

The Role of the State in Protecting Children's Rights

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AS A lawyer who has discharged duties in executive as well as in legislative organs of the state, an attempt is made to evaluate the Turkish Legal System existing practices in terms of the right envisaged in the Convention on the Rights of the Child. Before that, it is important to point out the duties imposed upon the State by Convention and some principles cited in the same document.

The Convention obliges States Parties :

- (a) To make the principles and provisions of the convention widely known to adults and children (Article 42);
- (b) to submit to the Committee on the Rights of the Child, through the Secretary General of the United Nations, reports on the measures they have adopted which give effect to the rights recognised and on the progress made on the enjoyment of these rights within two years of the entry into force of the Convention for the state party concerned and every five years thereafter (Article 44/1);
- (c) to make their reports widely available to the public in their own countries (Article 44/6);
- (d) to take all legislative, administrative, economic and social measures for the implementation of the rights recognised in the Convention (Article 4);
- (e) to ensure that the institutions, services and facilities responsible for the protection of children shall conform, in terms

of safety, health, the number and suitability of staff, with the standards established by competent authorities (Article 3/3); and,

- (f) to ensure that the best interests of the child shall be a primary consideration in all actions concerning children (Article 3/1).

Of course, this is not an exhaustive list of the obligations that States Parties have undertaken with respect to the Convention. Some duties that States Parties have to fulfil, particularly those which relate to the duty of making both the Convention and the reports widely known by the public, have the potential of mobilising the control of the public as one of the most effective mechanisms for this purpose. This control can contribute much to the material realisation of the rights included in the Convention.

Besides emphasising the economic and social rights of children, the CRC lays down many principles relating to the rights of the child. The legislative, executive and judicial organs of States Parties have to take these principles into account in all activities relating to children. Among these principles are :

- (a) regarding the best interests of the child as a primary consideration in all actions concerning children (Article 3/1);
- (b) assuring to the child who is capable of forming his or her own views the right to express these views freely in all matters affecting the child and giving due weight to these views in accordance with the age and maturity of the child;

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- (c) showing respect to his or her basic right while taking decisions concerning the child;
- (d) recognising the principle that parents have the primary responsibility for the upbringing and development of the child, and that appropriate assistance will be rendered to parents by the state in the performance of this responsibility (Article 18);
- (e) ensuring that a child shall not be separated from his or her parents unless such a separation is necessary for the best interests of the child (Article 9);
- (f) respecting the rights of parents or those who are responsible for the child (Article 3/2 and Article 5);
- (g) review of any penal decision concerning the child by an independent and impartial authority or judicial body (Article 40)

All these principles and provisions clearly show that there has been a change in the overall approach to the child. At the beginning of the present century, the relationship between the State, the child and parents was dominated and governed by quite different principles. Within the frame of these principles, the child was regarded as an "object" rather than a "subject". Throughout the first half of this century and even in the most advanced countries, the dominant view was that in all actions relating to the child, his or her needs could be best considered and met by "adults". If parents did not or could not fulfil their duties in relation to child, the State undertook to place the child in an institution under State surveillance or in another family. The child's view was not considered at all and also there was little regard for the rights of parents. Today there is a very different approach to the child, and due concern is also paid to the rights and duties of parents. It is accepted in principle that the child has the right to state his or her opinion freely and that this opinion should be properly considered in

decisions concerning the child. The CRC is one of the documents which fully reflects this overall change in approach relating to the child. States Parties have the obligation of respecting the rights and personality of the child and asking for his or her opinion while they are engaged in legislative arrangements relating to the child and preparing the environment in which the child will be able to grow to his or her full potential.

The CRC was signed by the former Turkish Government on September 14th 1990. In order to ratify the Convention, the former Government immediately prepared a bill and presented it to the Parliament. However, in November 1991 the country had a general election and the composition of the Parliament, as well as the government changed. As a result, the provisions of the Turkish Parliament Proceedings Regulation, the bill that would provide for the ratification of the Convention, become void. Therefore, the new Government had to draft and present another bill to the Parliament.

This new bill is presently on the agenda of the Turkish Grand National Assembly for ratification. Efforts are being made by a group of parliamentarians to ensure the speedy ratification of the Convention.

When the Turkish Legal System and related practices are analysed in terms of the provisions of the Convention, we can reach the following broad conclusions :

- (a) As far as some provisions of the Convention are concerned, there is no contradiction at all with respect to legislative arrangements or to legal practices. For instance, the child's right to a name and citizenship are both guaranteed under the Turkish Civil Code, the Surname Act and the Act on Citizenship, which are all in effect presently. With these acts, it is impossible for a child in Turkey to be deprived of his or her rights to a name or citizenship.

(b) For some rights stipulated by the Convention, there are some problems relating to practical aspects though no problem exists as far as the legislative frame is as an example. In Turkey, the child's right to education is recognised firstly by the Constitution (Article 42) and further elaborated by the Basic Law on National Education and the Code on Primary Education in a manner fully conforming to the 28th Article of the Convention. Under these acts, primary education is compulsory and free for all children irrespective of their gender.

Furthermore the State has the obligation to provide appropriate support to children who are talented but lack the material means to reach the highest stages of education in line with their specific interests and capacities. While these provisions are clearly stated in laws, there are some difficulties in actual implementation. For example, despite the fact that primary education is compulsory and free for both boys and girls according to our Constitution, many families, especially in the region of south-eastern Anatolia are reluctant to send their girls to school because of traditional beliefs.

(c) In order to enable our child to benefit from some of the other rights stated in the Convention it is necessary to introduce new legislative arrangements as well as certain administrative, economic and social measures. Some efforts in this direction have been made.

Article 32 of the Convention recognises the right of the child to be protected from economic exploitation. According to this article, States Parties shall effect all legislative measures in conformity with the relevant provisions of other international instruments, to provide for minimum ages for admission to employment; appropriate regulation of the hours and conditions of employment; and prevention of the performance of any work that is likely to be hazardous or to interfere

with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. The same article also obliges States Parties to take all relevant administrative, economic and social measures to protect children from economic exploitation. When the Turkish Legal System is analysed in terms of the right to be protected from economic exploitation, it is seen that relevant provisions are scattered among the various acts (*viz.* Labour Act, Apprenticeship and Vocational Training Act, Primary Education Act and the Act on the Duties and Authorities of the Police Force). In some cases provisions actually contradict each other. The Labour Act stipulates the minimum age for employment as 15 (Article 67) according to the standards of ILO agreements. Nonetheless there are some exceptions to this rule. The very same Act states that children older than 13 years of age can be admitted to employment if the nature of the work is such that it does not impair their health, development and school attendance. On the other hand, according to Apprenticeship and Vocational Training Act, elementary school graduates may be given training at enterprises for the purpose of preparation for an occupation before the minimum age limit. This means that children around 11 or 12 years may be employed in light work.

The working conditions of the children are also taken into consideration by the Turkish Legal System. According to the Labour Act, working hours of children must not exceed 7.5 hours and their working hours must not interfere with their school hours (Labour Act, Article 67). Before employing children, employers must ensure through a health check-up that the child's health is appropriate for the job. The health examination has to be repeated every six months (Labour Act, Article 30). Employers who do not fulfil these obligations are liable to be fined (Labour Act, Article 104).

These legal provisions, which are designed to protect children from economic exploitation, cannot be enforced in most cases since relevant administrative, economic and social measures have not been taken. Moreover, since the acts mentioned above do not cover children who work in the agricultural sector or in the streets. Such children are vulnerable to conditions that are potentially harmful for their mental and physical health, education and development. Street children particularly are frequently subjected to physical, emotional and sexual abuse.

As examples of provisions of the Convention which require new legislative arrangements and some economic, social and administrative measures, we can cite those which are related to delinquent children and others who are abused and neglected. The programme of the previous Coalition Government (in which the author was also a cabinet member as a State Minister) gave priority to human rights as well as children's and women's issues. Hence that Government had, in addition to presenting the bill which provided the ratification of the Convention, prepared another bill which revised the current Juvenile Court Act. In preparing for the Juvenile Court Bill and Ministry of Justice considered both the Convention on the Rights of the Child and the UN's Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). The Commission of the Ministry of Justice which was in charge of drafting the original form of the bill largely capitalised on the draft proposal which I had prepared during the previous legislative term. The Government which is in office now is as concerned as the preceding Government about children's and women's issues. Presently, the Minister of State which is in charge of women's and children's issues and social services and the Ministry of Justice both have their commissions spending efforts to ensure the compatibility of the na-

tional legislation relating to children with the provisions of the Convention. Moreover, in line with the Action Plan which was adopted at the World Summit for children in 1990, a National Plan of Action is now ready to guide activities for the realisation of child related goals. Intensive work on collaboration has also been taking place between the Government of Turkey and UNICEF since 1990 for the same purpose. Now a Master Plan of Operations forms the frame of these activities which are grouped under the following specific programmes :

- (a) Basic Health Programme
- (b) Basic Education Programme
- (c) Communication and Support for the Status and Development of Women
- (d) Basic Services for Mothers and Children in the Priority Provinces
- (e) Basic Services for Mothers and Children in the Urban Gecekondus

The Cooperation Programme largely includes backward provinces which have been prioritised for development (provinces of South-eastern Anatolia in particular) and big urban centres. The rationale behind this is the fact that these provinces are the ones where children are affected much more adversely by such phenomena as poverty, unhealthy urbanisation, intensive migration and distorted patterns of income distribution.

In addition to those which are valid for all children, the CRC includes special provisions, which cover children in especially difficult circumstances. This category includes children who are :

- in need of protection or special education;
- who are subjected to abuse and neglect;
- who are used in crime, drug trafficking, prostitution and pornography, and
- who are working.

A point which is liked to raise here in relation to children in need of protection is the change taking place in the overall policies of the Social Services and Child Protection Institution in conforming with the provisions of the CRC. Now this agency considers keeping children with their own families as the priority solution and strives to create supportive institutions for the family and to extend assistance to needy families. Alternative care (placing children with relatives, protective family, adoption, etc.) is resorted to only in the most pressing cases. It is now accepted also by the Ministry in charge that institutional care should be the last resort. In spite of this, more than 90 per cent of children who have been taken under protection by the State are now placed at protective institutions. We hope that this situation will change soon along with the introduction of new policies.

The absence of special legal arrangements for abused and neglected children and the lack of institutions specialised in assistance to the families of such children are considered as important items of deficit in this country. On this issues too a draft law had been prepared and submitted to the Grand National Assembly. Unfortunately, the very same circumstances which are mentioned earlier also made this draft void. At present another draft is being prepared by the author on the same issue.

Considering all this, it is considered essential to form a Children's Rights Commission in the Turkish Grand National Assembly. Such a Commission could engage in giving legal arrangements surrounding the rights of the children a perfect character and secure improved follow-up of procedures. The author shall submitting draft on this Commission to the Assembly as soon as possible.

Given that the legislative, executive and judicial branches of the State recognise the best interest of the Child as a priority issue and act in coordination in child related issues

while considering the child not as an "object" but a "subject", it is believed that the realisation of children's rights will be a relatively smooth process. Naturally, the State acting in this field also has to cooperate with the Children's Rights Committee of UN, with such international organisations such as UNICEF, UNESCO, ILO, WHO and FAO, and with international and national NGOs.

Notes

- (1) Throughout my government service as district and provincial governor, I personally tried to ensure the primary school enrollment of girls in particular by using the authority entrusted to me by the law on Primary Education and National Education. In one of the provinces of the region of South-eastern Anatolia (Urfa) where I served as Governor, the principal method used by parents to keep their daughters away from primary education was to postpone their legally required birth registration. In order to eliminate this obstacle, first I activated the Birth Registry Office, which was under the Office of the Governor, to complete the birth registration of all children. Then I took a second step with the Provincial Directorate of Education, which was also under the Office of the Governor, to influence parents to send their children to school. In short, all districts and provinces where I took office as a Governor I tried to ensure the primary school enrollment of children using both the method of persuasion and the sanctions which I was entitled to practice. In this connection, I would like to mention one specific article of the Act on Primary Education which is designed to prevent the exclusion of children from the right to education. Article 59 of this Act prohibits the employment of children at the age of primary education (those who have finished 5 years of age but under age 15) whether paid or unpaid, if such employ-

ment is not accompanied by education. The purpose of this article clearly is to prevent the transference of primary school age children from education to premature employment. However, it is not possible to say that this article is observed adequately in practice.

- (2) In the last legislative term, the author had prepared a draft law on working children which approached these children as a whole and sought to provide them protection from economic exploitation, abuse and neglect. However, this proposal too became void for not being discussed within the same legislative year. Soon the author will review this draft and submit it to the National Assembly once more.
- (3) During his service years as a governor, the author had the opportunity to deal closely with children who are in need of protection. This was natural as the Social Welfare and Children Protection Act gives high level administrative officials a wide set of duties and authorities in relation to children who are specially in need of protection. Among these duties and authorities we have the right to preside over the Provincial Committee of Social Services (Article 3); to cooperate with the Social Services and Child Protection Institution in identifying children in need of protection (Article 21); and to give final approval to decisions whereby children in need of protection are to be placed at relevant institutions or entrusted to other families before the court verdict for protection is

issued (Article 22). While performing his duties, the author noticed that children placed at protective institutions were later discharged without being given any employment just on the grounds that they were over 18. In a country like Turkey where the rate of unemployment has always been high and where even children growing up within their families found it difficult to get jobs, it was also impossible for these young people to find employment without any State support.

Hence as soon as the author was elected as MP, the author prepared a draft law which obliged public and private enterprises to have an employment quota for those who had grown up at protective institutions. The draft was adopted by the Parliament and is now in effect. Starting since the law came into effect, the author have been personally engaged in monitoring implementation. According to a report prepared by the Social Services and Child Protection Institution there were 1847 young people in 1992 who applied for jobs within the frame of this law and only 896 among them could find employment. Presently, the number of children eligible for employment under law and waiting for jobs is 2935. In order to ensure the working of the law, it was strengthened last year with a regulation. Moreover, the State Ministry in charge is continuously warning enterprises who are obliged to employ these people to fulfil their obligation.

