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**THE ESTABLISHMENT PROCESS FOR
A SEPARATE CHILD OMBUDSMAN
IN TURKEY: A CASE STUDY**

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IWP-2009-24

May 2009

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ISSN: 1014-7837

This paper provides an overview and analysis of the initial steps towards the establishment of a separate ombudsman for children in Turkey. Looking at children's socio-economic conditions, the legal and political situation, as well as the perception of childhood in the country, it reviews the rationale for the creation of a children's ombudsman. The paper then examines current processes from a child rights perspective, in particular with respect to the now cancelled general ombudsman law. It concludes with lessons learnt and recommendations for ongoing efforts in the establishment of an ombudsman for children in Turkey.

Readers citing this document are asked to use the following form:

Sedletzki, Vanessa (2009), 'The Establishment Process for a Separate Child Ombudsman in Turkey: A case study', *Innocenti Working Paper* No.2009-24. UNICEF Innocenti Research Centre, Florence.

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The Establishment Process for a Separate Child Ombudsman in Turkey: A Case Study

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Summary: The paper provides an overview and analysis of the initial steps for the establishment process of a separate children's ombudsman in Turkey. It examines the legal, political and social reasons why an ombudsman for children would be needed in the country. Specifically, it analyses Turkey's legal framework and international obligations, concluding that lack of implementation of the law and monitoring of children's rights are the main challenges. Children have disproportionately high rates of poverty, and are often victims of various forms of violence, in particular girls. The political structure of the country is affected by significant tensions, especially with regard to the place of religion in the public sphere. Moreover, civil society is quite weak. A law for a general ombudsman has been adopted by the Turkish Grand National Assembly but recently cancelled by the Constitutional Court. The paper analyses the possible reasons for the stalemate and looks at the text of the law from a child rights perspective. Drawing lessons from the foregoing, the study assesses the goals, risks and opportunities of the establishment process. It focuses on the need to build consensus on the objectives of the institution, ensure its independence, and implement the establishment process with the participation of key actors, including children. The study concludes with a set of recommendations.

Keywords: independent human rights institutions, ombudsman, children's rights, Convention on the Rights of the Child, Turkey

Acknowledgements: The author would like to warmly thank the UNICEF Country Office in Turkey for its tremendous support in the elaboration of this paper. Warm thanks are due in particular to Reza Hosseini, UNICEF's Representative in Turkey, for his leadership and commitment to the project. The author is very grateful to Lila Pieters, then Deputy Representative, for her guidance while in Turkey and later on in the drafting of the documents, in particular in-depth comments on early versions. Regina De Dominicis, current Deputy Representative, has coordinated the review of drafts of the document and provided useful insights. Burge Akbulut and Nilgün Çavuşoğlu have helped set up relevant interviews during the advocacy days and provided thorough review and inputs for the document. Feyza Ulubatli assisted the author during the interviews by supporting with translation and providing helpful background information. Numerous national personalities and actors in the area of children's rights in Turkey have made themselves available for interviews and endless thanks are due to them. The author also thanks Rébecca Steward, then consultant with IRC, for her close review of the draft. Last but not least, the author is grateful to Trond Waage, Senior Fellow at IRC, for his guidance, advice and support in carrying out the research.

Contents

1	INTRODUCTION.....	1
2	WHY AN OMBUDSMAN FOR CHILDREN IN TURKEY?.....	2
	Because international standards should be implemented	3
	<i>The European Union accession process.....</i>	3
	<i>Turkey's legal framework related to children and the CRC</i>	4
	<i>Lack of implementation and monitoring of children's rights</i>	4
	Because children in Turkey need an ombudsman	5
	<i>Main issues affecting children: disparities and discrimination</i>	5
	<i>The perception of childhood evolves but remains low</i>	8
	Because the political structure is marked by fundamental tensions and heavy politicization	11
	<i>The secularist/religious debate and its consequences</i>	12
	<i>The political system: a fragile balance</i>	12
	<i>The lack of a third voice: civil society is still weak</i>	13
3	LESSONS FROM A PRECEDENT: THE ESTABLISHMENT PROCESS FOR A GENERAL OMBUDSMAN	15
	Characteristics of the general ombudsman law	15
	<i>A structure headed by a chief ombudsman and specialized ombudsmen</i>	16
	<i>An institution strongly linked to the legislative branch.....</i>	16
	<i>A traditional mandate focused on handling individual complaints against the administration</i>	17
	The establishment process: a battlefield for political tensions	17
	<i>A parliamentary ombudsman</i>	18
	<i>Underlying interpretations.....</i>	19
	<i>The role of the Constitutional Court.....</i>	20
	The ability of the general ombudsman to contribute to the realization of children's rights	21
	<i>Children in the general ombudsman law</i>	21
	<i>The ability of the institution to take a child rights approach</i>	23
4	IMPLEMENTATION OF THE ESTABLISHMENT PROCESS FOR A SEPARATE CHILD OMBUDSMAN: GOALS, RISKS AND OPPORTUNITIES.....	24
	Reaching consensus on the objectives of the institution	24
	<i>Ensuring ongoing, independent and holistic monitoring of children's rights at national level</i>	25
	<i>Building bridges between all sectors of society for children</i>	25
	<i>Contributing to the implementation of the CRC in general, and existing national laws in particular.....</i>	25
	Building the independence of the institution and its focus on the best interests of the child	26
	Building on, and gathering support from, existing actors	29
	<i>Turkish Grand National Assembly Child Rights Monitoring Committee.....</i>	29
	<i>Social Services and Child Protection Agency</i>	29
	<i>Provincial bar associations and their child rights centres</i>	30
	<i>Civil society.....</i>	31
	<i>UNICEF</i>	32
	Building on child rights committees and fostering a culture of child participation	32
5	CONCLUSIONS AND RECOMMENDATIONS	33

1 INTRODUCTION

Recognition of the essential role played by independent human rights institutions for children in the implementation of the Convention on the Rights of the Child (CRC) by the Committee on the Rights of the Child (CRC Committee)¹ and others,² has led to the multiplication of these institutions as monitoring and advocacy tools at national level for children's rights. In Europe, for example, the number of these institutions has more than doubled in the past 11 years.³ As part of this movement, Turkey has recently engaged in a process for the establishment of a separate children's ombudsman.

The establishment of an independent human rights institution for children – also called 'ombudsman for children' – is a crucial phase where the conditions for its effectiveness and impact are being defined. Because ombudspersons for children operate without the hard power of courts or elected bodies to take binding decisions, but with the soft power to mediate, monitor, recommend and influence, the process through which they are created is determinant in their ability to carry out their functions. During the establishment process, not only is the mandate drafted and adopted; but the understanding and expectations of actors are also being shaped. And so is their trust vis-à-vis the institution.

More than a technical phase, the establishment process should therefore be seen as the critical moment when the contract between the institution and all actors – children, parliamentarians, government officials, the private sector, civil society, the media, etc. – is being negotiated and agreed upon. By this means, it contributes to ensuring that the independence of the institution will be valued and respected, and its primary mission to act in the best interests of the child fully understood.

Over the past year, the Government of Turkey, with the support of the UNICEF Country Office, has taken initial steps towards the establishment of a separate ombudsman for children, identified as one of the key objectives of the Children First project. This joint project, promoted by UNICEF, the Government of Turkey and the European Commission, draws on the European Union (EU) accession process and aims to support the Turkish Government in the implementation of the CRC. Advocacy activities for a children's ombudsman were launched with advocacy days in April 2008, organized around bilateral dialogues involving the UNICEF-led delegation, which included former and current European ombudspersons for children, as well as a large conference aiming to clarify concepts and build knowledge among a wide range of actors working in the area of children's rights.

¹ CRC Committee, General Comment No. 2 (2002) *The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, CRC/GC/2002/2; CRC Committee, General Comment No. 5 (2003) *General Measures of Implementation of the Convention on the Rights of the Child*, CRC/GC/2003/5.

² For example, 'A World Fit for Children', outcome document approved at the Special Session of the General Assembly on Children, 10 May 2002 (A/RES/S-27/2), para. 31(b); European Parliament, *Towards an EU Strategy on the Rights of the Child*, report adopted 20 Dec. 2007 (2007/2093(INI)),

³ Data collected through UNICEF IRC Survey on Independent Human Rights Institutions for Children in Europe.

With a view to informing its global study on independent human rights institutions for children, UNICEF Innocenti Research Centre (IRC) has undertaken specific studies of countries from various regions, either by studying independent institutions in place or by examining establishment processes.

Turkey has been identified as an interesting case-study for several reasons. First, a significant number of requests for assistance received by UNICEF IRC in this area relate precisely to the establishment phase. The incipient advocacy efforts by UNICEF-Turkey and the request for support in this regard therefore provided an opportunity to understand first-hand the very beginning of the establishment process in a country facing complex issues. Secondly, Turkey is a 'bridge' country between Europe, where independent institutions for children have been created in a number of countries in recent years, and the Middle East, where such institutions still do not exist. Thirdly, the process in Turkey is largely driven by international actors, including UNICEF and the European Commission; hence the need to understand how to ensure the country's ownership of what may appear as a foreign concept. Last but not least, as a middle-income country, Turkey's situation reflects that of many other countries where the role of UNICEF is currently being redefined.

The present case study investigates the stakes around the establishment process for a separate children's ombudsman in Turkey. Bearing in mind the Turkish context, the study explores the rationale for an ombudsman for children in Turkey and draws on previous experiences as well as the political situation to analyse dimensions to be taken into account in the establishment process.

Reflections and findings build on several sources. On the occasion of the advocacy days organized by UNICEF-Turkey, interviews were conducted with a wide array of actors ranging from ministry officials, parliamentarians, social workers, and lawyers to non-governmental organizations (NGOs) and children. Because interviews were conducted on the basis of confidentiality, statements are not attributed to specific informants but generally identified as a reflection drawn from an interview. The advocacy days were also an occasion to attend meetings and events, and gather additional information. The study is further based on existing reports and documents produced by UNICEF and other international organizations, including the EU and the Council of Europe. With a view to providing an in-depth understanding of some of the issues at stake, academic sources have also been consulted and used to put findings into a broader perspective.

2 WHY AN OMBUDSMAN FOR CHILDREN IN TURKEY?

A first step in the establishment process for an ombudsman for children lies in exploring the reasons why the institution is necessary in the national context, and developing a consensus in the country on this need. Examining the rationale for the establishment of an ombudsman for children also contributes to informing the mandate and functions the independent institution should possess.

The reasons for the creation of an ombudsman for children in Turkey relate first and foremost to the obligation to put in place measures for the implementation of international standards. Gaps in implementation imply that some issues affecting childhood need to be better addressed and have demonstrated the importance of an independent voice able to enhance the perception of children in the society. The political context of the country further evidences the need for an independent institution focusing on children's best interests.

Because international standards should be implemented

Like any state, Turkey is under the obligation to implement the standards it has subscribed to. However, the driving force behind the implementation of human rights treaties in this country in recent years has mainly been the accession process to the European Union, and the high degree of pressure and support that have come with it. With respect to children's rights, the willingness to implement the CRC has led to important legal reforms, but the lack of accompanying measures for implementation and monitoring has limited the impact of these reforms.

The European Union accession process

Turkey has been eager to join European organizations for many years. It has been a member of the Council of Europe since 1950 and has officially been involved in the EU accession process since 1999, when it was accepted as an official candidate.

The EU accession process has generated considerable efforts leading to numerous legislative reforms in only a few years.⁴ The creation of a general ombudsman and a children's ombudsman is also part of this process. In 2001 and 2004, major constitutional reforms amended more than 30 articles enhancing the recognition of human rights. These changes were accompanied by corresponding reform of legislation in a number of 'reform packages'.

Specifically, in line with the 2003 Accession Partnership with Turkey adopted by the EU Council of Ministers, the National Programme for the Adoption of the Acquis Communautaire foresees the creation of a general ombudsman. The main objective of the ombudsman system is to reduce the caseload before domestic courts and contribute to addressing practices of maladministration and human rights abuses.⁵

Although recently cancelled, the law on a general ombudsman was initially adopted in 2006 as one of the responses by Turkey to the conditions for entry into the European Union. It had benefited from significant technical and financial support from the European Commission.⁶ Similarly, the project underway for the establishment of a separate ombudsman for children aims to comply with the requirements of EU accession and is supported by the European Commission. In the first place however, it responds to Turkey's obligations under the CRC.

⁴ Information presented in this section draws from International Crisis Group, *Turkey and Europe: The way ahead*, Europe Report No. 184, 17 Aug. 2007, pp. 9–10.

⁵ European Commission, Project Fiche, 'Initial Twinning Support to the Ombudsman of the Republic of Turkey', 2004.

⁶ Ibid.

Turkey's legal framework related to children and the CRC

The Turkish legal framework related to children's rights has recently evolved significantly in relation to the pressure to adapt legislation to international standards as mentioned above. While the Constitution of Turkey adopted in 1982 lacks a child rights approach, this gap has been partly remedied with the adoption of several subsequent legal reforms.

The Turkish Constitution does not mention children's rights and primarily takes a protective approach. Rather than being identified as individuals, children are first and foremost perceived as members of the family and it is the family which is entitled to state support.⁷ Children who do not benefit from family care and/or need 'social resettlement' are warranted state protection.⁸ In other words, the text does not consider children as active participants in society. However, recent law reforms have attempted to address these shortcomings and have strengthened the protection of children's rights, in particular by amending discriminatory provisions in the legal framework.

With respect to gender equality, a major revision of the civil code in 2001 gave new rights to women in marriages registered after 2003, including equal shares of assets, easier divorces, and removal of the man as the automatic head of the family and of the requirement that he approve his wife's job. The code also raises the legal age for marriage to 17 for women and men. Child equality also makes significant progress, with the recognition of equal rights for children born outside wedlock.⁹

Importantly, a Child Protection Law was adopted in 2005.¹⁰ This law has been deemed a good piece of legislation, respectful of CRC principles by several informants. A probation system is established with a view to reducing deprivation of liberty. Remission of sentence is increased for children, and special arrangements are made for child victims and child witnesses of crime and violence. The number of child courts is increased, especially in cities where the reported number of children coming into contact with the law is high. Furthermore, civil society involvement in the provision of care and protection to children in contact with the law and deprived of parental care is expanded.¹¹ A complementary provision was inserted in the Penal Code in 2005, raising the minimum age of criminal responsibility from 11 years to 12. An informant has pointed out that the law was viewed as too protective towards children by some who would want to see a more punitive approach. However, the outstanding issue is to ensure that the law is translated into reality.

Lack of implementation and monitoring of children's rights

According to a number of informants, the main challenge lies in lack of implementation. Changing the mentalities of prosecutors and judges takes time. Moreover, the institutional framework needed for the actual implementation of the Child Protection Law, such as the

⁷ Constitution of the Republic of Turkey, article 41

⁸ *Ibid.*, article 61.

⁹ UNICEF, *Investing in Children in the Islamic World*, 2005.

¹⁰ Acto No. 5395, which entered into force on 3 July 2005.

¹¹ UNICEF-Turkey, Annual Report, UNICEF internal document, 2005, p. 26.

creation of child courts in all provinces, is not fully in place yet. One of the main obstacles to the implementation of the law lies in the lack of resource allocations in the budget.

Specifically, one of the gaps identified by the CRC Committee is the absence of a monitoring system for children's rights. In its Concluding Observations for Turkey issued in 2001 on its initial report,¹² the CRC Committee expressed "its concern at the absence of an independent mechanism such as an Ombudsman or a commission for children, to monitor children's rights and to register and address individual complaints from children concerning violations of their rights..." The Committee therefore

encourage[d] the State Party to pursue its efforts with a view to developing and establishing an independent and effective mechanism, easily accessible to children and in accordance with the Paris Principles, to monitor the implementation of the Convention, to deal with complaints from children in a child-sensitive and expeditious manner and to provide remedies for violations of their rights under the Convention.¹³

Gaps in the implementation of legislation and the absence of a monitoring and advocacy mechanism need to be addressed to help improve the situation of childhood in the country.

Because children in Turkey need an ombudsman

The realization of children's rights in Turkey is hindered by several issues. Deep inequalities, in particular geographic and gender based, reveal various forms of discrimination and social exclusion faced by children. Ultimately, it appears that these shortfalls are also linked to the low perception of children in the society.

Main issues affecting children: disparities and discrimination

Children disproportionately affected by poverty

The Turkish economy has been growing at a fast rate since 2002 (about 7.5 per cent on average per annum).¹⁴ However, the annual study on poverty issued by the Turkish Statistical Institute in December 2008 indicates disproportionately high levels of child poverty and significant regional disparities leading to social exclusion. While the average poverty rate in the population as a whole, in food and non-food poverty, was 18.6 per cent, 26.1 per cent of those under 15 are to be found in households living in food and non-food poverty.¹⁵ While poverty significantly decreased from 2003 to 2006, it showed a slight increase in 2007, which is likely to continue in coming years due to a weak economy.¹⁶ The annual study issued in 2007 indicates that poverty increases as the household grows because families with more children have greater difficulties in meeting the needs of all members. Broader indicators

¹² Turkey's submission of its first periodic report to the CRC Committee is overdue.

¹³ Concluding Observations of the Committee on the Rights of the Child: Turkey, CRC/C/15/Add.152, 9 July 2001, paras 19–20.

¹⁴ UNICEF-Turkey, Annual Report, 2007, p. 5.

¹⁵ UNICEF-Turkey, Annual Report, 2008, referring to Turkstat Annual Poverty Study.

¹⁶ Ibid.

further point to a significant level of poverty related to low levels of education and insecure employment.

In spite of improvements on average, the study highlights increasing disparities between rural and urban areas. In rural areas, the level of food and non-food poverty was 32.2 per cent in 2007 compared to 10.6 per cent for urban areas. While the poverty rate for children under 15 dropped significantly in urban areas between 2005 and 2007, to 16 per cent, it rose from 40.6 to 42 per cent in rural areas. The risk of poverty is higher for children living in rural areas in the central, northern, eastern and southeastern provinces. Indicators show in particular a worrying situation with respect to under-five mortality and maternal health. The effect of poverty is aggravated by lack of access to social services such as health and education in these regions. This results in the perpetuation of social exclusion and lack of benefit from the economic growth.

Gender inequalities

Another characteristic of the situation of children in Turkey lies in gender inequalities and their impact on girls.

The Committee on the Elimination of All Forms of Discrimination against Women expressed its concern at persisting patriarchal attitudes and deep-rooted stereotypes regarding the respective roles of men and women in the society. It also pointed to the perpetuation of violence against women, including in the forms of ‘honour killings’ and ongoing traditional practices such as early marriage, forced marriage and polygamy, in spite of existing legislation.¹⁷

In the area of education, for example, disparities are particularly significant. The girls to boys net enrolment ratio in primary school for 2006–2007 is about 90 per cent.¹⁸ Yet there is significant drop-out among girls in grades 6–8. According to the Turkish Statistical Institute, net primary schooling ratios in 2002 ranged from 100 per cent in the most developed western and northwestern provinces to 63.6 per cent in an eastern province. For girls, the spread was from 100 per cent to 54 per cent.¹⁹ Inequalities remain high in secondary education with a girls to boys ratio close to 75 per cent.²⁰ A UNICEF study quotes recent research listing the factors that affect the decision of families to send girls to school. Some have to do with poverty and preference for boys, others with the lack of adaptation of the schools to girls, both in terms of facilities and the lack of female teachers. Reasons invoked also relate to low value of education and lack of prospects. Finally, gender roles and early marriage as well as fear for girls’ security play a role in the decision.²¹

¹⁷ CEDAW Concluding Comments: Turkey, CEDAW/C/TUR/CC/4-5, 2005, para. 29.

¹⁸ Ministry of National Education, Turkey Education Statistics 2006/2007, Ankara.

¹⁹ ‘Plus 5’ Review of the 2002 Special Session on Children and World Fit for Children Plan of Action, National Progress Report, Turkey, Jan. 2007, p. 15.

²⁰ State Planning Organization/Office of the UN Resident Co-ordinator in Turkey, Millennium Development Goals Report, Turkey, 2005.

²¹ UNICEF, ‘Assessment and Analysis of the Situation of Adolescents in Turkey’, 1 Jan. 2004.

The perception of girls in the society, hence their opportunities, is generally worrying. One boy interviewed as part of the research actually explained that it is no fun to be a girl in Turkey, and if he were a girl, he would want to live in another country.

Child protection challenges

Several child protection challenges are affecting children in Turkey. In spite of improvements, child labour continues to be a concern. Many families rely on their children's labour in family enterprises in agriculture and other sectors, and at home.²² According to a Turkstat survey published in 2007, close to 6 per cent of children aged 6 to 17 are engaged in some economic activities. Just under half of the children concerned worked as unpaid labourers in family businesses, including farms and shops. However, urbanization, economic development and longer years of schooling may have helped to reduce some forms of child labour.²³

The number of children working on the streets is thought to number tens of thousands. The phenomenon affects children in large urban centres who have migrated from rural areas. Most of these children maintain ties with their families and go back home daily but face the risk of living full-time on the street in the long run.²⁴

Juvenile justice is another issue of concern. The number of children aged 12 to 18 indicted for criminal offences more than doubled between 1995 and 2005.²⁵ In spite of the adoption of a new Child Protection Law in 2005, the number of child courts remains limited, such courts having been established in only 33 provinces out of 81 as of the end of 2008. Other important challenges in the juvenile justice system include the long duration of trials, lack of specialization among juvenile justice professionals, ineffective data collection, lack of effective alternative measures and difficulties with other pieces of legislation, such as the Anti-Terror Law.²⁶ Additionally, the scheme does not sufficiently focus on prevention, which would require a more solid social protection system.

With respect to children without parental care, the number of children in residential institutions is also on the rise, having increased by about 25 per cent between 2000 and 2006.²⁷ Children are placed in care most often because of economic difficulties, followed by death of parents and abandonment.²⁸ With a view to addressing this situation, the Social Services and Child Protection Agency (SHCEK) initiated a comprehensive 'back to family' project in 2005. To date, it has reunited more than 5,500 children who were institutionalized because of their families' economic hardship.²⁹

²² 'Plus 5' Review, op. cit., p. 16.

²³ Ibid.

²⁴ Ibid., p. 17.

²⁵ Ministry of Justice, General Directorate of Criminal Registration and Statistics.

²⁶ Assessment by UNICEF Country Office in Turkey.

²⁷ Social Services and Child Protection Agency (SHCEK).

²⁸ 'Plus 5' Review, op. cit., p. 17.

²⁹ Information provided by UNICEF Country Office in Turkey.

As mentioned above, violence against women and girls is persistent.³⁰ Violence against children in the home or at school is also a problem, although corporal punishment is prohibited by law. In addition, little is known on child sexual abuse within and outside the family.³¹

The situation of Roma children gives rise for concern.³² While few data are available, especially because many Romani hide their origins to avoid discrimination, it has been found that they often have low levels of education and face unemployment and poverty. They are discriminated against at school and consequently tend to drop out at an early stage. They are also at high risk of street life, substance abuse, contact with the law and early marriage, particularly for girls.³³

Generally speaking, minority rights are a sensitive issue in Turkey. While religious non-Muslim minorities have been recognized and their rights protected since the Lausanne Treaty of 1923, the Turkish system does not allow for the recognition of other minorities within its borders and this issue has been particularly sensitive. The Committee on the Elimination of All Forms of Discrimination has found that the absence of disaggregated data was impairing efforts to properly address discrimination. Some have argued that the lack of recognition of minority rights for children is hindering the realization of other rights, including the right to education.³⁴

This brief overview of major challenges affecting childhood in Turkey shows that children, especially girls, are often the first victims of poverty, discrimination, and various forms of violence and exploitation. The implementation of the laws and policies put in place to address some of these issues needs to be followed up. In this context, an ombudsperson for children would be an important mechanism to monitor children's situations, especially the situation of the most marginalized and excluded, give visibility to the issues they face, and advocate for appropriate measures. Yet an ombudsman for children would also have to tackle another serious issue affecting children in Turkey: the low perception they enjoy in the society.

The perception of childhood evolves but remains low

Recent evolutions in the family structure

Like other countries, Turkish society has undergone many evolutions in the past 20 to 30 years and these have had an impact on the place of children in the family. Acceleration of

³⁰ Concluding Observations of the Committee on the Rights of the Child: Turkey, 9 July 2001, op. cit., paras 45–46; CEDAW Concluding Comments: Turkey, 2005, op. cit., paras 365–366; also see Ertürk, Yakin, 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences', Mission to Turkey, A/HRC/4/34/Add.2, 5 Jan. 2007.

³¹ Ibid., pp. 17–18.

³² Concluding Observations of the Committee on the Elimination of Racial Discrimination, CERD/C/TUR/CO/3, 24 Mar. 2009, para. 19: "The Committee is concerned that many persons of Roma origin continue to experience discrimination, particularly in the field of education, employment and housing."

³³ UNICEF-Turkey, Annual Report, 2007, p. 8.

³⁴ Kaya, Nurcan, *Forgotten or Assimilated? Minorities in the education system of Turkey*, Minority Rights Group International, 2009.

urbanization has been accompanied by higher levels of education and industrialization, entailing changes in lifestyles. An interesting study analyses the evolution of the 'value of children' in the family, comparing data collected in 1975 and in 2003 with a sample of adolescents, their mothers and their grandmothers, from both urban and rural areas and diverse socio-economic statuses.³⁵

The analysis uses three types of values attributed to children with a view to showing that these values are differently affected by economic development:

- economic/utilitarian value: material benefits provided by children both when they are young and as adults;
- psychological value: joy, pride and companionship;
- social value: social acceptance, including continuation of the family.

The main change over time identified consists of an increase in the psychological value of the child and a decrease in the child's utilitarian/economic value, due to economic growth in general over the period and the rise in education levels. Specifically, transition from rural to urban lifestyles entails access to old age security resources, such as social security and pensions, other than support from adult children. In addition, children spend more years in school, thus increasing the dependency age. As a result, children's material contribution to the family is less important. Conversely, the psychological value of children remains high across generations and social strata. One consequence is the decrease in the number of children per family between 1975 and 2003, with the two-child norm now well established.

The other consequence is a remarkable change in sex preference. While the national female sample of 1975 showed an overwhelming preference for boys, the 2003 urban sample indicates a clear reversal in favour of girls. In a context where men are deemed the breadwinners, the authors attribute this evolution to decreasing economic dependency from parents. To the contrary, psychological needs tend to be better fulfilled by daughters. Yet, interestingly, adolescent respondents have expressed a preference for boys. According to the authors, adolescents tend to reflect traditional social norms in their response. One may also conclude that the changes observed in sex preference at the individual level do not translate into changes in attitudes and perceptions of girls at the societal level, as underlined above.

Qualities considered desirable in children also highlight important aspects of the perception of children by parents. Independence, for instance, now emerges as a desired quality, especially for the urban high income group, suggesting that children are progressively seen as individual members able to make choices.

The study is helpful in understanding some of the changes underway in Turkish society. However, one of its main weaknesses is that it fails to ask children for their own perspectives on their role in the family and their parents' attitudes towards them. While adolescents are included in the survey, they are asked to project themselves as future parents rather than base replies on their own experience. This critical shortcoming is actually symptomatic of the way

³⁵ Kagıtcıbası, Cıgdem and Bilge Ataca, 'Value of Children and Family Change: A three-decade portrait from Turkey', *Applied Psychology: An International Review*, Vol. 54, No. 3, 2005, pp. 317–337.

children continue to be perceived in the society, as passive members and adults in the making. Consequently, an ombudsman for children would be expected to contribute to ensuring that children are considered as full actors. This necessity is reflected in the way children experience how their society perceives them.

Children's voices on their childhood

Studies on children's own experience of childhood in Turkey are limited. However, findings gathered from research and focus groups point to similar sets of issues. A UNICEF study has concluded that communication between children and their parents is limited. Students in the school system are not encouraged to participate, are scared to ask questions of teachers, and feel that their opinions are neither sought nor taken into account either at school or in the home. Children and adolescents feel they are not seen as agents and contributors. Parents and peers restrict adolescents' social life. Adolescents also suffer from peer pressure.³⁶

These findings are further echoed in evidence gathered from a roundtable of children organized by UNICEF-Turkey on the occasion of the advocacy days, and interviews conducted with some of them suggest some commonalities in their discourse.

During a consultation organized by UNICEF,³⁷ three groups of children were asked to identify priorities for action for children in Turkey. The following priorities emerged from the groups:

Group 1

1. Those who exploit children in orphanages should be penalized.
2. The views of children in orphanages should be taken into account.
3. The perspective of children should be taken into account.
4. The conditions of children in orphanages should be reviewed.
5. Child rights should be realized.

Group 2

1. The education rights of children should be protected and children's views should be given priority regarding the environment.
2. Children should organize and participate in social activities.
3. Abuse (in the family or outside) against children should be prevented.
4. The education system should be more flexible for children.
5. Children's views should be taken into consideration while solving their problems.

Group 3

1. Children have the right to be heard and express their opinions.
2. Children have the right to be protected from sexual abuse.
3. Children have the right to express their opinions on family related issues.
4. Children have the right to move freely in malls without their parents.
5. Children have the right to express their opinions on policy-related issues.

³⁶ UNICEF, 'Assessment and Analysis of the Situation of Adolescents in Turkey', op. cit., pp. 40 and 57.

³⁷ Consultation held on 8 Apr. 2009.

The striking commonality among the priorities identified by all three groups lies in the demand by children to be considered as active members of the society. Each of the groups has devoted at least two of five priorities to the right of children to express their views in matters affecting them, be it in the family, at school or at policy level. Importantly, child abuse also represents a common theme in all groups.

Beyond the priorities identified as part of the exercise, ensuing discussions and interviews confirm children's eagerness to have a voice. Children expressed the willingness to keep themselves informed on news and current events in their society. One child suggested that children should have the right to vote and participate in political debates. Children repeatedly insisted that they do not feel consulted and/or properly informed by those who make decisions about their lives. Generally speaking, they point to the lack of consideration they enjoy in the society as active participants.

Until 2004, the law prohibited children from being members of associations. A revision of the law now enables children and adolescents over 12 years old to be members of an association and those over 15 to found a children's association. This evolution has the potential to promote the development of children's organization as a tool for child participation.³⁸

One of the functions of a child ombudsman is precisely to contribute to enhancing the perception of children in the society, in particular by promoting a culture of child participation and setting up mechanisms for children's voices to be heard, be it in their family, their school and immediate environment, or at policy level.³⁹

This section shows that an ombudsman for children is needed, not only to tackle specific issues and speak out on behalf of the most marginalized and excluded, but also to promote a child rights approach to childhood in the society. The call for a child ombudsman also stems from the political context and structure of the country, where an independent voice, able and willing to advocate for the best interests of the child independently of political tensions, would be a major tool for advancing children's rights on the policy agenda.

Because the political structure is marked by fundamental tensions and heavy politicization

Turkey's unique geographic location has significantly influenced the history of the country, together with its politics and socio-economic situation. The origins of the tensions currently affecting Turkish society, including its children, and the political system can be found in the contradictions the country is currently grappling with. As will be evidenced later in the paper, the political crisis currently affecting Turkey has a direct impact on the creation of an ombudsman system. The heavy politicization of every issue constitutes an additional indicator that an ombudsman for children is needed to prioritize the best interests of the child over political considerations.

³⁸ UNICEF, 'Assessment and Analysis of the Situation of Adolescents in Turkey', op. cit.

³⁹ CRC Committee, General Comment No. 2, op. cit., para. 16.

The secularist/religious debate and its consequences

The history of Turkey has been marked by tensions between secularists and those in favour of giving more space to religion in public affairs. Starting with the Ottoman Empire, reformers have been progressively reducing the influence of Islamic institutions. With the founding of the Turkish Republic in 1923, the Republican elite aimed to modernize the country by rejecting anything associated with the old regime, especially religion, and implemented secularism by disestablishing Islam from its role in law and education and as the official religion of the state.⁴⁰

Since then, the country has been divided between secular forces broadly composed of the judiciary, the military and secular political parties, and religious forces, in particular political parties with Islamist roots benefiting from increasing support from the population. These parties have often been prohibited based on electoral laws, with the Constitutional Court ordering the closure of political parties on 18 occasions, on either technical or ideological grounds.⁴¹

Overall, the split along the perception of the role of religion in public affairs deeply divides the political realm and corresponds to opposing visions of Turkish society. Importantly for the purpose of this study, the fierce opposition between these visions leads to a very fragile balance of powers, where every issue becomes a ground for a political battle.

The political system: a fragile balance

The current Turkish Constitution was adopted in 1982 and has been amended several times since.⁴² It provides for a secular state and a semi-presidential system.

The Turkish Constitution explicitly asserts secularism as a fundamental principle. The concept is defined in the Preamble, which states that “there shall be no interference whatsoever by sacred religious feelings in state affairs and politics.” Yet the secular nature of the Turkish Republic has always been a matter of controversy. One of the main issues today lies precisely in the concern by some that the party in power might repeal this principle, and hence the tendency to interpret the measures it takes as part of a strategy to question secularity.

The 1982 Constitution establishes a semi-presidential system, where the executive branch has extensive powers. Executive power is divided between the Council of Ministers headed by the Prime Minister and the President, both elected by the Parliament. The Prime Minister carries out government policy. The President holds a symbolic role as head of state. However, the latter also has considerable powers, in particular dissolving Parliament,

⁴⁰ See Yilmaz, Ihsan, ‘State, Law, Civil Society and Islam in Contemporary Turkey’, *Muslim World*, Vol. 95, No. 3, 2005, pp. 385–387.

⁴¹ Hirschl, Ran, ‘Constitutional Courts vs. Religious Fundamentalism: Three Middle Eastern tales’, *Texas Law Review*, Vol. 82, No. 7, June 2004.

⁴² Most of the information under this section is extracted from the text of the Constitution, together with ‘Turkey’, in *Encyclopaedia Britannica Online* <www.britannica.com/eb/article-44477>, accessed 14 May 2008.

approving the appointment of the Prime Minister, submitting proposals for constitutional reform to referendum, and asking Parliament for reconsideration of a law (relative veto). Currently, the AKP (Justice and Development Party), a party with Islamic roots, has a wide majority in Parliament and holds the functions of president and prime minister. However, before the election of the current president, the former president belonged to an opposition political party. As a result, he could use various prerogatives under the constitution to counterbalance the influence of the parliamentary majority. The establishment process has been one case in point, as will be examined.

The legislative branch is composed of a single chamber, the Grand National Assembly, a body composed of 550 members elected by universal suffrage for five years. Importantly, the adoption of the Constitution was accompanied by an electoral law that seriously limited the activities of Turkish political organizations.⁴³ The organization of the parties was restricted, as well as their ties with various associations such as youth, women's and local groups. This in turn affects the scale of the involvement of civil society in politics.

The Constitutional Court is composed of 11 members, appointed by the President.⁴⁴ Notably, Parliament does not have any role in the composition of the Court. Current members were appointed by the former president, a firm secularist. Consequently, the Court tends to be ideologically positioned and plays an important role in the political system in general and for the creation of an ombudsman in particular.

In this heavily politicized environment, advancing children's rights on a more neutral ground is particularly difficult and would require independent voices that will speak out beyond political motivations for the best interests of the child. One component could be civil society. However, although progress is now being made, there is still a long way to go for civil society to strengthen its influence.

The lack of a third voice: civil society is still weak

Several informants have identified the absence of a strong civil society in Turkey, including in the area of children's rights, as an important obstacle to the quality of the democratic system.

Many civil society organizations are created ad hoc, by wealthy donors, but lack the proper structure to achieve results. One author has looked into the structure of civil society in Turkey.⁴⁵ According to her, while there are numerous associations, unions and other groups, these do not seem to have a critical influence in public life. The author concludes that civil society in Turkey lacks autonomy from the state and military power, and has limited participation in the decision-making process. One of the contributing factors has been the

⁴³ Political Parties Act, No. 2820 (1983), cited in Hirschl, Ran, 'Constitutional Courts vs. Religious Fundamentalism', op. cit.

⁴⁴ Article 146.

⁴⁵ See Simsek, Sefa, 'The Transformation of Civil Society in Turkey: From quantity to quality', *Turkish Studies*, Vol. 5, No. 3, Autumn 2004, pp. 46–74.

existence of the Law on Associations of 1983⁴⁶ which prevented civil society organizations from participating in politics and cooperating with political parties. Similarly, state employees and civil servants were not allowed to engage in politics or become party members. This situation has actually changed recently with the adoption in 2004 of a new Law on Associations,⁴⁷ which is much less restrictive in terms of membership and activities of associations.⁴⁸ The powerful role of the state, combined with a monolithic idea of the nation, also accounts, according to the author, for the lack of a strong civil society. Beyond horizontal relations with political decision-makers, she also questions the quality of horizontal relations within civil society and points to its fragmentation, a finding echoed by a number of informants interviewed. One problem relates to the heavy politicization of debates within the country, mentioned above, and hence the difficulty of finding a distinct voice. In addition, in the current political situation, one informant has drawn attention to the difficulty of knowing whom to address in advocating for children's rights.

As mentioned above, the revision of the Law on Associations includes an important provision regarding the right of children and adolescents to found and be members of associations. However, the concrete effects of the law require a change of mindset, both to ensure that children and adolescents actually found and participate in organizations, and to guarantee their voice is heard.

The impact of the EU engagement has been pointed out by several informants as an important factor in changing the structure of civil society organizations. While all agree on the impact of the EU, appreciation of its effects varies. The EU accession process has resulted in more flexible legislation on associations as seen in revision of the law, and led in 2005 to a shift in responsibility for associations from the general directorate of security to the ministry of the interior.⁴⁹ The accession process has also entailed a significant increase in the funding available for NGOs, including children's rights organizations. Some argue that the consequences have been negative, as the focus of these organizations has thus changed from an agenda centred on the good of children to the establishment of strategic priorities with targets based on available funding. Others argue that increased funding from the EU, and the stricter controls that go with it, have forced organizations to have a clearer vision for their work and to prioritize areas of action, as well as obliging them to submit structured proposals for funding and report regularly on progress. Another set of issues raised by an informant is that some of the EU funds allocated directly to the State – rather than to specific projects – are managed by a governmental agency that is not used to working with NGOs. All in all, the civil society landscape is still marked by heavy competition in access to funding.

Efforts have been initiated to create a coalition of child rights NGOs. With Parliament this 'platform' has launched a campaign to combat violence against children. One of the issues in the coalition is competitiveness among members. At the time of writing, it is no longer functional.

⁴⁶ Associations Law No. 2908 of 6 Oct. 1983.

⁴⁷ Associations Law No. 5253 of 4 Nov. 2004.

⁴⁸ See, in particular, the analysis contained in Jilani, Hina, 'Report of the Special Representative of the Secretary-General on Human Rights Defenders', Mission to Turkey, E/CN.4/2005/101/Add.3.

⁴⁹ International Crisis Group, *Turkey and Europe*, op. cit., pp. 9 and 12.

The most efficient civil society organizations in promoting and protecting children's rights are probably bar associations, as will be examined below, but they seem to be mostly focused on legal issues and mainly involved within the realm of their own profession.

The establishment process for a child ombudsman could provide an opportunity for renewed efforts towards the consolidation of an NGO coalition by providing a common goal to achieve. Likewise, it could help foster the creation of children's and adolescents' organizations. Furthermore, as experience has shown elsewhere, one of the tasks of the independent institution would be to support and work in partnership with children's organizations as well as NGOs operating in the area of children's rights.

The analysis of the situation in Turkey has thus demonstrated that for legal, social and political reasons, the establishment of an ombudsman for children is needed to ensure that the rights of children in the country are monitored and fulfilled. Yet the implementation of the establishment process should also take into account past experiences.

3 LESSONS FROM A PRECEDENT: THE ESTABLISHMENT PROCESS FOR A GENERAL OMBUDSMAN

An establishment process for a general ombudsman has already taken place in Turkey but its implementation did not materialize because of a political deadlock. The law for the general ombudsman, promoted as part of the EU accession process, was adopted by Parliament but the Constitutional Court first stayed the execution of the law, and then cancelled it in a recent ruling.⁵⁰

Drawing lessons from this experience for the creation of a child ombudsman is important in two respects. On the one hand, it is essential to understand why the establishment process for a general ombudsman was suspended, in order to avoid the same shortcomings. On the other hand, an analysis of the mandate of the general ombudsman can help assess whether and how this mandate enables the institution to promote children's rights, and in turn identify the key elements that need to be taken into account in the establishment process for a child ombudsman.

Characteristics of the general ombudsman law

The final law establishing a Turkish ombudsman was adopted by the Grand National Assembly on 28 September 2006. The law provides for a traditional ombudsman, strongly attached to Parliament, with a mandate to:

examine and inquire the complaints of real and legal persons concerning the functioning of the administration, as well as any act, action, manner and behaviour of the administration within the framework of the qualification of the Republic of Turkey that have been laid down in the Constitution and with respect to the

⁵⁰ Decision No. 2006/140, 25 Dec. 2008.

principles of justice, respect to human rights and attentiveness to the rules of law and justice, and to make recommendations to the administration to that end.⁵¹

An analytical reading of the law enables three characteristics of the general ombudsman to be highlighted as particularly relevant for the purpose of this study:

- a structure headed by a chief ombudsman and deputies;
- an institution linked to Parliament;
- a mandate focused on handling individual complaints about maladministration.

A structure headed by a chief ombudsman and specialized ombudsmen

The law provides for a chief ombudsman, a deputy chief ombudsman and 10 ombudsmen. It further lists a series of conditions to be met in qualifying for the function of chief ombudsman and ombudsmen, including in terms of age, academic qualifications, professional experience, absence of political affiliation at the time of application and other limiting factors such as criminal convictions and physical or mental disabilities.⁵² The chief ombudsman and all other ombudsmen are to be elected for a mandate of five years, renewable once.⁵³ Importantly, the respective areas of responsibilities of the 10 ombudsmen are not specified in the law and are to be determined by an additional regulation.⁵⁴

Ombudsmen and staff functions are incompatible with belonging to a political party and holding any official or private duties.⁵⁵ With respect to immunities, criminal investigation and prosecution against ombudsmen have to be authorized by the Speaker of the Grand National Assembly.⁵⁶

An institution strongly linked to the legislative branch

The law closely links the general ombudsman institution to the Turkish Grand National Assembly and assigns virtually no role to the executive branch.

The selection and appointment process is fully in the hands of Parliament, with a Joint Commission shortlisting candidates and the Assembly proceeding to the election of the chief and the deputy ombudsmen. The presidency of the Assembly collects applications.⁵⁷ Ombudsmen can be dismissed by the Assembly, or because of a criminal conviction by a court.⁵⁸

The resources for the functioning of the institution are allocated by the Assembly as part of its own budget. The law states that the chief ombudsman will submit to Parliament its

⁵¹ Article 1 of Law No. 5548 (previously No. 5521) readopted 28 Sept. 2006.

⁵² Article 10.

⁵³ Article 14.

⁵⁴ Article 8(3).

⁵⁵ Article 32.

⁵⁶ Article 33.

⁵⁷ Article 14.

⁵⁸ Article 15.

financial requests, and that the budget of the institution shall be included in the budget of the Grand National Assembly.⁵⁹

In terms of accountability, the institution also reports to Parliament. The Joint Commission makes a first reading of the report and submits its comments for discussion by the Assembly.⁶⁰

The general ombudsman therefore belongs first and foremost to the category of parliamentary ombudsmen, linked to the oversight function of Parliament. However, while Parliament dominates the process, one informant has suggested that it has not been very supportive of the general ombudsman. One proposal, for example, was to ensure that the chief ombudsman could directly address Parliament in presenting its report in a session of one or two hours. This was rejected on the basis that a written report was sufficient.

A traditional mandate focused on handling individual complaints against the administration

The mandate of the institution consists of examining individual complaints about maladministration. The law consequently provides for a number of powers related to the inquiries, including the powers to request information and documentation, appoint experts and hear witnesses.⁶¹ In one provision, the law states that the chief ombudsman can make statements concerning the activities of the institution.⁶² However, the law remains vague with regard to the possible scope of these statements and the way they can be made. This leaves a wide margin of discretion to the person in charge with respect to the content of the statements and the forums in which they are made.

Importantly, concerning the independence of the institution, the law specifies: “No organ, authority, body or person can instruct or give orders; send circulars; advise and make suggestions to the Chief Ombudsman and Ombudsmen in fulfilling their duties.”⁶³

Having examined the main characteristics of the ombudsman structure and mandate, let us now turn to the debate that took place during and after the adoption of the law.

The establishment process: a battlefield for political tensions

The establishment process for a general ombudsman has been chaotic in many ways. The law was first adopted by the Grand National Assembly in June 2006, but vetoed by former president Ahmet Necdet Sezer.⁶⁴ The Assembly reapproved the law in September 2006, overriding the veto. President Sezer subsequently appealed to the Constitutional Court. After having suspended implementation of the law for more than two years, the Court finally

⁵⁹ Article 36.

⁶⁰ Article 22.

⁶¹ Articles 17 to 21.

⁶² Article 23.

⁶³ Article 12.

⁶⁴ ‘Sezer Vetoes EU-Backed Ombudsman Law’, *Turkish Daily News*, 2 July 2006.

cancelled it. At the time of writing, the Court had not yet issued the grounds for its decision, and hence the reasons for the ruling are so far unknown.

A parliamentary ombudsman

The main argument put forward by former president Sezer to contest the constitutionality of the law is the fact that in his view it expands the powers of the Assembly beyond those stated in the Turkish Constitution.⁶⁵ In the absence of published reasons for this decision at the time of writing, the rationale of the ruling of the Constitutional Court can be inferred from the claims for cancellation upon seizure of the Court.⁶⁶

The Constitution does not give the legislative branch any power over the executive branch

It has been argued that in order to preserve separation of powers, the Constitution of 1980 foresees the relationship between the legislative and the executive branches as being on an equal footing. The system does not provide for an institution attached to the Grand National Assembly that will investigate the actions of the administration.

The Constitution limits the supervisory power of the legislative branch over the executive branch

Article 87 provides for the capacity of Parliament to supervise actions of the Government, but not explicitly those of the administration. Article 98 of the Constitution states that the Turkish Grand National Assembly can “exercise its supervisory power by means of questions, parliamentary inquiries, general debates, motions of censure and parliamentary investigations.” It does not leave space for additional mechanisms. As a result, the creation of an ombudsman mechanism linked to the legislative branch may be understood as breaching the balance of power provided by the Constitution.

The same issue was raised regarding amendments to laws on the Court of Accounts and on the Radio and Television Supreme Council regarding the appointment process of their members by Parliament. The Constitutional Court found that the power to appoint members of these bodies could lie with the Grand National Assembly only to the extent that the mandate of these bodies fell within the competences of the Assembly granted by the Constitution, and it invalidated the amendments on this ground. By extension, it is argued that the appointment process for the general ombudsman and its deputies by the Assembly is unconstitutional.

The Constitution gives the power to supervise the actions and procedures of the administration only to judicial bodies

Article 125 of the Constitution provides that “recourse to judicial review shall be available against all actions and acts of administration.” Consequently, beyond judicial review, it is

⁶⁵ Ibid.

⁶⁶ The following analysis is based on ‘Legal Situation Regarding the Establishment of an Ombudsman Institution in Turkey’, briefing note provided by UNICEF Country Office in Turkey, May 2009.

argued that review of any act of administration is only possible via a mechanism set up by the executive itself.

Yet, in line with the Paris Principles, the powers of the ombudsman institution contained in the law are “quasi-judicial”. This implies that the ombudsman can make recommendations and facilitate solutions on individual cases but it does not have the competence to issue binding decisions like a court. This difference from the justice system precisely ensures the flexibility of the institution in fulfilling its task through both formal and informal means. Furthermore, as examined below, a number of human rights bodies have been established under the executive branch and enjoy varying credibility in terms of independence. The Constitution provides for the establishment of a State Supervisory Council with the mandate to monitor the functioning of the administration and its compliance with the law. However, it can only act upon the President’s request and cannot receive individual complaints.

In Turkey, in the current context additional reasons for cancellation could be explored outside the legalistic arena. Political interests and strategies have certainly played an important role in the process. Former president Sezer was a secularist, strongly opposed to the political majority in Parliament, held by the AKP. One of the reasons for the former president to veto the law and submit it to the Constitutional Court was probably to prevent the AKP from expanding the powers of the institution over which it had control. Yet other issues may also have played a role in the deadlock.

Underlying interpretations

A deeper understanding of the matter requires placing the debate in the context of the underlying visions of society currently being debated in Turkey.

While it seems to be commonly acknowledged that the ombudsman system is a concept created in Sweden in the nineteenth century, a lesser known aspect is that a similar system existed in the Ottoman Empire, based on Islamic law. Some research has identified possible roots for the Swedish Ombudsman in the Ottoman Islamic tradition.⁶⁷ Indeed, in the Ottoman Empire the Qadi-al-Qadat, or Chief Justice, was in charge of controlling respect for the Islamic law by public officers.⁶⁸ Swedish King Charles XII spent time in Turkey in 1709 and may have been inspired by this figure to create a position of Chancellor of Justice in charge of ensuring respect for laws by public officers upon his return.⁶⁹

⁶⁷ Pickl, V., ‘The Islamic Roots of the Ombudsman System’, *Ombudsman Journal*, 1987; al-Wahab, Ibrahim, *The Swedish Institution of the Ombudsman: An instrument of human rights*, LiberForlad, 1979, quoted in Reif, Linda, *The Ombudsman, Good Governance and the International Human Rights System*, Martinus Nijhoof, 1994.

⁶⁸ Garante dei diritti delle persone private della libertà, *The Ombudsman for People Deprived of Liberty in Europe*, Edizioni Promedia, 2004, under the auspices of the European Union, Agis, Comune di Roma.

⁶⁹ *Ibid.*, p. 25.

Whether the Swedish ombudsman system finds its origins in Sharia has been a subject of debate.⁷⁰ What is important for the purpose of this study is that the establishment of an ombudsman has been interpreted and/or portrayed by some actors in Turkey as an attempt by the AKP to infuse religious law into the Turkish legal system by re-establishing an institution reminiscent of the Islamic tradition. In this perspective, the general ombudsman battle goes beyond the politics of power and becomes a manifestation of the long-standing debate dividing Turkey on the boundaries between religion and the state. This in turn contributes to explaining the attitude of the Constitutional Court on the matter.

The role of the Constitutional Court

The position of the Constitutional Court needs to be placed in the framework of the role of the judiciary in Turkey and, more broadly, in the context of a general movement in several countries confronted with similar debates regarding the boundaries of religion and the state, which have seen shifts in the role of the judicial power. Traditionally, the judiciary in Turkey has been secularist and has systematically opposed Islamist parties.

The stance taken by the Turkish Constitutional Court is comparable to that of similar courts in other countries struggling between secular and religious identities. Ran Hirschl has analysed the attitudes of constitutional courts with respect to religion in Egypt, Israel and Turkey.⁷¹ He concludes that power holders representing secular voices have transferred religion and state quandaries from the political sphere to constitutional courts, as a strategy to counterbalance their decreasing power in elected positions. The consequence has been “unprecedented judicialization of foundational collective identity, particularly in the realm of state and religion questions.”⁷² In the Turkish case, according to this author, referral of the secular–religious debate to the judiciary has offered a way for secular actors to fight religious fundamentalism while maintaining a facade of legality in line with Western democratic rules and avoiding making risky political decisions.⁷³

This analysis may at least partly explain the attitude of the Constitutional Court regarding the law on the general ombudsman. This issue is important to bear in mind in relation to the creation of a children’s ombudsman. The process for the establishment of a separate ombudsman for children would indeed have to differentiate itself from these types of debates to avoid falling into the same trap. The involvement of actors from the whole political spectrum, as well as key members of the judiciary, to reach a consensus would be essential to guarantee that the process is not politicized or tackled as involving conflict-ridden issues in a vision for Turkish society.

⁷⁰ The thesis has been contested for example by the European Ombudsman (see ‘Is There a Classic Parliamentary Ombudsman?’, speech on the occasion of the Twentieth Anniversary of the Austrian Ombudsman Board, 4 June 1997, Vienna).

⁷¹ Hirschl, Ran, ‘Constitutional Courts vs. Religious Fundamentalism’, op. cit.

⁷² Ibid., p. 1819.

⁷³ Ibid., pp. 1848 and 1856.

The ability of the general ombudsman to contribute to the realization of children's rights

Beyond the political issues that have affected the implementation of the law on the general ombudsman is the question of the ability of the institution to take a child rights approach. In other words, if the law had been validated by the Constitutional Court, or if a similar law is adopted with necessary changes, would the text offer a satisfactory system for the monitoring, promotion and protection of children's rights? The following review is based on a presentation made by Seda Akço, child rights lawyer and UNICEF consultant, at the Independent Child Ombudsman Conference,⁷⁴ complemented with additional analysis.

Children in the general ombudsman law

An overview of the provisions contained in the general ombudsman law enables opportunities to be explored for the inclusion of children's rights in the mandate. However, because children are not specifically mentioned, work on children's issues would remain a discretionary decision.

Reference to child rights standards

One of the recommendations made by the CRC Committee in its General Comment No. 2 on independent human rights institutions for children consists in making a clear link in the mandate of the institution to the Convention on the Rights of the Child.⁷⁵

The law related to the Turkish ombuds institution does not make any specific reference to international instruments or to child rights legislation. The only specific text mentioned as providing a framework for the action of the institution is the Turkish Constitution.⁷⁶ This observation can be analysed as reflecting the importance of domestic ownership of the law. As stated above, the Turkish Constitution does not make mention of children's rights in general, but refers to the family and to state support for children in need of special protection.

The law on the ombudsman makes, however, a general reference to the "principles of justice, respect to human rights, and attentiveness to the rules of law and justice."⁷⁷ This provision could provide an opportunity to include indirectly in the mandate of the institution a wide range of international human rights instruments, including the Convention on the Rights of the Child. Reference to the rules of law and justice can be interpreted as extending to principles of juvenile justice adopted by the United Nations, such as the Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁷⁸ and the Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).⁷⁹

⁷⁴ Ankara, 9 Apr. 2009.

⁷⁵ CRC Committee, General Comment No. 2, op. cit., para. 8.

⁷⁶ Article 1 of the Law.

⁷⁷ Ibid.

⁷⁸ UN General Assembly Resolution 40/33 of 29 Nov. 1985.

⁷⁹ UN General Assembly Resolution 45/112 of 14 Dec. 1990.

Yet the lack of a specific mention of children means that a child rights approach can only be implemented at the discretion of the head of the institution and its sustainability could easily be questioned if the priorities of the institution change.

Possibility of a deputy ombudsman specializing in children's issues

In the same vein, while the law specifies that the institution will have a maximum of 10 ombudsmen specialized in specific fields or topics, it does not indicate what these might be. It leaves the decision to a regulation to be adopted in the future.

Assigning the responsibility of dealing with children's issues to one of the ombudsmen was an option discussed long before the law was adopted. As stated by the Turkish representative in dialogue with the CRC Committee in 2001, "one of the deputy ombudsmen would be assigned the role of ombudsman for children."⁸⁰ Yet even if an ombudsman for children is indeed created through regulation, nothing in the current law guarantees that it would be upheld in the long term. Here again, a shift of priorities or political considerations might threaten the existence of the function. As stated by the CRC Committee General Comment No. 2, recognition in the legislation of the child rights mandate is an essential condition for its sustainability and effectiveness in contributing to the implementation of the CRC.

Possibility for children to submit complaints

The mandate of the general ombudsman mainly consists of handling individual complaints against the administration. The law provides that real and legal persons can submit a complaint. While it does not make specific mention of children, neither does it impose any limitation in terms of age and legal capacity. It can thus be inferred that children are allowed to submit complaints to the institution.

However, some limitations raise issues regarding compliance of the system with the Convention on the Rights of the Child. The law indicates, for instance, that the "principle of reciprocity shall apply for the applications by foreigners."⁸¹ This provision implies that there is no unlimited right for foreigners living in Turkey to submit a complaint. As stated by article 2 of the CRC, the State has the responsibility to ensure realization of the rights contained in the Convention to all children within its jurisdiction, whether or not they are nationals of the country. This principle has been reiterated by the CRC Committee in its General Comment No. 2.⁸² Furthermore, the law specifies that the application should be made in the Turkish language, which de facto limits the accessibility of the institution to children who do not speak Turkish and thus infringes the principle of non-discrimination contained in the CRC.

The mandate provided by the law therefore contains several shortcomings with respect to children's rights. On the one hand, it does not make any specific mention of children or

⁸⁰ Committee on the Rights of the Child, Summary record of the 701st meeting, 23 May 2001, CRC/C/SR.701, para. 43.

⁸¹ Article 17(1).

⁸² Para. 9.

instruments protecting their rights, leaving implementation of the law for children to the discretion of the head of the office and other relevant decision makers. On the other hand, some of its provisions fail to comply with the CRC. Yet, beyond the substance of the law, would the system thereby put in place be effective in contributing to the implementation of the CRC?

The ability of the institution to take a child rights approach

While assessing how the law would be implemented if it were validated is clearly challenging, an analysis shows that the mandate of the general ombudsman contains some weaknesses that would need to be addressed for the institution to be able to adequately foster the realization of children's rights with a child rights approach.

As has already been emphasized, the mandate of the institution focuses on handling individual complaints. The law provides that the chief ombudsman can make statements on the activities of the institution and can delegate this power to the deputy chief ombudsman. However, the law does not explicitly allow a specialized ombudsman to make statements. In practical terms, this means that should an ombudsman for children be appointed, she or he will most likely not be able to make public statements on children's rights. She or he will only be able to do so through the chief ombudsman or the deputy chief ombudsman. This implies first that the decision to speak out lies with people who are not directly in contact with children and who may prioritize other areas or give more weight to other political considerations than the best interests of the child. It also means that the ombudsman for children could lack visibility as a public figure, recognized by children as their interlocutor. As a result, the ombudsman for children is likely to have limited capacity to directly interact with children and build trust with them.

This situation is aggravated by the fact that the law does not provide for child friendly complaint mechanisms. This feature of an independent human rights institution for children has been highlighted by the CRC Committee as essential to the accessibility of the institution to children.⁸³ Child friendly mechanisms may be instituted at a later stage but this is again left to discretion.

In addition, the law does not provide any mechanism for the participation of civil society, let alone children. The ability of an independent institution to build bridges with various parts of society is an essential asset for its effectiveness. This is all the more important when it comes to children's rights, as many actors are involved in their fulfilment – not only the state. The participation of children in the functioning and activities of the institution, through the establishment of councils and consultation processes, as well as direct involvement in the management of the office, enables the institution to truly act as a voice for children and ensure that its work responds to their views and needs in society. Yet the law does not provide for any such channel.

⁸³ CRC Committee, General Comment No. 2, op. cit., para. 15.

Likewise, the function of the general ombudsman is very limited and may not take into consideration the wide range of areas in which an ombudsman for children may need to work to effectively promote children's rights. While the general ombudsman only deals with conflicts between citizens and the administration, an ombudsman for children can only be effective if permitted to reach out to all sectors of the society, including parents, teachers, private companies, lawyers' associations, academia and the media, among others. The role of the ombudsman for children as a bridge builder between all the sectors of society for the best interests of the child can therefore be fulfilled only with difficulty in the context of the present law.

Yet it has to be noted that the question of the ability of the institution, as established by the ombudsman law, to implement the CRC will remain unanswered until (and if) the law is actually implemented. In some countries, proactive personalities have interpreted restrictive laws expansively and managed to be strong advocates for change for children's rights. However, it would be a considerable challenge to find this space in a general ombudsman's office where powers are concentrated in the hands of the chief ombudsman and the deputy chief ombudsman and where functions are very limited. Moreover, an ombudsman system for children has to build on a solid legislative base that guarantees its sustainability. For these reasons, it has been proposed that a separate child ombudsman be established.

4 IMPLEMENTATION OF THE ESTABLISHMENT PROCESS FOR A SEPARATE CHILD OMBUDSMAN: GOALS, RISKS AND OPPORTUNITIES

The establishment process for a separate child ombudsman in Turkey is currently at an early phase but is moving forward. In line with the UNICEF-Turkey Annual Report, discussions were initiated in 2007, paving the way for awareness-raising activities in 2008. These have led to the recent establishment of a parliamentary committee on monitoring children's rights. Some informants have pointed out that most actors are currently gathering information and have not yet taken positions in favour of or against a children's ombudsman. As mentioned, the establishment process consists of setting up a contract between authorities, civil society including children, and the institution. It aims to secure the independence of the institution, build trust among partners, and promote a culture of child participation. These aspects are all interrelated and expected to be further enhanced by the institution once it is in place. The implementation of the establishment process is of critical importance and this section reviews how it could be carried out in the Turkish context.

Reaching consensus on the objectives of the institution

The establishment process must focus on the mission of the institution, both because it is the element from which for example, the mandate of the institution stems, and because, from a strategic perspective, it is the aspect most likely to gather actors around the same goal.

Ensuring ongoing, independent and holistic monitoring of children's rights at national level

The lack of a monitoring system on children's rights was repeatedly pointed out during the advocacy days, echoing the recommendations of the CRC Committee as a serious gap in Turkey's implementation of the CRC. One additional factor that has contributed to highlighting the importance of developing monitoring capacities is the need for the government to report to the EU.⁸⁴

Several mechanisms already in place are working on enhancing their ability to monitor children's rights, including with UNICEF support and advocacy. The national statistical bureau, Turkstat, compiles indicators and publishes an annual study on poverty, which includes analysis of child poverty. Child rights committees, established at provincial level, are in the process of reinforcing their monitoring capacity with UNICEF support, with the goal of reporting to the Social Services and Child Protection Agency on the situation of children's rights.

However, there is no comprehensive system providing qualitative and quantitative analysis on the situation of children's rights in the country. One primary objective of a children's ombudsman would thus be to independently monitor on an ongoing basis – and freely report on – the situation of childhood in Turkey. This goal must be agreed upon and accepted by all partners through the establishment process as part of the setting up of the contract.

Building bridges between all sectors of society for children

In promoting the implementation of international standards and domestic legislation, the children's ombudsman would need to work with a wide range of actors and act as a bridge builder between segments of the society which currently do not interact. One of the strengths of a child ombudsman lies precisely in the unique ability to gather unlikely partners around the cause of children's rights.

In Turkey in particular, this role would require supporting the consolidation of an NGO coalition or platform on children's rights, which could act as an interlocutor with the ombudsman, but also operate in a unified way vis-à-vis other institutions. It would also involve promoting dialogue around children's issues between various political parties, as well as among institutions with diverse political affiliations. Similarly, it could foster cooperation between the judiciary, the legislative and the executive branches to ensure the implementation of legislation with a child rights approach.

Contributing to the implementation of the CRC in general, and existing national laws in particular

As mentioned above, one of the main issues repeatedly identified during the advocacy days is the fact that Turkey has good laws but poor implementation practices. The recently adopted

⁸⁴ UNICEF-Turkey, Annual Report, internal document, Dec. 2007.

Child Protection Law for example provides a solid framework for the protection of children's rights but implementation is lagging behind.

As stated by one informant, the main issue lies in the lack of a system for implementation and the absence of coordination among stakeholders. Because many actors responsible for law implementation do not have a comprehensive child rights approach, implementation functions on a sectoral basis and does not build on the interrelatedness of children's rights. Cooperation between institutions is a challenge because it is not institutionalized. In this context, it relies more on personal support and commitment than on a formalized system. As a result, implementation efforts remain uneven and rotation of staff threatens the sustainability of positive progress.

The tasks of a child ombudsman would therefore include addressing these deficiencies and promoting cooperation between various actors for the implementation of legislation. Such collaboration can be fostered through the establishment phase by supporting the active involvement and ownership of all relevant stakeholders.

Building the independence of the institution and its focus on the best interests of the child

The most important feature that enables the ombudsman to carry out the functions described above is its independence. From this specific characteristic stem other elements of its mandate, in particular its ability to speak out on behalf of children, act as a bridge builder between all sectors of the society, and be trusted as being driven by the best interests of the child. The establishment process should aim to ensure that the institution can operate independently, by guaranteeing a sound legal framework and structure, and by educating partners on the necessity to respect this independence.

Firstly, the child ombudsman must be given the legal tools to promote children's rights and be protected from possible threats and interferences. It is important that the institution be established by law.⁸⁵ The relevant legislation should abide by international standards, namely the Paris Principles and CRC Committee General Comment No. 2.

However, no legal guarantee of independence can be as efficient as the readiness of the political system to accept the existence of an independent monitoring body with no interference. This aspect represents a challenge even in more established democracies.

Human rights institutions already in place in Turkey have met with significant challenges in striving to achieve their mandate and doubts have been raised as to their independence. The Turkish human rights protection system is a complex formation of several bodies attached to different institutions, mainly defined in 2001 legislation.⁸⁶ The Human Rights High Council

⁸⁵ Principles Relating to the Status of National Institutions ('Paris Principles'), A/RES/48/134, 20 Dec. 1993, para. 2.

⁸⁶ Law No. 4643 of 2001. The description of human rights bodies builds on 'Core Document Forming Part of the Reports of States Parties: International human rights instruments: Turkey', HRI/CORE/TUR/2007, 8 July 2008, paras 73–85.

is a governmental coordinating mechanism chaired by the Minister for Human Rights and gathers undersecretaries from various relevant ministries. Its role is to make legislative proposals and recommendations in line with Turkey's international commitments. It is supported by the Human Rights Presidency, a body placed under the Prime Minister's Office, which acts as its secretariat. The Human Rights Presidency is responsible for coordinating the work of various government agencies in the field of human rights and for monitoring the implementation of national legislation. Importantly, it also examines individual complaints on alleged violations of human rights.

The Human Rights Advisory Council is a consultative body to the Human Rights High Council, bringing together government representatives and civil society through the participation of NGOs, professional associations and human rights experts. Its mandate is to make recommendations on human rights policy and implementation. However, as one informant, and a European Commission report⁸⁷ have pointed out, the Human Rights Advisory Council has not operated since the publication of a report on minority rights in October 2004 and legal proceedings have been taken against the main authors.

At local level, two mechanisms are in place. On the one hand, human rights inquiry delegations created by the 2001 legislation are composed of representatives of official and non-governmental bodies. Their role is to investigate allegations of human rights violations locally and report to the relevant authorities. On the other hand, human rights boards created by a government regulation of 2000 are composed of various civil society organizations such as universities, bar associations, and trade chambers, as well as local authorities and government officials. A 2003 reform restricted the number of government officials and ended police representation on these boards. They are in charge of investigating complaints regarding human rights abuses, transmitting their findings to relevant authorities and informing the public on human rights. However, it has been pointed out that many boards do not hold regular meetings and are not effective. Human rights NGOs have generally refused to participate, arguing that they lack authority and independence.⁸⁸

A parliamentary mechanism for monitoring human rights was established by law in 1990.⁸⁹ The Human Rights Inquiry Commission of the Turkish Grand National Assembly examines conformity of the Turkish system with domestic and international standards and can make proposals for legislative reform. It also handles individual complaints and has extensive investigation powers, including the competence to request information from a wide range of public institutions and private establishments, access their premises and conduct hearings. However, it has been reported that according to human rights organizations its purely advisory role has limited its efficacy.⁹⁰ This aspect is important to bear in mind, as the process for the establishment of a separate child ombudsman builds on a Child Rights Monitoring Committee within the Grand National Assembly.

⁸⁷ European Commission, 'Turkey 2007 Progress Report', 6 Nov. 2007, SEC (2007) 1436, p. 13.

⁸⁸ US Department of State, Country Reports on Human Rights Practices, 2007, released by the Bureau of Democracy, Human Rights, and Labor, 11 Mar. 2008, <www.state.gov/g/drl/rls/hrrpt/2007/100589.htm>.

⁸⁹ Law No. 3686 of 1990.

⁹⁰ US Department of State, Country Reports on Human Rights Practices, 2007, op. cit.

An analysis of human rights protection mechanisms in Turkey therefore demonstrates that there is mistrust towards their independence and authority, and hence their ability to carry out their mandate. As the creation of an ombudsman institution is understood as another human rights body within this system, it may inherit the public's perception of existing mechanisms.

On another level, possible opposition to the creation of an independent institution could originate from scepticism with respect to the concept of a children's ombudsman. Establishment processes in other countries have triggered debates about the nature and scope of a child ombudsman. Main arguments against the establishment of a children's ombudsman in Norway for example have included:

- The Ombudsman could be a threat to parental authority.
- The Ombudsman might become an excuse for other groups and bodies responsible for children to diminish or relinquish their responsibilities.
- The funds allocated should rather be used to strengthen other existing efforts or services for children.⁹¹

These arguments can now be easily questioned based on successful experiences of ombudsmen for children in other countries and they are no longer voiced in Norway. However, it is important to address them early in the process so they do not obstruct discussions.

The establishment process for a child ombudsman should therefore address the concerns of those who fear either too much or too little independence, and dissociate itself from the establishment process for a general ombudsman and other independent structures. While politicization may be a threat to the independence of the institution, the perception of childhood may help to situate the institution outside political tensions. Because children's rights have the potential to bring a wide range of actors into an alliance, strategies for the establishment process should build on that strength. Often issues related to children transcend political parties.⁹² The bottom line should be the specificity of children's rights and the importance of putting children's best interests above political tensions, as UNICEF is currently attempting to do.

Once the institution is established, independence can only be achieved by the appointment of a personality widely trusted by both governmental and non-governmental actors, whose commitment to children's rights is recognized, and who has the ability to initiate a dialogue with and influence various parts of the political system. Yet those skills should be discussed and determined as part of the establishment process itself. It would ensure on the one hand that partners, including children, have a firm understanding of the nature and function of the institution, and would guarantee on the other hand that consensus is widely reached on expectations of the ombudsman.

⁹¹ The Norwegian experience has been documented by Flekkøy, Målfrid Grude, *A Voice for Children: Speaking out as their ombudsman*, UNICEF and Jessica Kingsley, 1991, p. 50.

⁹² *Ibid.*, p. 49.

Building on, and gathering support from, existing actors

Which actors should be involved in the establishment process and what can their added value be? It is important to ensure that a wide range of partners are engaged in the process, not only to reach consensus, in particular with respect to independence, but also to benefit from their expertise and deflate possible opposition.

Opposition could indeed come from other institutions or mechanisms working on children's issues, perceiving the child ombudsman as a threat or competitor. During the advocacy days, some of the questions raised related to the place of an independent institution in the overall child protection system.

Various child protection mechanisms are in place in Turkey. While it would be essential to differentiate the functions of a child ombudsman from those of these mechanisms, it is important to underline that the child ombudsman would not be established in a vacuum. Ensuring this would further contribute to showing that the child ombudsman is not a concept imported from abroad but continues and complements existing child rights mechanisms. The establishment process should fully involve these structures so they can contribute their knowledge and experience, and so that their possible concerns can be addressed from the outset.

Turkish Grand National Assembly Child Rights Monitoring Committee

The creation of the Child Rights Monitoring Committee of the Turkish Grand National Assembly was announced on 20 November 2009 and largely resulted from the advocacy efforts of UNICEF on the need for a monitoring mechanism for children's rights in the country.⁹³ The parliamentary committee is intended to be one of the driving forces for the establishment of a child ombudsman.

The process for a child ombudsman has in fact been largely drawn from the support of parliamentarians over several years. It was reported that the idea for the establishment of a child ombudsman initially originated in a workshop on the role of parliaments in child protection which was held with Turkish parliamentarians. It is anticipated that members of the child rights monitoring committee will play an important role in the process.

Social Services and Child Protection Agency

The Social Services and Child Protection Agency (SHCEK) is attached to the Prime Minister's Office and is responsible for running childcare institutions and orphanages, as well as community centres such as day nurseries, child and youth centres, and rehabilitation centres which benefit poor families and children working on the street. In other words, SHCEK plays a central role in matters related to child protection and in policy discussions on issues related to child care and children in vulnerable situations. It is also a close UNICEF partner.

⁹³ UNICEF-Turkey, Annual Report, 2008.

SHCEK nevertheless faces several difficulties in fulfilling its mandate. Firstly, it seems to be hampered by limited resources, and only a limited proportion of its resources are actually available for the fulfilment of its mandate.⁹⁴ Some informants attribute this to the heavy financial burden of pensions for retired staff, while others point to deficiencies in the management of assets, such as houses and buildings. The result is that resources available for childcare programmes remain insufficient.

Another obstacle lies in the lack of a child rights approach by staff working in SHCEK and the institutions it is collaborating with. One informant mentioned the absence of a holistic approach to children's rights and the fact that children tend to be perceived as passive beneficiaries rather than active partners. Consequently, as stated by the same informant, efforts need to concentrate on changing attitudes from the inside.

Similarly, SHCEK would increase its efficiency if it had a stronger prevention agenda. So far, this dimension is lacking and impairs its ability to protect children's rights.

Finally, SHCEK does not operate as an independent body. While having some autonomy in its functioning, it is structurally tied to the Prime Minister's Office. As explained by several informants, the appointment process for the head of SHCEK is not transparent and it is often politically motivated. This does not mean that the person appointed is not competent, but rather that the system does not provide specific guarantees for his or her independence.

The mandate and functioning of a children's ombuds office would therefore be different from that of the Social Services and Child Protection Agency. While SHCEK works as a government agency focusing on protecting children in vulnerable situations, a child ombudsman would represent a monitoring institution, advocating for the rights of all children with a wide range of actors, and working to change mindsets in the society. Rather than working under the auspices of the Prime Minister's Office, it would be fully independent. Nevertheless, the child ombudsman would be expected to work in close collaboration with SHCEK.

Provincial bar associations and their child rights centres

Child rights centres have been created within provincial bar associations to provide free legal assistance to children in contact with the justice system. Children are either put in touch with them directly, through a juvenile judge, or are referred by the social services agency, when in contact with the law or when their rights are violated. Consequently, child rights centres have direct interaction with children and know first-hand the issues affecting their lives. Beyond providing legal counsel, they also use their knowledge of individual cases to influence policies by speaking out on child rights violations and making recommendations for legislative reform, in particular to the Ministry of Justice. Therefore, they represent an important mechanism for the promotion and protection of children's rights in Turkey.

⁹⁴ Information gathered through various interviews pointing to the same conclusion.

However, their role has some limitations. Among these is the nature of their function. Because they are part of bar associations, child rights centres only intervene when the judicial system is involved in a case. The referral is therefore much more restrictive than the scope of an ombudsman, who can deal with all situations where children's rights are violated, especially those that do not involve a breach of the law.

The other limitation lies in their uneven effectiveness. First, not all provincial bar associations have established child rights centres. Secondly, depending on their perceptions of childhood, lawyers will feel more or less committed to children's rights, resulting in great disparities in the functioning of the centres. Last but not least, lawyers dealing with cases involving children work on a pro-bono basis and are paid very low fees by the state. As a consequence, they do not have a strong incentive to devote time and energy to these cases and the quality of the legal advice provided can in many instances be poor.

However, where these centres exist and function properly, they provide an effective system of protection for children and their model could inform the establishment of a child ombudsman. Moreover, meetings with lawyers of the children's rights centre in Ankara and with the chair of the Turkish Bar Association showed these actors have a great interest in promoting the establishment of a separate children's ombudsman. The experience of child rights centres could be used to inform the establishment process and gather support for the cause, in particular among the judiciary. Because there are bar associations in each province, they can also provide a mechanism to make the process known throughout the country.

Civil society

The lack of a strong civil society could represent an obstacle to the establishment and functioning of the institution. On the one hand, experience has shown that civil society organizations tend to support independent public monitoring institutions as a positive way to monitor government actions; on the other hand, these organizations also provide the expertise the institution needs to fulfil its task. In Turkey, child rights organizations exist but in a limited number and with limited capacity and technical knowledge. Therefore, it would currently be difficult for the institution to rely on them. Yet their weight could become increasingly important as more efforts are made, in particular within the framework of EU support, to foster a stronger involvement of the civil society in decision making. For instance, the Children First project raised awareness and thus specifically helped to initiate the consolidation of a coalition of NGOs working in the area of children's rights, around the theme of violence against children.

Importantly, existing NGOs must be involved in the establishment process so they can learn about the institution, advocate for its creation, and contribute their expertise. The process also provides an opportunity to build on, and further promote, recent advances by offering a common objective. One of the tasks of a child ombudsman, if one is created, would precisely be to act as a builder of networks bringing together various actors, and in particular child rights organizations.

UNICEF

Finally, UNICEF in Turkey has the potential to play a critical role in the establishment process for a child ombudsman. It has already taken that role by putting forward the idea of a separate child ombudsman and meeting with various actors on the topic as part of the Children First project. UNICEF's access to both political decision makers, such as government officials and parliamentarians, and civil society, including NGOs and children, together with the perception of UNICEF as an impartial voice speaking for the best interests of the child, give it the capacity to draw support for the establishment of a child ombudsman. UNICEF also represents a source of expertise – and a watchdog – in the establishment process to ensure that the law abides by international standards and provides for the independence of the institution.

Building on child rights committees and fostering a culture of child participation

Last but not least, the main task of the children's ombudsman in the current context in Turkey would be to strongly promote child participation and make children's voices heard in all spheres of their lives, including families, schools, institutions, and political decision-making processes. As mentioned above, children eagerly demand to be able to participate. Currently, mechanisms for participation are limited, and listening to children is not sufficiently valued in the national culture. As a result, children cannot have their say in even small decisions affecting their lives. The establishment process should therefore make space for child participation through appropriate mechanisms.

Among those already in place are the child rights committees. These committees were created in each province by the Government of Turkey with support from UNICEF as part of the preparatory process for the National Children's Congress in 2000. They are coordinated by SHCEK and composed of children from a wide range of backgrounds with a view to ensuring representativeness: children with disabilities, children living at home or in institutions, children at school, working children, children living or working on the street were all part of these committees. They have the task of identifying priorities on children's issues and making proposals for solutions to the National Child Forum held every year.⁹⁵

Depending on the province, the effectiveness and dynamism of child rights committees remain uneven. However, where they function properly, these committees provide a good opportunity for children to monitor the situation of children's rights, influence decision making at provincial level and build the capacity of children to take responsibility for claiming their rights. Dialogues with children participating in some of these committees have shown commitment and concern to improve the situation of children, as well as skills in articulating a discourse and setting up strategies towards that goal. UNICEF has been supporting the committees through both technical assistance and financial support with small grants to cover functioning costs.⁹⁶

⁹⁵ *The Story of the National Child Forum and Children's Participation in Turkey*, booklet published as part of the Children First campaign by UNICEF and the Government of Turkey with financial support from the European Commission, 2007.

⁹⁶ UNICEF-Turkey, Annual Report, 2007.

Child rights committees represent an important tool in the creation of a children's ombudsman in two respects. Firstly, they can make a great contribution to the establishment process. They can contribute to informing their peers about the process and gathering their suggestions. They can advise the Government on the type of mandate and functions the institution should have. They could also participate in the appointment of the child ombudsman, thereby ensuring that the person in charge is able to respond to children's concerns and communicate with them, and strengthening the child ombudsman's independence by being directly accountable to children themselves. The committees would therefore be instrumental in ensuring that the process builds on children's views and in guaranteeing that, once created, the child ombudsman is well known among children in the country. In addition, these existing child participation mechanisms could provide a good basis for the work of the child ombudsman and benefit from the support of the institution for their strengthening. However, the role of child rights committees in the establishment process largely depends on the willingness of the Government and other actors to fully involve them in the creation of a children's ombudsman and take into account their proposals.

5 CONCLUSIONS AND RECOMMENDATIONS

The study of the establishment process for a separate children's ombudsman in Turkey has aimed to show the importance of the creation of such an institution in the country and highlighted some of the elements to be taken into account in this process. Building on information collected for this study, and in the context of the global research undertaken by UNICEF IRC, the following are some conclusions and recommendations for the establishment process.

- More than a preparatory phase, the establishment process for a child ombudsman should be seen as an essential component of the effectiveness of the institution itself. Because ombuds institutions rely very much on trust – trust by the rights holders who appeal to them and trust by the actors they aim to influence – the perception of the institution, developed at the early stages of establishment, is critical in enabling it to fulfil its mandate. In this sense, it is an opportunity that cannot be missed.
- The process should first aim to build consensus around the reasons why a separate ombudsman for children is needed in Turkey. Agreement on principles will help focus the discussions on substance rather than on structure – where power issues are more likely to arise. As a result, it will contribute to concentrating on children's rights and ensuring that the process is not (too) politicized. As explained in this paper, the rationale for the establishment of a separate ombudsman is threefold:
 - The obligation to implement the international standards Turkey has subscribed to, in particular the Convention on the Rights of the Child. The impetus in the country often comes from pressure by European institutions as part of Turkey's accession process to the EU. As emphasized here, main gaps with respect to the CRC lie in the lack of systematic implementation and monitoring of children's rights, which an ombudsman would help address.

- The situation of children in Turkey shows that they are disproportionately affected by disparities and discrimination. In addition, the society's perception of its children, although evolving, continues to be low. Child participation in particular remains very limited at all levels. A child ombudsman would concentrate on working with partners and making policy recommendations to address the root causes of inequalities. It would also offer a space for children to make their voices heard.
- Politics in the country are affected by fundamental tensions around the place of religion in public affairs. The organization of powers provides for fragile checks and balances, which can lead to immobilization of the system when various institutions are held by opposed political parties. While it is progressively strengthening, civil society does not yet have the capacity to offer a strong third voice. Consequently, ensuring that children's rights are not victims of the political context requires an institution that is independent of political parties, and is trusted by all as guided solely by the best interests of the child.
- Further to agreeing on concerns for children's rights in the country, consensus needs to be promoted on the objectives of the independent institution. These include ensuring holistic monitoring of children's rights, acting as a bridge builder among all sectors of society working for and with children, and advocating for the implementation of domestic and international law.
- Because the establishment process for a general ombudsman generated a political crisis, and ended with the cancellation of the law by the Constitutional Court, the process for the creation of a children's ombudsman should clearly differentiate itself as a separate effort to promote the implementation of the CRC. In the same vein, partners should be informed on the inadequacies of the current general ombudsman law for ensuring sustainable and efficient work for and with children, with a child rights approach and in accordance with the CRC.
- In explaining the role of the children's ombudsman, it is important to highlight that it should not be an institution working exclusively on legal issues affecting children, and staffed by lawyers. While the general ombudsman law takes a very legalistic approach, the ombudsman for children should have a multidisciplinary approach and this should be reflected in its mandate and staff, in line with the recommendation of the CRC Committee.
- Given the apparent scepticism in the country about the ability of the system to have a truly independent institution, the notion of independence for the children's ombudsman could be presented as a necessary corollary to the mission of the institution to promote the best interests of the child.
- One of the lessons to be drawn from the experience of the establishment process for a general ombudsman, as well as other attempts to create independent bodies, is the fact that attaching an independent institution too closely to either the legislative or the executive branch leads to some imbalance which threatens the ability of the institution to

carry out its mandate, in particular in the Turkish context. In the case of the general ombudsman, the main political difficulty has been the fact that the law provides for a parliamentary ombudsman and was perceived as a threat by the executive branch. With respect to independent committees established by the government, perceived or real governmental interference has threatened their independence. As a result, for the children's ombudsman to be accepted and trusted by all, regardless of which party holds the majority or dominates one body, it is essential to ensure that its structure, mandate and appointment process involve various powers, including children and civil society, on the model of other European child ombudspersons. For instance, consideration could be given to an appointment made by the Government on the recommendation of the Parliament (or vice versa) and through a selection process led by child rights committees. The institution would then submit its annual report to both the Government and the Parliament.

- In accordance with international standards, the law establishing the ombudsman for children should specify that the institution must be accessible to children. The law should also explicitly provide for the participation of children in the functioning of the ombuds office. Drawing from other European experiences, children should participate in the appointment of their ombudsman. On the one hand, this ensures that the personality reflects children's aspirations and makes the ombudsman accountable to them. On the other hand, in a highly politicized context, it signals that the appointment is not politically motivated but based on the best interests of the child. In case of political difficulties, it is harder to contest or block a choice made by children. Once operating, the institution should also have a permanent participatory mechanism composed of children (with due regard to representativeness in terms of geographic origin, gender, age, disability, ethnic group, children in institutions, etc.), such as an advisory council, with the function of advising the ombudsman and contributing to the management of the office. These children could also act as 'ambassadors' for the ombudsman.
- The establishment process should involve partners from various sectors.
 - A consultative/working group could be created, with representatives from the Parliament, Government, including various ministries such as the Ministry of Justice, the Ministry of Family/Social Affairs, and the Ministry of Finance, SHCEK, bar associations/child rights centres, judges, civil society/NGOs, academia, media, teachers, social workers, UNICEF, and others as relevant.
 - Children should be consulted and their suggestions duly taken into account at each stage of the process. Child representatives could be chosen from among members of child rights committees, who are already used to advocacy activities and come from various geographic locations and backgrounds. They should be properly trained and the issues should be presented to them in a child friendly way. Discussions could also be held in schools to make the institution known and in order to benefit from children's contributions, either through the organization of specific consultations or on the occasion of special events such as child rights days.

- The establishment process is usually very long, but this is also a condition for its success. Raising awareness and educating actors takes time and effort. It is important to carefully address possible opposition and criticisms throughout the process so that, once created, the children's ombudsman can operate in a conducive environment. Because he or she may take unpopular positions and be critical of some actors, reaching as wide as possible a consensus on the importance of an independent institution for children's rights is key to ensuring its effectiveness and sustainability in the long term.