

AUSLANDSRUBRIK

The Rights of the Children in Turkish Criminal Justice System

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Abstract

The Turkish legal system follows the civil law tradition of the continental Europe, which has its origin in the Roman Law. Turkey has made last 15 years major legal reforms. After new penal code and criminal procedure code the juvenile courts Law has been replaced by the child protection Law which entered into force on 3.7.2005. Protection of the rights of children in criminal justice system, the main elements of new turkish children criminal law and problems in praxis have been discussed in the article.

I. Introduction

The Turkish Republic was founded in 1923 by *Mustafa Kemal Atatürk*, who instituted an ambitious programme of reforms designed to orient the political, social and economic structure of the country towards Western countries and neighbouring Europe in particular. It is one of the 20 most populous countries in the world. The first census of 1927 recorded a total population of 13.8 million, whereas a total of 81 million was returned by the last census in 2017. Children are the country's largest demographic group. The current estimated total of 27 million people under 19 years of age represents 36 per cent of the total population with under 15s and under-five-year-olds constituting 28 per cent and nine per cent of the total respectively.¹

In its attempts to accede to the European Union, the Turkish Government is following the National Program for the Adoption of the *Acquis Communautaire*. As a result, Turkey is currently going through a process of major political, legal and institutional reforms. This has been reflected by the enactment of a new Penal Code² that entered into force on 1 June 2005, a Criminal Procedure Code, a Misdemeanours Law and an Enforcement Law. The Juvenile

Courts Law has been replaced by the Child Protection Law (Act No 5395), hereinafter referred to as the CPL, which entered into force on 3 July 2005. It implemented the UN Convention on the Rights of the Child (hereinafter referred to as the UNCRC or CRC) and the ten fundamental principles of the Beijing Rules.³ The legislation was aimed at minimizing custody and imprisonment, accelerating trials, ensuring privacy, preventing interruption to children's education, encouraging rehabilitation and ensuring that child suspects and offenders are handled only by police child branches, child courts, child penitentiaries and professionals and personnel trained in dealing with children.⁴ This law was particularly necessary as the last decade has shown considerable increases in reported offences by juveniles in many countries.⁵

The new Child Protection Law provides protection and rehabilitation measures for children who have been exploited or forced into criminal activity and guarantees their rights to counselling, education, childcare, healthcare and housing. The Ministry of Justice was the coordinating institution for its implementation. The Ministries of Health, Labour and National Education, the General Directorate of Social Services and Child Protection⁶ and various municipalities were also involved in implementing measures to protect and support children.⁷

The next chapter first deals with awareness efforts regarding rights of children in Turkey. In chapter III and IV, I am going to give an overview about national and international legal framework. In chapter V domestic legislation on the protection of the rights of the child in Turkish criminal law is presented.

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¹ http://www.unicef.org/turkey/ut/ut2_2010.html#nt26 (last accessed on 20.8.2018).

² Available in English at: <http://www.legislationline.org/documents/action/popup/id/6872/preview>, (last accessed on 25.2.2010).

³ Zermatten, 'Introduction' in: Zermatten (ed), Training Course On Juvenile Justice for Officials from Turkey, Working Report 2-2003, 5-6 available at: <http://www.childsrights.org/html/documents/Publications/WRTurquie2003.pdf> (last accessed on 25.2.2010).

⁴ 'Plus 5' Review of the 2002 Special Session on Children and World Fit for Children Plan of Action, National Progress Report, Turkey, January 2007, 17 available at: http://www.unicef.org/worldfitforchildren/files/Turkey_WFFC5_Report.pdf (last accessed on

25.2.2010).

⁵ Miklau, 'New Tendencies and Politics in Juvenile Justice, A Challenge for The Legislator' in: Zermatten (ed) Training Course On Juvenile Justice for Officials from Turkey, Working Report 2-2003, 9, last accessed on 25.2.2010.

⁶ Established by Act No 2828 on Social Services and the Child Protection Agency, dated 24.5.1983.

⁷ Hanci, United Nations Committee on the Rights of the Child, (42nd Session) 'Summary Record of The 1129th Meeting' (Chamber B) 2, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c0418bef762dfbfc1257185002e697c/\\$FILE/G0642246.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c0418bef762dfbfc1257185002e697c/$FILE/G0642246.pdf) (last accessed on 25.2.2010).

II. Awareness-raising efforts

Turkey's ratification of the CRC led to an awareness raising campaign on children's rights. This was followed by a National Children's Congress in 2002. The Congress in turn decided to set up a National Children's Forum, which was to consist of one boy and one girl from each province. The Forum was initiated by SHCEK, the national agency responsible for monitoring the implementation of the CRC, and meets every year. Children attending the seventh annual gathering of the Child Forum in 2006 launched a new campaign to promote and raise awareness about children's rights and to boost children's participation in decision-taking at all levels. The 'Rights of the Child Promotion Campaign' went ahead in 25 provinces spanning the entire country. The first phase of the campaign lasted until 20 November 2007 and was managed predominantly by children. The provinces in question were chosen because they had active children's rights committees and/or were candidates for the Child Friendly City initiative conducted by the Ministry of the Interior.

Information on the rights of the child, particularly rights that had been affected by recent changes in legislation, are being widely disseminated to the public.⁸ Children are being taught about their rights as part of the national school curriculum. Many national and international conferences, symposia, panels and other events have been organized to raise awareness of children's rights.

Finally, the Ministry of Justice of Turkey has developed and executed a National Judicial Network Project (NJNP) (UYAP) by using every modern technology necessary to accomplish inner automation of the entirety of the judiciary and judicial support units and to accomplish external unit integration with public bodies and organizations. As a result of the contributions of NJNP to the judicial system, juveniles may be tried in a reasonable time period, accurate policies may be developed by receiving crime reports of juveniles, it is easier to prevent impunity for those who commit crimes against children, and to stop crimes against children by an effective, transparent, fair and speedy performance of the judiciary. Legislations relating to children are accessible any time with their up to date status. Studies are being conducted swiftly by the judicial authorities for the establishment of precautions that aim to improve, protect and support the rights and well-being of children and vulnerable groups.⁹ Systematic data collection and analysis are needed to provide the basis for improved policies and programs for children. Awareness of child rights among policy and decision makers, service providers, caregivers and children will enhance the effectiveness of their participation in policy discussions.¹⁰

⁸ An agreement had been concluded with the Turkish radio and television authorities to produce 12 human rights-related programmes, one of which would focus exclusively on child rights and abuse. (The author has also participated in one of these programmes on 'the right to life and the right to liberty and security'.)

⁹ See (n 11) 8.

¹⁰ United Nations Children's Fund, Revised country programme document Turkey, 31.10.2005, 9 available at: http://www.unicef.org/spanish/about/execboard/files/Turkey-CPD_Rev1.pdf, (last accessed on 26.2.2010).

III. National legal framework

At the outset, it should be noted that Turkish law follows the Civil Law tradition of continental Europe, which has its origin in Roman law, and is based on statutory or legislative enactments.¹¹ For example, the first Turkish penal code, enacted in 1923, was based on the Italian Penal Code of 1889.

In 1979, Turkey enacted Law No 2253 on the Establishment, Duties and Trial Procedures of Juvenile Courts, which essentially dealt with procedural matters. Thus, one of the problems encountered by the criminal justice system was the lack of specific legislation relating to the protection of juveniles. As a result, the Ministry of Justice worked towards enacting a separate piece of legislation relating to children within the framework of the UNCRC and other international instruments, such as the United Nations Rules for the Protection of Children Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. In addition, a number of laws were enacted to monitor the judiciary. For example, Law No 4675 on Supervisory Judges, which entered into force on 16 May 2001, ensures that objections and complaints relating to services and practices in institutions are overseen by an independent judicial organ. Law No 4681 on Monitoring Boards for Penal Institutions and Detention Houses, which entered into force on 21 June 2001, requires that institutions be inspected at regular intervals by civil society organizations and reports drawn up further to these inspections be delivered to the Turkish Grand National Assembly and to various executive organs, such as Ministries and General Directorates, in order to take the necessary steps.

These new laws reconstructed the juvenile justice system with the aim of rendering it more child-friendly. The definition of child protection and principles governing children's rights are now more complete and in line with international instruments. A clear distinction between child delinquency and child protection has been made.¹² Article 3(1)(a) of the CPL provides the major definitions:

1. Juvenile in need of protection: any juvenile whose physical, mental, moral, social or emotional development and personal safety is in danger, who is neglected or abused, or who is a victim of crime,
2. Juvenile pushed to crime: any juvenile about whom an investigation or prosecution is carried out on the allegation that he/she has committed an act which is defined as a crime in the Laws, or any juvenile about whom a security measure has been decided due to an act he/she has

¹¹ Şeref, 'Turkish Legal System and the Protection of Human Rights' SAM (Stratejik Araştırmalar Merkezi) Papers, No 3/99, 3. A new Civil Code was adopted by Parliament in November 2001 and entered into force in January 2002. The new Civil Code incorporates some amendments regarding the protection and rights of the child. See Commission of the European Communities, 2002 Regular Report on Turkey's Progress Towards Accession, 20, 40 and 45 available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf, (last accessed on 25.2.2010).

¹² Seminar on Juvenile Justice Procedures, TAIEX Workshop, 3.

committed.

The purpose of the CPL is to regulate the procedures and principles protecting juveniles who are in need of protection or who are pushed to crime, and ensuring their rights and well-being.¹³ It entails:

- the types of protection measures regarding children in need of protection,
- the institutions and organizations that are to apply these measures,
- the courts that have jurisdiction,
- the qualifications required for the appointment of judges, prosecutors and social workers who are to function in these courts,
- enforcement procedures and
- a supervision mechanism of protection orders given by the Courts.

This law also provides for a broader application of ‘conciliation’¹⁴ and introduces two important procedures, namely the possibility of suspending the pleading of the criminal case and the announcement of the verdict.¹⁵ A child can apply to Social Services when he/she wishes to be taken by the agency. The CPL recognizes the right of the juvenile of adequate capacity to participate in the proceedings, by taking his opinion into consideration, and to be informed about them. The question of capacity is not defined by age but is rather a factual question to be decided by the judge.¹⁶ One of the main goals behind the legislation was the reorganization of the services provided to children in light of international instruments, namely the CRC, and scientific developments.¹⁷ In order to attain this goal, all Turkish facilities and services directed at children should ensure that:

“a. they are equipped with the knowledge and resources to meet their own basic humanitarian needs and develop the potential they have,

b. the damage done to a child’s psychological, social and physical integrity by the event that resulted in the restriction of their liberty is identified and undone,

c. children undergo a social, cultural, vocational, psychological, medical and physical treatment as required by their age, gender and personality, which will be aimed at their reintegration into society, will develop their esteem and trust and will reinforce their respect of the rights and freedoms of others,

d. children are brought up to be physically, intellectually, morally and emotionally healthy individuals who are

aware of the importance of working and assuming a constructive role in society and who have learned to live without causing any damage to others,

e. children strengthen their relationships with their family and society,

f. children are integrated into society by approximating life in institutions to social life and seizing every opportunity to maintain their relationship with society.”¹⁸

In addition to the aforementioned laws, provisions on the special status of children with regard to law enforcement and procedural rights are now provided for in the Penal Code,¹⁹ Misdemeanours Law (The law governing administrative offences), the Criminal Procedure Code and the Law on the Execution of Criminal and Security Measurements. Following Turkey’s ratification of the CRC in 1995 and in line with the amendments made to its legislation thereafter, article 19 of the Regulations on Apprehension, Custody and Taking of Statements now contains special provisions concerning minors: apprehension and statement-taking powers are restricted and provision is made for juveniles to benefit from the assistance of a lawyer, for their parents or guardians to be able to choose a lawyer and for statements to be taken from under-age suspects on condition that their lawyer is present.

The law on the ‘Organization and Duties of the General Directorate of Penal Institutions and Detention Houses’, which relevant authorities are currently working on, foresees:

- a Child and Youth Services Department to be established to provide services to children in the 12-18 age group and youth in the 19-21 age group, with a single management,
- Observations and Measures Centres to be established to make up for the deficiencies in infrastructure at the trial stage,
- Education services to be inspected by the Ministry of National Education and health services by the Ministry of Health in order to make institutional services more effective.

Furthermore, works have commenced on a comprehensive regulation aiming to standardise the services provided to children who are under the supervision of the General Directorate of Prisons and Detention Houses and to bring these services in line with provisions contained in

¹³ Art 1 CPL 2005, available at: http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/turkey/Turkey_juv_prot_law_Eng.pdf (last accessed on 25.2.2010).

¹⁴ Report presented by the Minister of Justice of Turkey, in: 28th Conference of European Ministers of Justice, Lanzarote (25.–26.10.2007), 5, available at: <http://www.coe.int/t/dghl/standardsetting/minjust/mju28/MJU-28%282007%2914E-Turkey.pdf> (last accessed on 25.2.2010).

¹⁵ Arts 19 and 23 CPL 2005.

¹⁶ <http://www.law.yale.edu/rcw/rcw/jurisdictions/asw/turkey/frontpage.htm> (last accessed on 25.2.2010).

¹⁷ United Nations Children’s Fund Executive Board First regular session 2006, 16-20 and 23 January 2006, Revised country programme document, Turkey, 3 available at: http://www.unicef.org/about/execboard/files/Turkey-CPD_Rev1.pdf (last accessed on 25.2.2010).

¹⁸ Nursal, ‘Juvenile Justice and treatment in Turkey’ in: Zermatten (ed) Training Course On Juvenile Justice for Officials from Turkey Working Report 2-2003, 69, available at <http://www.childsrighs.org/html/documents/Publications/WRTurquie2003.pdf> (last accessed on 25.2.2010).

¹⁹ For example: abandonment (art 97), failure in the duty of assistance or notification (art 98), maltreatment (art 232), breach of family law obligations (art 233), kidnapping and detention of a child (art 234).

international instruments.²⁰

There are three models that inspire the juvenile courts' system:²¹ the welfare model, the justice model and the restorative model.²² The welfare model places the emphasis on the young offender. The latter is seen as a victim rather than an offender so that the criminal justice system should not punish him but rather look for the causes that might explain his behaviour. The justice model is based on the idea that a young offender is responsible for his acts so that when he commits an offence he has chosen to misbehave. He therefore has to pay for his deeds in the form of retributive punishment. The last model, the restorative justice model, focuses on re-integrating the victim into society. The young offender has to face his victim(s) and be proactive in order to repair the damage he has caused. Thus, mediation and service community orders are frequently used. The Turkish model is a mixture between the welfare and the justice model. Young offenders are not only sanctioned by criminal law but also by family and welfare laws.²³ Since 2005, however, a restorative justice model has also appeared through the use of mediation.

IV. International legal framework

Turkey ratified the European Convention on Human Rights on 18.5.1954²⁴ and has accepted the competence of the European Court of Human Rights to receive individual complaints. It signed the Convention on the Rights of the Child on 14.9.1990 and ratified it on 9.12.1994.²⁵ The Social Services and Child Protection Agency (SHCEK) is the coordinating directorate for the implementation of the UNCRC. The CPL efforts continue to ensure its full implementation. Research is being conducted on the need for further legislative changes to ensure that all legislation affecting children is CRC-compliant.²⁶ Turkey has as well ratified the European Convention on the Exercise of Children's Rights on 10.6.2002²⁷ and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in the armed conflict on 4.5.2004²⁸ following a decision of the Council of Ministers on 16.10.2003 (Decision No: 4991). According to the Turkish Constitution, international human rights instruments duly ratified by Parliament have priority over national laws in case of conflict.²⁹ Since international conventions

take precedence, they directly protect human rights in Turkey. Furthermore, the best interests of the child are guaranteed by several provisions of the Turkish Constitution:³⁰

- Article 42(2) of the Constitution stipulates that 'the State will adopt appropriate measures for protecting children and establish the institutions needed therefore.'
- Article 50(2) states that 'Minors, women and persons with physical and mental handicaps will be protected by special provisions as to their working conditions.'

Thus, it can be said that Turkish law ascribes a great deal of importance to child protection. The UN Committee on the Rights of the Child endorsed the CPL, the designation of the General Directorate of Social Services and Child Protection Agency as the coordinating organization responsible for monitoring and implementation of the UNCRC and its Optional Protocol, the amendments to the Constitution allowing for direct application of the Optional Protocol to domestic legislation and the training activities undertaken by the State party in order to enhance the awareness of the issues covered by the Optional Protocol.

V. Domestic legislation on the protection of the rights of the child in criminal law

1. The Age of Criminal Liability

According to article 1 of the UNCRC, 'a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. The new Penal Code defines a child as any person under the age of 18,³¹ a definition in line with that of the UNCRC.³² Article 3(1)(a) of the CPL defines a juvenile as 'any individual that has not yet completed the age eighteen, regardless of whether they have reached full legal age earlier'. Thus, the upper limit for the application of the special provisions of the CPL has been fixed at 18.

In the old Turkish Penal Code the minimum age of criminal liability was 12 years of age. Under article 31(1) of the

²⁰ See (n 15) 73.

²¹ Zermatten, 'Face à l'évolution des droits de l'enfant, quel système judiciaire: système de protection ou système de justice?' (1994) *Revue internationale de criminologie et de police technique* 2.

²² Bahar/Arıcan, 'Dünya'da ve Türkiye'de Çocuk Adaletinin Gelişimi: Temel Sorunlar, Modeller ve Arayışlar' in *Kriminoloji Dergisi* (Turkish Journal of Criminology and Criminal Justice) (2009) CI, SI, 64–66. Also see Zermatten (n 4).

²³ See (n 5) 11.

²⁴ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG> (last accessed on 25.2.2010).

²⁵ The convention became a national legal instrument after having been ratified by Law No 4058 published in the Official Journal No 22184 of 27.1.1995. It should be noted that Turkey made a number of reservations to the Convention, which remain today. For details see: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&lang=en#EndDec (last accessed on 25.2.2010); Solmaz Balo, 'Teori ve Uygulamada Çocuk Ceza Hukuku' 2.B., (Ankara, 2005) 89.

²⁶ *ibid* (n 4) 4. See also art 45(1) of the CPL.

²⁷ <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=16>

0&CM=&DF=&CL=ENG (last accessed on 25.2.2010).

²⁸ http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11-b&chapter=4&lang=en (last accessed on 25.2.2010).

²⁹ Art 90(5) of the Turkish Constitution: 'International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail'.

³⁰ The Constitution is available in English at: http://www.ana.yasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf (last accessed on 25.2.2010).

³¹ Art 6(1)(b).

³² In the old law on the 'Establishment, Duties and Trial Procedures of Juvenile Courts' the competence of the courts was limited to juveniles aged 12 to 15. Consequently, juveniles between 16 and 18 were tried by ordinary courts.

new Code however, ‘minors under the age of thirteen are exempt from criminal liability’. This is in line with most legal systems nowadays which provide for a criminal threshold between 13 and 15 years of age.³³ Thus, between the ages of 13 and 18, the juvenile’s responsibility varies depending on the person’s mental development. In some European countries (like Germany) some provisions of juvenile law are being applied to young adults, referring to the age groups of 18 to 20, but this has not been the case in Turkey.

There is no death penalty in Turkey neither for adults nor juveniles. The last execution in Turkey occurred in 1983 (after the 1980 military coup). Even if the death penalty was still in place, it would be inapplicable to children, because of penalty reduction for juvenile.

As aforementioned, criminal sanctions cannot be applied to a juvenile who at the time of committing an offence was under the age of 13. While such minors cannot be prosecuted, security measures may be imposed on them.

Different sanctions apply according to the age group of the juvenile offender. Where a minor is older than 12 but younger than 15 at the time the offence was committed, and he is either incapable of appreciating the legal meaning and consequences of his act or his capability to control his behaviour is underdeveloped, and then he shall be exempt from criminal liability. However, such minors shall be subjected to security measures specific to children. Where the minor has the capacity to comprehend the legal meaning and result of the act and to control his behaviour in respect thereof, a term of 12 to 15 years of imprisonment shall be imposed for offences requiring a penalty of aggravated life imprisonment and for offences that require a penalty of life imprisonment, a term of nine to eleven years imprisonment shall be imposed. Otherwise, the penalty to be imposed shall be reduced by half, save for the fact that for each act such penalty shall not exceed seven years.³⁴ Where a minor is older than 15 but younger than 18 years at the time the offence was committed, then for crimes that require a penalty of aggravated life imprisonment a term of 18 to 24 years of imprisonment shall be imposed and for offences that require a penalty of life imprisonment 12 to 15 years of imprisonment shall be imposed. Otherwise, the penalty to be imposed shall be reduced by one-third, save for the fact that the penalty for each act shall not exceed 12 years.³⁵ According to article 107(5) of the Code of Execution of Punishments and Security Measures, when the offender is a juvenile a day in prison counts as two days served. Thus, article 31 of the Turkish Penal Code illustrates that the Turkish juvenile justice system is a mixed one. For the juvenile offender

under 13, a welfare model is in place. For the juvenile offender aged between 13 and 16, a welfare and justice model prevails and aged between 16 and 18 the justice model governs. Some elements of the restorative justice model also exist through mediation.³⁶

The security measures mentioned above are protective and supportive measures regulated by the CPL. They are juvenile-specific safety measures aimed at juveniles who are pushed to crime and who do not have criminal liability.³⁷ They are enumerated in article 5 of the CPL and include education, care, health and shelter. They are flexible measures and their duration is not determined by law, but by judge. The court must monitor their implementation³⁸ and may vary them if they are deemed inappropriate.³⁹

2. Deprivation of Liberty and Conditions of Detention

a) Pre-trial arrest and detention

As regards juvenile suspects, the following rules apply.⁴⁰ Children who are under the age of 13 at the time of the offence or deaf and dumb minors who are under the age of 16 at the time of the offence may not be apprehended for any offence. As soon as their identity has been established, such minors shall be released. The public prosecutor’s office shall immediately be informed of the minor’s identity and offence. Minors shall not on any account be used in establishing the nature of an offence. Children between the ages of 13 and 18 may be apprehended for an offence. Their relatives and lawyers shall be informed of their apprehension and they shall immediately be brought before the public prosecutor. The preliminary investigation shall be conducted by the chief public prosecutor in person or a public prosecutor appointed by him.⁴¹ Detained juveniles shall be kept at the juvenile unit of the law enforcement facility.⁴² In situations where the facility does not have a juvenile unit, juveniles shall be kept separately from detained adults.⁴³ Chains, handcuffs and similar tools ought not to be used on juveniles. However, when necessary, the police may take necessary measures to prevent the juvenile from escaping or endangering his life or physical integrity or that of others. If the offender is under the age of 18 at the time he begins serving his sentence, his liberty depriving sentence will be served in a reformatory or in a special section of the adult penitentiaries.⁴⁴ If, at the time of the trial, the juvenile offender is an adult, there are no specific rules, except reducing the punishment.

³³ *ibid* (5) 11. For instance, Albania, Austria, Denmark, Germany, Italy, Norway, Spain,

³⁴ Art 31(2) Penal Code.

³⁵ Art 31(3) Penal Code.

³⁶ Art 24 CPL 2005.

³⁷ Art 11 CPL 2005.

³⁸ Art 8(2) CPL 2005.

³⁹ Art 7(5) CPL 2005.

⁴⁰ *ibid* (n 11) 6.

⁴¹ Response of the Turkish Government to the report of the European

Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Turkey from 7.-15.9.2003, p. 7 and 22, available at <http://www.unhcr.org/refworld/country,,COECP,TUR,4562d8cf2,4718b94e2,0.html> (last accessed on 26.2.2010).

⁴² Art.16(1) CPL 2005.

⁴³ Art 16(2) CPL 2005.

⁴⁴ *Gölcüklü/Feyyaz/Cin Şensoy*, ‘Criminal Law’ in: Ansay/Wallace (eds) *Introduction to Turkish Law* (5th edn, Wolters Kluwer, The Hague 2005) 173.

b) Measures that can be taken against a juvenile offender

At the investigation or prosecution stages related to juveniles pushed to crime, the court may decide for one or several of the measures listed below to be taken:

- No moving outside specified peripheral boundaries.
- No access to certain places or access to certain places only.
- No contact with specified persons and organizations.⁴⁵

However, if these measures do not bring about favourable outcomes or are violated by the juvenile, the court may decide to issue an arrest warrant.⁴⁶ According to article 107(5) of the Code of Execution of Punishments and Security Measures, a day in prison for juvenile counts as two days served. It should be borne in mind that an arrest warrant cannot be issued for juveniles who have not yet completed the age of fifteen for acts that require an imprisonment penalty with an upper limit of five years.⁴⁷ Criminal sanctions available against the juvenile are juvenile custody and security measures.

c) Education and training while in detention

Children in reformatories benefit from all types of education and training activities. Juveniles placed in reformatories whose age and other particulars are appropriate may attend institutions of primary, secondary and higher education; participate in social and sports activities that take place in their respective schools; take, in connection with their education, foreign language, computer and vocational courses and courses given to prepare students for university examinations; take an examination conducted outside the institution to enter distance education institutions and universities; and attend social activities such as plays, concerts and sports events under the supervision of the institution's educators.⁴⁸

The workshops in the Juvenile Reformatory in Ankara were closed down in 1995. According to new regulations, children older than 15 years of age for whom it is impossible to attend formal education are guided towards an appropriate occupation taking into consideration their wishes, abilities as well as the availability of vocational training centres and employment opportunities in their future place of residence. These juveniles may then attend vocational training centres attached to the Ministry of National Education under the Apprenticeship and Vocational Training Law (Act No 3308). Students who are employed within the framework of the vocational training program receive a certain portion of their monthly wages to be used for their personal expenses and the remaining amount is deposited in a bank and kept in a safe custody account to be delivered to children on their release.⁴⁹

⁴⁵ Art 20(1) CPL 2005.

⁴⁶ Art 20(2) CPL 2005.

⁴⁷ Art 21 CPL 2005.

⁴⁸ This is in line with art 19, CRC.

⁴⁹ *ibid* (n15) 71.

⁵⁰ United Nations Children's Fund Executive Board, First regular session 2006, 16–20 and 23 January 2006, Revised country programme

d) Post release measures

New laws in place since 2005 have helped to address some of the concluding observations of the Committee on the Rights of the Child, (ex: the provision of a probation mechanism for children).⁵⁰ Prior to 2005, there was no specific legislation in Turkey dealing with the situation of children released from care. Therefore, Law No 5402 on Probation and Help Centre and Protection Boards was enacted to this effect and came into force on 20.7.2005.

The enactment of the new law represents an important part of the reform of the Turkish criminal justice system. With this new system, juvenile offenders are placed under supervision and measures to enable the resettlement of the children under the supervision of an expert. This change allows as well children released from prison to be supervised. Since 2005, probationary measures that apply to both adults and juveniles have been in place. However, there is still no exclusive regulation for juveniles, except article 36 of the CPL: 'the court may decide to take under supervision the juvenile about whom a protective and supportive measure have been decided, about whom the decision to defer the commencement of a public prosecution action has been approved, and about whom it has been decided to put off the announcement of verdict'.⁵¹

One of the most important problems faced by children released from care was the failure to maintain the confidentiality of 'records of convictions' especially for juveniles aged 16–18. This places a number of barriers for juveniles seeking employment, benefiting from credit and hostel facilities in higher education, attending certain education institutions and those being called up for military service.⁵² There is now a better regulation in place, which provides that the criminal records of juveniles can only be given to the Public Prosecutor Services and the courts. In practice no downsides have been reported regarding this regulation. But an exception for some crimes would be appropriate, like sexual abusing of children etc.

3. Procedural Rights

This section deals with specialized institutions and procedures regarding juvenile.

Juveniles are treated as criminal offenders but subject to different, sometimes reduced, sanctions than adults. The CPL governs procedures regarding juvenile delinquents so that the general criminal law and criminal procedure law is only subsidiary.

a) The Courts

In Turkey, lay judges neither exist in adult courts nor juvenile courts.⁵³ Juvenile courts are composed of a single

document, Turkey, 3, available at http://www.unicef.org/about/execboard/files/Turkey-CPD_Rev1.pdf (last accessed on 25.2.2010).

⁵¹ Also refer to arts 37, 39, 40 and 41 CPL 2005.

⁵² *ibid* (n 15) 72.

⁵³ On the appointment of judges see art 28 CPL 2005.

judge and are found in each provincial centre. Where required due to heavy workload, more than one chamber may be established. They administer actions filed with regard to juveniles pushed to delinquency, for crimes falling under the jurisdiction of basic penal courts.⁵⁴ The Public Prosecutor shall not be present at the hearings administered at juvenile courts but may appeal their decisions.⁵⁵

Juvenile heavy penal courts⁵⁶ exist too. They are composed of one presiding judge and two members.⁵⁷ They administer suits related to crimes committed by juveniles, falling under the jurisdiction of the heavy penal court (court of aggravated crimes).⁵⁸

b) Public prosecutor's juvenile bureau

A juvenile bureau at the Chief Public Prosecutor's Offices has been put in place.⁵⁹ Its main duties are (i) carrying out the investigation procedures related to juveniles pushed to crime, (ii) ensuring that necessary measures are taken without any delay, in cases which require measures to be taken with regard to juveniles and (iii) working in cooperation with the relevant public institutions and organizations and non-governmental organizations for the purpose of providing the necessary support services to juveniles in need of assistance, education, employment or shelter and to notify such and similar cases to the authorized institutions and organizations.⁶⁰ In cases where delay is considered risky, these duties may also be carried out by Public Prosecutors who are not assigned to juvenile bureaus.⁶¹

c) Juvenile unit of the police

Law enforcement duties related to juveniles are carried out by the juvenile units of the police.⁶² When starting a procedure concerning juveniles in need of protection or pushed to crime, the juvenile unit must notify the situation to the juvenile's parent(s) or guardian, or to the person who has undertaken the care of the juvenile, to the Bar and the Social Services and Child Protection Agency. If the juvenile is residing in a public institution, the representative of that institution should be notified. However, any relatives of the juvenile who are suspected of soliciting the juvenile to commit the crime or of abusing the juvenile should not be given any information.⁶³ If the juvenile is detained by the police, he/she may be accompanied by a next of kin.⁶⁴

The personnel at the juvenile unit of the police should be provided with training on topics such as juvenile law, prevention of juvenile delinquency, child development and psychology, social services and so on, by their own agencies.⁶⁵ Members of the juvenile unit of the police must attend 60 hours of elementary training and 90 hours of expert training.⁶⁶

If the juvenile is in need of protection or if reasons exist to believe that waiting for a court decision would be against the interests of the juvenile, the juvenile unit of the police should secure the safety of the juvenile by taking the necessary measures in those circumstances and delivering the juvenile to the Social Services and Child Protection Agency as soon as possible.⁶⁷

Following ratification of the UNCRC in 1994, Turkey established a 3500 member juvenile police force. The duties and responsibilities of the gendarmerie were similar to those of the police. The gendarmerie operates mainly in rural areas and cooperates with the General Directorate of Social Services and Child Protection, particularly in the implementation of action plans relating to children's rights. The General Directorate assesses the situation of children taken into gendarmerie custody on a case by case basis and, if necessary, refers them to the relevant support units within the Directorate.⁶⁸ A new, separate and specifically trained police organization has been established to deal with juvenile crime in 84 cities. It is not only dealing with juvenile delinquency but also helping street children and other children who live in difficult circumstances. In Istanbul alone, eight juvenile protection centres have been established. The police is also implementing a 'foster family' project via the project 'Volunteer families provide for street children'.⁶⁹

d) Investigation

Crimes committed by juveniles first come to the police. The police must immediately pass the case on to the Public Prosecutor. The police may do nothing, besides collect and secure the evidence. The police are not allowed to take a statement of the juvenile. As noted above, there is a special police unit for juveniles that may arrest juvenile offenders if necessary.⁷⁰ Following the enactment of the CPL, investigations related to juveniles pushed to crime are carried out by the Public Prosecutor assigned at the

⁵⁴ Art.26(1) CPL 2005.

⁵⁵ Art 25(1) CPL 2005.

⁵⁶ During Parliamentary debates, it was argued that the maintenance of these courts was counter to the CRC. However, they remained in place. See *Ms Seda Akco* in: Balo, (n 23) 602.

⁵⁷ Art 25(2) CPL 2005.

⁵⁸ Art 26(2) CPL 2005. They administer crimes involving a penalty of ten years imprisonment or more.

⁵⁹ Art 29 CPL 2005.

⁶⁰ Art 30(1) CPL 2005.

⁶¹ Art 30(2) CPL 2005.

⁶² Art 31(1) CPL 2005. As of January 2002, all 81 provinces had police child branches and 43 had fully equipped childcare units. Separately, crime prevention centres for children have been established in major cities. 'Plus 5' Review of the 2002 Special Session on Children and World Fit for Children Plan of Action National Progress Report TURKEY January 2007, 17, available at: http://www.unicef.org/worldfitforchildren/files/Turkey_WFFC5_Report.pdf (last accessed on 26.2.2010).

Report.pdf (last accessed on 26.2.2010).

⁶³ Art 31(2) CPL 2005.

⁶⁴ Art 31(3) CPL 2005.

⁶⁵ Art 31(4) CPL 2005. See also art 32 CPL 2005.

⁶⁶ 30 hours on Child trafficking and child abuse, 30 hours on Juvenile Justice System and 30 hours on Child Protection.

⁶⁷ Art 31(5) CPL 2005.

⁶⁸ Unveren, United Nations Committee on the Rights of the Child, (42nd Session) 'Summary Record of The 1129th Meeting' (Chamber B) 8, available at: [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c0418bef762dfbec1257185002e697c/\\$FILE/G0642246.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/c0418bef762dfbec1257185002e697c/$FILE/G0642246.pdf) (last accessed on 26.2.2010).

⁶⁹ *ibid* (n 15) 81.

⁷⁰ *Hakeri*, 'The Prosecution Service Function within the Turkish Criminal Justice System' [2008] *Eur J Crim Policy Res* 353; *Hakeri/Tekin/Kartal/Tunc*, *Turkish Criminal and Criminal Procedure Law*, in: *Turkish Public Law* (Editors: Korkusuz/Kayali), Ankara, 2018, p.329.

juvenile bureau⁷¹ or by assistants appointed by him.⁷² The public prosecutor must be present during all activities and procedures conducted as part of a preliminary investigation concerning minors. In theory, he must take over responsibility at the outset. In practice, however, he only does so in serious cases. During interrogation and other procedures related to the juvenile, the juvenile may be accompanied by a social worker.⁷³ If necessary, the Public Prosecutor may file a request to the juvenile judge for a protective and supportive measure to be taken regarding the juvenile.⁷⁴ This would enable his/her social integration.

In order to ensure a sensitive approach to matters regarding juveniles, four separate circulars have been issued on the responsibilities of the juvenile police: The Use of Handcuffs, Protection of Minors, Protection of the Family, and The Juvenile Police.

e) Criminal Prosecution

The Juvenile Prosecution Offices are not separately organized from the general prosecution offices but they are settled within the structure of general prosecution offices.⁷⁵ According to article 170(2) Criminal Procedure Code, 'the public prosecutor must undertake criminal prosecution if there is evidence that the crime which is prosecuted *ex officio*, has been committed'. However, an exception exists in juvenile cases whereby the commencement of a public prosecution for an act, which carries a penalty of imprisonment of three months to two years, may be deferred for three years,⁷⁶ to be able to keep the juvenile away from criminal justice system.

In situations where juveniles have committed a crime together with adults, the investigation and prosecution shall be carried out separately.⁷⁷ If considered necessary, the court may delay the juvenile's trial until a verdict has been reached on the adult's case.⁷⁸ Where it is thought that the trials must be carried out together, the general courts may decide, at any stage, to merge the trials, on the condition that such consolidation is found appropriate by the courts. In such an event, the joint cases shall be administered at general courts.⁷⁹ In that case trial is not public.

f) Hearing

The juvenile, his/her parent, guardian, court-assigned social worker, the family that has assumed the care of the juvenile, or if the juvenile is cared for by the Agency of child protection (SHCEK, the national agency), the representative of the Agency may be present at the hearing.⁸⁰ The juvenile present at the hearing may be taken outside

the courtroom if his/her interests require so. Additionally, a juvenile whose interrogation procedures have been completed may be dispensed from attending the hearing.⁸¹

g) Putting off announcement of the verdict

If the sentence determined after the trial procedures is imprisonment for a maximum of three years or a monetary fine, the court may decide to put off the announcement of the sentence.⁸² In case of a decision to put off the announcement of the sentence, the juvenile will be subjected to a measure of supervised freedom (probation) for a period of three years.⁸³ It means after three years of probation no sentence will exist.

h) The right to a lawyer

The right to a lawyer is unrestrictedly stated and mandatory in any procedure against a juvenile. According to article 150(2) of the Criminal Procedure Code, a juvenile must have a defence counsel from the outset of the preparatory proceedings, regardless of whether he demands one. He must be present from the very first examination. If the juvenile or his legal representative does not engage an attorney, the police/public prosecutor/judge will appoint one for him. Declarations made to the police in the absence of the lawyer have no evidential value.

In addition, there are child rights committees and child centres established by bar associations. They are accessible to all of children wishing to file a complaint or looking for attorneys. Their assistance is free of charge.⁸⁴

i) The right to be heard

According to article 12 of the UNCRC, a child who has the ability to express his or her views has the right to express him/herself freely on every matter related to him/her. In order for this right to be effective, listening to the child, either directly or through a representative or an appropriate authority, is to be especially provided for in judicial or administrative investigations that affect the child. In conformity with this principle, article 13(2) of the CPL states that 'before rendering a decision, the opinion of the juvenile having adequate capacity shall be taken.'

j) Privacy

Juveniles are protected from media exposure and attacks on privacy. The media is not allowed to have access to judicial proceedings. As per article 185 of the Criminal Procedure Code, the trial of a juvenile is not open to the public and the verdict is announced in a closed session.

⁷¹ Art 15(1) CPL 2005.

⁷² Art 19 of the Regulations on Apprehension, Custody and Taking of Statements.

⁷³ Art 15(2) CPL 2005.

⁷⁴ Art 15(3) CPL 2005.

⁷⁵ *ibid* (n 7) (TIII).

⁷⁶ Art 19 CPL 2005.

⁷⁷ Art 17(1) CPL 2005.

⁷⁸ Art 17(2) CPL 2005.

⁷⁹ Art 17(3) CPL 2005.

⁸⁰ Art 22(1) CPL 2005.

⁸¹ Art 22(3) CPL 2005.

⁸² Art 23(1) CPL 2005.

⁸³ Art 23(3) CPL 2005.

⁸⁴ The offices of the various bar associations are being criticized for not being very efficient. Sixty Bar offices across the country had offices known as 'Child Rights Commissions' but only 40 of these are actually active: UNHCR, Report of Fact-Finding Mission, 11–20 February 2008, Turkey, 57 available at: <http://www.unhcr.org/refworld/topic,45a5fb512,4652f4a02,489c167e2,0.html> (last accessed on 25.2.2010).

Only the judge(s), victim, lawyers, parents and social workers⁸⁵ are present during proceedings. This protects juveniles, forestalls their stigmatisation and stimulates their future social integration. This is one of the most important principles of criminal procedure.

k) Gender discrimination

There are no gender specific issues when it comes to child protection. Also, there is no discrimination between boys and girls in the Turkish Penal Code, the CPL and the Turkish criminal justice system as a whole. Boys and girls have equal access to justice.⁸⁶

Turkish legislation is governed by the egalitarian philosophy of the Constitution. The principle of equality is enshrined in article 10 of the Constitution as an inalienable human right. According to this article, '[e]verybody is equal before the law irrespective of his or her language, race, sex, political and philosophical belief, religion, sect and other differences.' Privileges cannot be granted to any person, family, group or class. All State organs and administrative authorities are under the obligation to comply with the principle of equality before the law in all their actions. Law No 2828 on Social Services and Child Protection Agency reiterates the principle of equality by stating in its article 4(d) that '[d]ifferences in class, race, religion, sect or region may not be considered in the provision of social services.'

VI. Conclusion

In its efforts to accede to the European Union, Turkey has made remarkable improvements to its juvenile justice system, mainly through the enactment of the CPL and the amendment of several of its laws, rendering them CRC compliant. Indeed, a separate piece of legislation, wholly

dedicated to child protection, is now in place. Specialised institutions, such as courts and juvenile police branches, have been set up. Activities are provided to those in detention and post release measures, such as probation, have been put in place. These changes have been welcomed by the Committee on the Rights of the Child.

However, a number of problems remain in practice, an important one being the insufficiency of financial resources allocated to SHCEK and children's services as a whole. In terms of legislation, some provisions of the anti-terrorism law remain in violation of the CRC. They should be amended or abrogated as soon as possible. An independent Ombudsman, who would ensure that children's rights are being respected and that their individual complaints are being dealt with is still not in place. Finally, it should be noted that although the CPL provided for juvenile courts to deal with cases involving children, these are insufficient in number so that some cases are still being dealt with in ordinary courts. This raises concerns as the personnel in those courts is not specially trained to deal with child-specific issues. Although the number of children receiving custodial sentences fell from 6,254 in 2000 to 4,523 in 2004, juvenile courts had still not been expanded throughout the country so that only 34 per cent of children were tried by juvenile courts.⁸⁷ The others were tried by ordinary courts that apply the CPL. Moreover, trials take a long time and this is in direct violation of article 40 of the UNCRC. The Ministry of Justice reports the average duration of proceedings to be longer in juvenile courts than in other courts (755 days in 2000).⁸⁸ And finally, the judicial system is faced with a large backlog. In 2002 there were 1,153,000 criminal cases and 548,000 civil cases pending.⁸⁹ In Diyarbakır, some 4,000 cases are awaiting action in the new juvenile court, hearings are being put off for a year and some changes for the benefit of juvenile offenders have yet to take effect.

⁸⁵ Social workers have to be present during proceedings as per arts 33–34 CPL 2005.

⁸⁶ In fact, only 2.3 per cent of convicted juveniles are girls; *Hancı/Hamit/Eşiyok/Filiz/Ulukol*, 'Cezaevinde Bulunan Çocukların Temel Özellikleri ve Suç Tipleri' in: III Ulusal Çocuk ve Suç Sempozyumu, Bakım, Gözetme ve Eğitim, 22–25 Ekim 2003, Bildiriler, (Akyüz/Uluğtekin/Acar/Öntaş, (eds), (Ankara 2005) 404.

⁸⁷ There are 73 juvenile courts and 20 juvenile felony courts established within the country for 81 million inhabitants but not all of

them are working which effectively means that there are currently only 68 juvenile courts and 13 juvenile felony courts that are active.

⁸⁸ Commission of the European Communities, 2002 Regular Report on Turkey's Progress Towards Accession, 21 available at: http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/tu_en.pdf (last accessed on 26.2.2010).

⁸⁹ *ibid* 77.