and over to act as full legal adults. Children with legal capacity and/or their parents or legal guardians can bring cases to challenge violations of children's rights under domestic law, but must have been directly affected by these violations. It is more difficult to challenge violations of rights contained in the CRC that are not addressed under Turkish law.

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

As above, children aged 16 and over may bring claims in their own names, but otherwise must have the assistance of a representative.

In addition, a child of any age who has been a victim of crime may request that the public prosecutor open a criminal case. Adults who witness a child being victimized by a crime are legally obligated to report the crime to the public prosecutor and can be punished for not doing so under Articles 277 to 279 of the Turkish Penal Code, especially if the witness is a public servant, a teacher, a doctor, or a person in a similar profession. Victims are asked if they wish to intervene in criminal proceedings under Article 238 of the Turkish Code of Criminal Procedure, and child victims wishing to do so are automatically appointed representatives under Article 234 of the Code.

Parents, legal guardians and children's rights organisations may seek to initiate or intervene in a case, but this may only be done subject to judicial discretion as recognised in Articles 1 and 4 of the Turkish Civil Code.

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

Child complainants may be able to seek legal aid from the local bar association. In addition, children accused of being in conflict with the law are automatically appointed lawyers under Article 150 of the Code of Criminal Procedure.

### D. Are there any other 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 below the age of 18 without full legal capacity to proceed with a court case. This permission is not sought for criminal cases, nor where the parent or guardian is the person alleged to have violated the child's rights.

## 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/regional instruments, how can a legal challenge be brought?

Following recent revisions, Article 148 of the Constitution now provides that any person may directly challenge violations of human rights contained in the Constitution or the European Convention on Human Rights before the Turkish Constitutional Court. However, legal procedures for how these cases will be filed and reviewed have not yet been developed.

The Supreme Court of Appeals may also review cases that involve violations of international instruments, and the Court of Cassation would review similar administrative decisions. 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.

- B. What powers would courts have to review these violations, and what remedies could they offer?
- 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?
- D. Is any form of collective action or group litigation possible, with or without naming individual victims?
- 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?

As above, children's rights organisations may seek to initiate or intervene in a case, but this may only be done subject to judicial discretion as recognised in Articles 1 and 4 of the Turkish Civil Code.

## **IV. Practical considerations.** Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

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

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 (see Articles 29, 31 of the Child Protection Law). 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. Along these lines, criminal courts may refer cases to children's courts, and civil courts may refer cases to family courts. This may depend on the nature of the crime or the children's rights violation established as governed by the Codes of Civil and Criminal Procedure.

- 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. The costs of this assistance are borne by the government in accordance with the Code of Criminal Procedure and the Child Protection Law; fees for social and other professional services are also covered. Notably, cases are randomly assigned to lawyers, and hence the lawyer selected may not have any experience or training in working with children.

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. These costs often amount to roughly 1500 Turkish Lira (€700), which can prove prohibitively expensive.

- 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 practising 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?

For civil cases, the legal aid bureaus of bar associations may offer to provide representation and legal assistance to persons in financial need with valid claims.

- 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?

- 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 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 (see Articles 116 to 134, 138 to 140, 148, and 206 to 218).

In practice, lawyers may not collect evidence in the prescribed ways, which may result in a case's transfer of dismissal. Alternatively, public prosecutors may decline to file cases even where there is evidence.

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

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

As discussed above, the Constitutional Court, Supreme Court of Appeal and Court of Cassation may all review cases alleging violations of children's rights.

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?

If a lawsuit is unsuccessful, the losing party must cover all of the costs of the case and cannot bring the same violation to court again. Given the impact of precedent, this may also make it difficult for similarly situated victims to challenge violations in court.

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

There are often issues in the execution and enforcement of laws and legal decisions.

V. **Additional factors**. Please list any other national laws, policies, practices or other factors you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Media coverage has in some instances proved to be useful in bringing cases forward and challenging violations of children's rights. However, there are legal limitations on the involvement of media in court cases.

Families of child victims may sometimes argue against lawyers and advocates taking a case further in light of certain social and official pressures. This may even involve filing a suit for damages against the lawyer involved to prevent the case from proceeding.

# Turkey: Case law from the European Court of Human Rights

Using the Council of Europe's database of case law from the European Court of Human Rights relevant to children's rights<sup>6</sup>, CRIN has found and categorized 25 cases brought against Turkey that implicate children's rights. The most frequently alleged violations of children's rights involves the juvenile justice system, followed in turn by issues of parental custody, police abuse, paternity, health, religious education, discrimination, and negligence. The numerical breakdown of decisions by theme is presented below, followed by brief summaries of the precise issue(s) at hand in each case.

## **Case themes:**

Juvenile Justice/Detention (9)  
Parental Custody/Access/International Child Abduction (5)  
Police Abuse (3)  
Paternity (3)  
Health (2)  
Religious Education (1)  
Discrimination (marital status of parents) (1)  
Negligence/Injury (1)

## **Case descriptions:**

Juvenile Justice/Detention (9):

- VI. [Erhan Dinç v. Turkey](#), 20 May 2010: "Minor accused and detained, in Turkey" / [Aytimur v. Turkey](#), 20 May 2010: "Minor accused and detained, in Turkey"
  - A. lack of an effective procedure whereby the applicant could have challenged the lawfulness of his provisional detention (Art. 5 § 4 ECHR) - [violation].
  - B. impossibility for the applicant, who did not have an effective remedy enabling him to challenge the lawfulness of his provisional detention, to claim compensation (Art. 5 § 5 ECHR) - [violation].
- VII. [Alkes v. Turkey](#), 16 February 2010: "Minor accused and detained, in Turkey".
  - A. ill-treatment sustained by the applicant while in police custody and impunity of the police officers implicated (Art. 3 ECHR) - [violation].
- VIII. [Soykan v. Turkey](#), 21 April 2009: "Minor accused and detained, in Turkey".
  - A. impossibility for the applicant to be assisted by a lawyer while in police custody (Art. 6 § 3(c) ECHR + Art. 6 § 1 ECHR) - [violation].
- IX. [İpek and Others v. Turkey](#), 3 February 2009: "Minors accused and detained in Turkey".
  - A. absence of plausible reasons to suspect that the applicants had committed an offence justifying their arrest (Art. 5 § 1 (c) ECHR) - [no violation for the second applicant], (Art. 5 § 1 (c) ECHR) - [violation for the first and third applicants];
  - B. length of the applicants' detention in police custody (Art. 5 § 3 ECHR) - [violation];
  - C. lack of an effective remedy in domestic law enabling the applicants to challenge the lawfulness of their arrest and their detention in police custody (Art. 5 § 4 ECHR) - [violation];

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<sup>6</sup> [http://www.coe.int/t/dg3/children/caselaw/caselawchild\\_en.asp](http://www.coe.int/t/dg3/children/caselaw/caselawchild_en.asp)

- D. non-existence of a right to compensation for the unlawfulness of the applicants' arrest and detention in police custody (Art. 5 § 5 ECHR) - [violation].
- X. [Güveç v. Turkey](#), 20 January 2009: "Minor accused and detained in Turkey".
  - A. detention of a minor in an adult prison and inability of the authorities to provide him with adequate medical assistance for his psychological problems, and also to prevent his repeated suicide attempts (Art. 3 ECHR) - [violation];
  - B. length of the applicant's detention on remand (Art. 5 § 3 ECHR) - [violation];
  - C. lack of a remedy in domestic law enabling the applicant to challenge the lawfulness of his detention on remand (Art. 5 § 4 ECHR) - [violation];
  - D. impossibility for the applicant to participate effectively in his trial because he was completely without any legal assistance or because of the de facto lack of legal assistance (Art. 6 § 1 ECHR + Art. 6 § 3 (c) ECHR) - [violation].
- XI. [Salduz v. Turkey](#) [GC], 27 November 2008: "Minor accused and detained in Turkey".
  - A. impossibility for the applicant to be assisted by a lawyer while in police custody (Art. 6 § 3 (c) ECHR + Art. 6 § 1 ECHR) - [violation].
  - B. non-communication to the applicant, in proceedings before the Court of Cassation, of the written opinion of the Principal Public Prosecutor (Art. 6 § 1 ECHR) - [violation].
- XII. [Nart v. Turkey](#), 6 May 2008: "Detention on remand of a 17-year-old adolescent in Turkey".
  - A. duration of the applicant's detention on remand (Art. 5 § 3 ECHR) - [violation].
  - B. lack of an effective remedy to challenge the lawfulness of the applicant's detention on remand (Art. 5 § 4 ECHR) - [violation].
- XIII. [Selçuk v. Turkey](#), 10 January 2006: "Detention on remand of a 16-year-old child in Turkey"
  - A. duration of the applicant's detention on remand (Article 5 § 3 of the ECHR) - [violation].

#### Parental Custody/Access/International Child Abduction (5)

- ▣ [Mustafa and Armağan Akin v. Turkey](#), 6 April 2010: "Custody rights of a divorced father with respect to his children, in Turkey"
  - custody arrangements, established by the domestic courts, preventing a brother and sister from seeing each other (Art. 8 ECHR) - [violation].
- ▣ [Övüş v. Turkey](#), 13 October 2009: "International child abduction, in Turkey".
  - failure to notify the applicant, who lives in Germany, about the divorce action initiated by her former spouse before the Turkish courts (Art. 6 § 1 ECHR) - [violation].
  - impossibility for the applicant to see her children owing to the Turkish authorities' failure to take measures (Art. 8 ECHR) - [violation].
- ▣ [Ancel v. Turkey](#), 17 February 2009: "International child abduction in Turkey".
  - length of the domestic proceedings concerning the applicant's custody of her daughter, who had been removed by her father (Art. 6 ECHR) - [no violation];
  - non-enforcement of the decision awarding the applicant custody of her daughter, who had been removed by her father (Art. 8 ECHR) - [no violation].
- ▣ [Eskinazi and Chelouche v. Turkey](#), decision of 6 December 2005: "International child abduction in Turkey"
  - decision of the Turkish authorities concerning the return of the applicant's daughter to her father in Israel (Articles 8 and 6 of the ECHR) - [application inadmissible].
- ▣ [Sophia Guðrún Hansen v. Turkey](#), 23 September 2003: "International child abduction in Turkey"
  - adequacy of the measures taken by the authorities to enforce court decisions relating to the mother's right of access (Article 8 of the ECHR) - [violation].
  - mother's deprivation of the right of access as a result of alleged discrimination

based on her religion and nationality (Article 14 of the ECHR) – [no violation].

### Police Abuse (3)

- ▮ [Nehyet Günay and Others v. Turkey](#), 21 October 2008: “Death of an adolescent in circumstances engaging the responsibility of the security forces in Turkey”.
  - disappearance of a 17-year-old adolescent after violence inflicted on him by the security forces and in circumstances entailing a real danger of death (Art. 2 ECHR) – [violation].
  - absence of a genuine and effective investigation into the circumstances in which the young man disappeared (Art. 2 ECHR) – [violation].
  - suffering endured by the young man’s close relatives following his disappearance (Art. 3 ECHR) – [violation].
- ▮ [Okkali v. Turkey](#), 17 October 2006: “Impunity of police officers who had ill-treated a 12-year-old child in Turkey”
  - defect in the greater protection from which the applicant should have benefited as a minor (Article 3 of the ECHR) – [violation].
  - impunity of the police officers responsible for ill-treating the applicant (Article 3 of the ECHR) – [violation].
- ▮ [Aydin v. Turkey](#) (GC), 25 September 1997: “Treatment meted out by police and security forces during police custody in Turkey”
  - acts of physical and mental violence and act of rape committed against a 17-year-old detainee (Article 3 of the ECHR) – [violation].
  - lack of an effective remedy to protect the girl (Article 13 of the ECHR) – [violation].

### Paternity (3)

- ▮ [Turnali v. Turkey](#), 7 April 2009: “Determination of paternity, in Turkey”.
  - dismissal by the domestic courts of the applicant’s request to establish his paternal affiliation owing to failure to comply with the limitation rule (Art. 8 ECHR) – [violation].
- ▮ [Tavli v. Turkey](#), 9 November 2006: “Action for disavowal of paternity in Turkey”
  - impossibility for the applicant to have it established by a court that he was not the father of his former wife’s child, despite the DNA test which confirmed this contention (Article 8 of the ECHR) – [violation].
- ▮ [Ebru and Tayfun Engin Colak v. Turkey](#), 30 May 2006: “Establishment of paternity in Turkey”
  - length of proceedings relating to the establishment of paternity (Article 6 § 1 of the ECHR) – [violation].
  - inability of the domestic courts speedily to determine the paternity issue, and the resulting uncertainty as to the child’s personal identity (Article 8 of the ECHR) – [violation].
  - absence of a remedy enabling the applicants to complain of the excessive length of the proceedings relating to the establishment of paternity (Article 13 of the ECHR) – [violation].

### Health (2)

- ▮ [Oyal v. Turkey](#), 23 March 2010: “Child contaminated by HIV when given blood transfusions immediately after his birth, in Turkey”.
  - redress in the context of domestic law and length of the administrative procedure in relation to the complaints concerning the contamination of the child by HIV when given blood transfusions (Art. 2 ECHR) – [violation].
  - length of the administrative procedure in question (Art. 6 § 1 ECHR) –

- [violation].
- lack of an effective remedy whereby a procedure may be speeded up (Art. 13 ECHR) - [violation].
- ▮ [Yardimci v. Turkey](#), 5 January 2010: “Child suffering infirmity attributable, according to its parents, to inappropriate medical treatment during childbirth, in Turkey”.
  - length of the civil proceedings concerning the action for damages for the harm sustained, brought by the applicants before the domestic courts, which is based on the parents’ allegations concerning the inappropriate medical treatment of their child during childbirth (Art. 6 § 1 ECHR) - [violation].

#### Religious Education (1)

- ▮ [Hasan and Eylem Zengin v. Turkey](#), 09 October 2007: “Religious instruction in Turkey”
  - refusal to grant exemption to compulsory religious culture and ethics classes for a state school pupil whose parents are adherents of the Alevi faith (Article 2 of Protocol No. 1 of the ECHR) - [violation].

#### Discrimination (marital status of parents) (1)

- ▮ [Selin Asli Öztürk v. Turkey](#), 13 October 2009: “Impossibility for a child born out of the wedlock to have his deceased father's divorce judgment recognised, in Turkey”.
  - refusal of the national courts to grant the recognition, requested by the applicant, of her deceased father’s divorce judgment, delivered abroad, this refusal depriving her of a part of her inheritance (Art. 6 § 1 ECHR) - [violation], (Art. 1 of Protocol No. 1) - [violation].

#### Negligence/Injury (1)

- ▮ [Balci v. Turkey](#), 17 February 2009: “Death of a child after his fall from a swing with defective mountings in Turkey”.
  - compensation for the applicants in domestic law, establishment of individual criminal responsibility, and investigation carried out by the competent authorities into the death of their child after his fall from a swing with defective mountings (Art. 2 ECHR) - [no violation].