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Local Recommendations for Access to Justice in Turkey

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1. Introduction

The report *"Local Recommendations for Access to Justice in Turkey"* was developed under the project *Enhancing Civic Participation and Confidence Building in the Judicial Reform Process* and run in partnership with the Turkish Economic and Social Studies Foundation (TESEV) and Turkije Instituut, based in Leiden, Netherlands.

The main objectives of the project are to identify, at a local level, the problems that prevent citizens in Turkey from accessing justice in judicial processes, to support local actors serving in the field of justice and law in turning identified problems into significant policy recommendations, and thus, to develop local recommendations for judicial reform.

Facilitating access to justice and enhancing confidence in the judiciary are among the main objectives of the Judicial Reform Strategy developed by the Ministry of Justice in 2009 in order to contribute to the EU accession process of Turkey.[1]Access to justice also stands out as one of the ten main objectives in the Judicial Reform Strategy, which was revised by the Ministry of Justice in April 2015.[2] The main points of agreement set out in these objectives are that citizens should be more informed about judicial services, that the difficulties they encounter should be identified and that the reduced confidence in the judiciary should be enhanced in the eyes of the public. Changes that are made in the field of access to justice in Turkey are regularly reviewed and the problems that need to be solved are identified in Chapter 23 "Judiciary and Fundamental Rights" of the EU Progress Reports which are issued as part of the Turkey's accession process to the EU.[3]

In terms of policy development, a lack of cooperation between Turkey's policy-makers and civil society in the field of judicial reform is a roadblock that prevents the expectations of different segments of society from being met by judicial services. In order to be trusted to take care of the needs of society, judicial reform must be needs-based with civil society included in the process. Positive and negative observations of citizens, who are the very users – and beneficiaries - of the judicial system, will therefore more effectively facilitate measurements of the impact of the reform process on the needs of citizens.

In consideration of these findings, this project attempts to identify the barriers to access to justice according to a number of thematic areas. With the participation of local non-governmental organizations, bar associations and universities, it has developed policy recommendations that may be evaluated as part of the reform process for solving barriers confronting the judiciary. The common area selected for activities under this project was access to justice. The three thematic areas and the provinces selected for case studies are as follows:

1 **Ministry of Justice, 2009, Judicial Reform Strategy, http://www.sgb.adalet.gov.tr/Yargi-Reformu-Stratejisi.pdf**

2 **Ministry of Justice, 2015, Judicial Reform Strategy, http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf**

3 **http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf**

1. The role of legal aid mechanism in access of women to justice, *Konya*

2. Access to justice in the investigation stage as part of the access of juveniles to justice, *Istanbul*

3. Access to justice in the area of environment, *Trabzon*

In the first stage of *Enhancing Civic Participation and Confidence Building in the Judicial Reform Process*, which started in October 2014, site visits were conducted in three provinces and meetings were held with lawyers, academicians, representatives from local NGOs and representatives of relevant public bodies. Afterwards, study visits were conducted in Amsterdam, Utrecht, The Hague and Leiden, Netherlands. The focus was on subheadings in defined thematic areas, such as legal aid mechanism, access to information, and efficiency and speed of judicial processes. Following this, expert workshops were held on these three thematic areas in Konya, Trabzon and Istanbul with the participation of representatives of non-governmental organizations, academicians from universities, bar associations, and judges and public prosecutors from local courts. During this process, problems encountered in the area of access to justice were discussed in a solution-oriented manner. The aim was to hear firsthand problems surrounding access to justice and ensure that the academicians, legal experts and NGOs were able to develop significant solution recommendations for these problems. The problems identified and the solution recommendations expressed by the participants during these project activities were developed into a report by the authors of the study *"Local Recommendations for Access to Justice in Turkey"*. Prior to the publication of this report, draft policy recommendations were shared with the representatives from the Directorate General for Strategy Development, Directorate General for EU Affairs, Directorate General for Mediation, Directorate General for Prisons and Detention Houses of the Ministry of Justice and the Turkish Justice Academy. The opinions of the representatives were duly taken into account. This report was prepared in Turkish and its abridged version including the key findings and proposals are translated in this English version.

As a result, the solutions which are covered in the report *"Local Recommendations for Access to Justice in Turkey"*, are opened to discussion during a meeting held in October 2015 in Ankara. Representatives from NGOs and the Ministry of Justice, lawyers, jurists and Dutch experts in the field of access to justice addressed ways to support judicial reform efforts in Turkey. Problems and recommendations related to the future of judicial reform in Turkey will also be covered during the meeting.

The concept of 'access to justice', which is the main heading of this report, became increasingly popular during the 2000s when the EU accession period of Turkey started. In the literature, it is generally covered within the framework of access to courts, judicial processes and legal services. However the concept of access to justice extends beyond the operation of judicial mechanisms and access to those mechanisms. From this perspective, access to justice can also be considered as a method of "legal reinforcement", allowing for the meeting of social and economic justice needs of citizens and making sure they receive the rights afforded to them. The importance of this inclusive perspective, which is also highlighted in the report *"Local Recommendations for Access to Justice in Turkey"*, is that it brings into view the legal and judicial needs of disadvantaged social groups such as women, children, the handicapped and those groups who cannot access public and judicial services due to their social identities. In addition to this, a definition of access to justice which highlights the importance of legal reinforcement can also be considered as a framework for claiming one's rights. Through this lens, greater access to justice can solve unjust practices and thus meet legal demands with more collective impacts as has been seen in cases where environmental rights have been violated.

This report has been developed based on such a perspective. The first chapter, written by Gamze Nur Çelik and Bürge Elvan Erginli, examines access of women to justice through the legal aid mechanism and presents the identified problems and solution recommendations for access of women to legal aid in Konya. The second chapter of the report, which was written by Seda Akço Bilen, looks into access of juveniles to justice by focusing on the problems children experience in the investigation stage of the criminal justice system. This chapter also includes recommendations related to juvenile-specific judicial practices and cooperation between individuals and organizations who will take part in the investigation stage. The third chapter, authored by Özgür Akışoğlu and Koray Özdil, looks at access to justice in the area of environment. The chapter is based on the case of Trabzon and covers access of citizens to environmental information, their participation in decision-making processes and the problems they encounter during environmental lawsuits. This chapter was also prepared with the consultancy of environmental lawyers Mukadder Usanmaz and Arif Nihat Alpsoy and the parts related to the case of Netherlands were developed by Marjanne Haan from the Turkije Instituut with contributions from Ayşegül Çil from the European Centre for Nature Conservation.

TESEV and the Turkije Instituut would like to take this opportunity to express their gratitude once again to all of the participants and experts from Turkey and the Netherlands who took part in the activities of this project and shared their valuable opinions with us. We are especially indebted to the authors who contributed their valuable efforts and assistance in the development of this report.

2. Access To Justice For Women: A Case Study Of Konya

Access to justice is a broad concept which covers awareness of rights, access to judicial mechanisms and fair trial.[4] The concept has been frequently addressed especially in the US as well as recently in the civil law. It has also been spoken about in recent legal studies and by policy makers in Turkey.[5]

There are challenges and barriers to access to justice for physically, socially and economically disadvantaged groups who encounter discriminatory treatments in society.[6] In Turkey, women are also among those disadvantaged groups for various reasons such as gender discrimination, lack of education and poverty. The majority of the applications that are made to counseling centers of non-governmental organizations which offer psychological and legal aid for women consist of economic demands for women.[7] Economic factors constitute a major impediment preventing women from filing a lawsuit before the courts.

The legal aid mechanism, one of the leading developments as part of the efforts towards access to justice, plays a key role in providing women with free access to legal information and representation.[8] Legal aid, in its simplest terms, involves making sure that those who have a need but no opportunity benefit from legal services. Regulated under the Attorneys' Act in Turkey, legal aid aims to ensure that those who are unable to meet attorney's fee and court expenses are able to use legal services as well.[9]

Considering that women are prevented from access to justice primarily due to economic reasons, legal aid may be considered as an important tool in removing this barrier. On the other hand, it is known that such arrangements fail to achieve what is aimed at as part of facilitating access to justice for women due to problems experienced in practice. According to the European Commission's 2014 Progress Report for Turkey, an improvement has been made on access to justice in Turkey thanks to the arrangements introduced regarding legal aid. However, the improvement was not deemed sufficient and it was stated in following parts of the report that measures are still needed to be taken to increase and monitor the scope and quality of legal aid.[10]

4 Maurits Barendrecht,"Legal Aid, Accessible Courts or Legal Information? Three Access to Justice Strategies Compared",*Global Jurist*, V: 11, No: 1, 2011, p. 1-26.

5 Seda Kalem Berk, *Türkiye'de Adalete Erişim: Göstergeler ve Öneriler*, Editor: Koray Özdil, İstanbul, TESEV Publications, 2011, p. 16-17, 27.

6 For a study on disadvantaged groups and the obstacles they meet encounter, see.: Louis Schetzer, Judith Henderson, Access to Justice and Legal Needs: *A project to identify legal needs, pathways and barriers for disadvantaged people in NSW*, Sydney, Law and Justice Foundation of New South Wales, 2003, p. xiv-xvi.

7 Kalem Berk, *ibid*, p. 18-19.

8 Kalem Berk, *ibid*, p. 41-42.

9 The legal aid in criminal actions is regulated separately from the Attorneys' Act. In certain cases set out in the Code of Criminal Procedure (CMK), bar associations may appoint defense counsels under the CMK Practice Services. The topic of this report is about legal aid in civil procedure and it is covered in the Code of Civil Procedure and the Attorneys' Act.

10 2014 Progress Report for Turkey, p. 46, (Online) http://www.ab.gov.tr/files/ilerlemeRaporlariTR/2014_ilerleme_raporu_tr.pdf, August 5, 2015.

At this point, it is important to know what kind of methods women follow and what kind of relationship they establish when they encounter a problem and feel the need to take legal action. For this purpose, TESEV Democratization Program organized a meeting with women's rights associations in Konya in 2012.[11] During the meeting, members from the associations focused on the difficulties of acting in unison with other non-governmental organizations while fighting against barriers to access to justice for women. Konya was selected as the region of research due to the number of powerful non-governmental organizations it hosts which are engaged in improving women's issues. Konya was also chosen because it is a home to both secular and conservative non-governmental organizations.

The fact that women try to solve legal problems they experience in their daily lives by resorting to non-governmental organizations rather than the bar association or courts necessitates giving extra thought to the law and justice mechanisms affecting the lives of women. In this context, this study aims to find out the problems encountered in the operation of the legal aid system as a means for women to access information and representation in the Konya province. Following this, the study will present solutions that are developed with the contribution of local actors. Another aim of this study is to provide a platform for local actors to exchange ideas and to develop further cooperation for increasing the access of women to justice.

In line with these aims, TESEV's research team conducted a site visit on December 17-19, 2014, in Konya, and held interviews with the representatives of various organizations[12] during the visit. As part of the interviews, the team obtained information about the status of organizations regarding the provision of legal advice and aid to women. The team also looked at the organizations' inter-institutional relations in order to identify the barriers preventing access to legal aid for women across the Konya province. The next activity of the study was the workshop which was held in April 2015 in Istanbul. This included the participation of jurists from Turkey and the Netherlands who are experts in the areas of access to justice for women, legal aid and alternative solution mechanisms. During the workshop, the problems surrounding access to justice for women in Konya were examined thoroughly and relevant recommendations were developed by considering the case of the Netherlands. Further to this, problems that are encountered in the Netherlands regarding the access of women to justice and solution-oriented practices were also examined. The study visit was held in May 2015 in the Netherlands. On June 9, 2015, the experts meeting was held in Konya during which the problems and solution proposals that were identified in previous site visits were evaluated and concrete recommendations were developed.

Based on the findings obtained from the site visit and subsequent meetings, this study examines the problems identified regarding the access of women to legal aid. It then offers solutions for these problems for the attention of the legal aid provider Konya Bar Association as well as other Konya-based institutions which are engaged in areas related to women. This study presents the means by which these institutions can offer services for women who attempt to solve their legal needs and problems through the support of civil society. However, since bar associations also provide legal aid services, this study will also look at how to improve the relations between bar associations and NGOs.

11 **Although non-governmental organizations engaged in the field of women's rights in Turkey are mainly located in major cities, there are new formations and developments in the Anatolian cities as well.**

12 ***Interviewed Institutions:*** **Ministry of Family and Social Policies, Provincial Directorate of Konya, Legal Aid Center of Konya Bar Association, Legal Studies Association (HUDER), Konya Branch of Mazlumder, Konya Branch of ŞEFKAT-DER, Women and Family Support Center of Konya, Selçuk University Departments of Civil Law and International Relations.**

2.1. LEGAL AID SERVICE OFFERED AT THE KONYA BAR ASSOCIATION AND ITS COMPARISON WITH THE CASE OF NETHERLANDS

Attorney appointment may differ from one bar association to another in Turkey. In Konya, legal aid offices offer services at the Konya Courthouse. From a list of attorneys that is created daily for those who want to serve at the legal aid office and are registered with the center, two attorneys, who are predetermined based on the principle of remuneration, offer services for people who apply for legal aid. After an attorney is appointed to an applicant, the applicant meets the attorney and the formal procedure begins with establishing the authority of the attorney to represent the applicant. All processes throughout the lawsuit, including objection and appeal, are completed by the attorney and the duty of the attorney ends upon the exhaustion of all legal remedies. In addition to this, law apprentices may accompany the attorneys. Law apprentices can offer this service independently after fulfilling a one-year internship where they gain experience in the field.

Identifying practical problems arising out of the legal aid service offered at the Konya Bar Association is important for increasing access to legal aid. Although many of these problems are not specific to the Konya Bar Association, some of them can be solved through a series of adjustments to be made locally. The types of practices used in the Netherlands, which has a developed legal aid system, were examined under the project.[13]. The types of practices and identified problems in the Netherlands are briefly examined. In some cases, these practices are utilized when creating solutions to the problems in Turkey.

2.1.1. The List Procedure in Appointment Of Attorneys

In Konya, the province which was visited as part of the project, 90% of those who apply to the legal aid unit that offers service in areas besides family law are women who apply for family law related issues (divorce, alimony, domestic violence, misunderstanding with spouse etc.).[14] In practice however, it is observed that women are not able to benefit from this service adequately. One of the important factors related to this problem is the list procedure in appointment of attorneys. Lawyers who are experts on women's issues are on the same list as other lawyers. This means that applicants are assigned a lawyer based on that list rather than on the lawyer's field of expertise. This is a significant problem in a society where women who are subjected to violence cannot share the situation they are in with anyone and have particular difficulty in bringing their situation to the authorities[15].

The list procedure in appointment of attorneys poses other problems as well. The fact that legal aid service is not established based on the areas of interest of lawyers is considered a problem by the Konya Bar Association. For

13 In the Netherlands, the legal aid mechanism as laid down in the "Legal Aid Law" entered into force in 1994. In the Netherlands, there are 17.000 active attorneys and 7.000 of them offer legal aid service. Different from Turkey, in the Netherlands the legal aid system is not administered by the Bar Association, but by the Legal Aid Board, a non-departmental public body (*quango*) that finances legal aid and determines which attorneys will offer which services. This kind of organizations, which are very common in the administration system of the Netherlands, ensure that duties and responsibilities of the government in certain services are taken away from the ministries and transferred to other structures. In the case of legal aid, the Dutch Ministry of Security and Justice enacted the Legal Aid Regulation and appointed the Board to offer this service.

14 Based on the information by the Konya Bar Association during the site visit and meetings conducted under the project.

15 41% of women who live in urban areas and have been subjected to physical or sexual violence by their husbands or partners have not told anyone. This rate is 55% in rural areas. 89% of women who have been subjected to violence at least one time by their husband did not apply to any public authority or non-governmental organizations. See: Turkish Ministry of Family and Social Policies and Hacettepe University Institute of Population Studies, A Research on Domestic Violence Against Women in Turkey, Ankara, Elma Teknik Basım Matbaacılık, 2015, p. 153, 162. (Online) http://www.hips.hacettepe.edu.tr/KKSA-TRAnaRaporKitap26Mart.pdf, July 31, 2015.

instance, there are times when a divorce lawyer has to deal with a commercial case or when a lawyer who has no previous experience in administrative procedures is forced to handle a case on administrative procedure. According to the Legal Aid Regulation, the failure of a lawyer to perform an assigned duty constitutes an offense. The lawyers file the lawsuits even if it is not one of their own areas of expertise, which means they can fail to produce in some cases. Likewise, the fact that lawyers who are successful in a specific field cannot be selected by applicants constitutes a significant problem.

The Case of the Netherlands: A person who applies to legal aid in the Netherlands can select any lawyer from the list at his/her own will. Thus, applicants benefit from the procedure as they can select any lawyer they want and lawyers who succeed in a field are rewarded under this system.

Recommendation: First, bar associations need to adjust their services to the needs of women. Second, it is very important to transform the law into a more liberating and empowering mechanism for women rather than a means of pressure or an obstacle to the implementation of women rights. Lastly, women should be provided with the opportunity to make a selection from the lawyers in the legal aid list for legal support. This is especially important in issues that tend to be locked in the private space, such as divorce.

2.1.2. Problems Related to Collection of Application Documents

According to the Legal Aid Regulation, an applicant can benefit from legal aid if he or she does not have any social security, any title deed or property in Turkey. In order to apply to the legal aid mechanism, applicants need to submit a poverty certificate, a copy of the birth certificate, a residence certificate and documents related to the lawsuit they want to file. However, applications which are made pursuant to the Law on Protection of the Family and Preventing Violence against Women No:6284 do not require a poverty certificate.16 The person who asks for aid is obliged to meet the counsel's fee and court expenses when a lawyer is appointed to that person. Pursuant to the Legal Aid Regulation, a lawsuit can be filed with a petition requesting legal aid to cover the counsel's fee and court expenses17. However, the Konya Bar Association states that these petitions are never accepted by the judge and thus the Bar Association is forced to pay such expenses.

The red tape which is encountered by those who want to get legal aid service is one of the problems experienced by applicants. Collecting documents, which the applicants for legal aid service are required to show as evidence of no social security, title deed or traffic record, poses both financial and moral difficulties for the applicant. Moreover, the evaluation of such documents results in an unnecessary workload for the bar association. This problem has been voiced by the Konya Bar Association as well as by NGOs.

The Case of the Netherlands: In the Netherlands, a legal aid appointment can be made to those who have an income of less than EUR 20,000. In addition, legal aid insurance is issued out at approx. EUR 15 per month. Necessary details which would clear the way for a person to benefit from the legal aid service can be learnt through the information provided by the tax office within 24 hours by using a single tax identification number.

16 **Between 2010-12, 903 applications were made to the İstanbul Bar Association in this respect and 741 of them were accepted.**

17 **The "legal assistance" in the abolished Civil Procedure Code (HMUK) is regulated as "Legal Aid" in the current Code of Civil Procedure (HMK). p. 9-10.**

Recommendation: In order to shorten the application period, a system where the necessary details of applicants can be retrieved by using his/her ID number can also be used in Turkey under a procedure similar to the one in the Netherlands.

2.1.3. Problems Related to Lawyers Who Offer Legal Aid Service

During the expert meeting, the Bar Association argued that lawyers and law apprentices see the Legal Aid Office as guard duty and do not know enough about what exactly legal aid is and which benefits it offers.[18] The Konya Bar Association wants lawyers to take part in various training sessions and workshops about legal aid. However, since legal aid service is founded on voluntariness, the Bar Association is not able to make these training sessions required. Low interest in training sessions which the Bar Association recommends lawyers to participate in is regarded as a problem by the Bar Association. Lawyers who serve under the legal aid system are required to inform the bar associations once every six months about the work they have done and the progress they have made in the lawsuit. The Konya Bar Association underlined that there has been an attempt to establish a senior control mechanism, but the lawyers fail to respond to these efforts.

The Case of Netherlands: In order for lawyers to qualify for offering legal aid service in the Netherlands, they are required to be registered with the Legal Aid Board and meet certain quality standards. These standards are set out by the Bar Association. In some areas of the law, such as criminal law, mental health, asylum and immigration law and family law, certain additional requirements apply. Lawyers need to have adequate expertise and experience in such special fields.

Recommendation: It was offered by the Bar Association as a solution that a distinction should be made regarding the duties of lawyers who offer legal aid service. Lawyers should be appointed to cases based on their area of expertise and should be obliged under the legislation to receive at least two trainings a year.

2.1.4. Limited Physical Accessibility to the Legal Aid Service

Since the legal aid service is offered at the Konya Courthouse only, the difficulty that some women experience in terms of accessibility emerges as a problem. Women occasionally apply to legal aid service for the purposes of getting information and consultation only. In the past, a proposal was made to establish a Legal Aid unit at Selçuk University as part of a Legal Clinic. However, this proposal failed to succeed. The fact that there is only one women's shelter in Konya and everyone knows the location of that shelter also remains a problem.

The Case of the Netherlands: In the Netherlands, the legal clinic offers information for citizens by phone so that people do not have to go to the legal center. Moreover, the Legal Aid Board has recently made quite an investment in the online platform called "*Roadmap to Justice*".[19] This online platform provides services for individuals such as giving legal advice and offering means of personal development.

18 **Similar problems are underlined in a study where the quality of legal aid service offered under the Code of Criminal Procedure is evaluated with specific reference to the İstanbul Courts: See: İdil Elveriş, Galma Jahic, Seda Kalem, *Mahkemede Tek Başına: İstanbul Mahkemeleri'nde Müdafiiliğin Erişilebilirliği ve Etkisi*, İstanbul, İstanbul Bilgi Üniversitesi Yayınları, 2007, b.a.**

19 **Legal Aid Board, Legal Aid in the Netherlands: a broad outline – 2015, p. 8, (Online) http://www.rvr.org/binaries/content/assets/rvrorg/informatie-over-de-raad/legalaid-brochure_online--2015.pdf, July 31, 2015.**

Recommendation: During the expert meeting, the establishment of a legal aid office in the center of Konya was proposed as a solution. A telephone consultation service similar to that of the Netherlands can be provided by the Konya Bar Association. Moreover, opening a Legal Clinic at Selçuk University and offering a part of legal aid service at this clinic was proposed as a solution and the Bar Association and the University reached a verbal agreement on this issue during the Workshop of Experts. Also, increasing the number of women's shelters is among one of the urgent actions that needs to be taken. Afterwards, necessary information channels should be created in order to enable access to these shelters.

2.2. LACK OF LEGAL INFRASTRUCTURE AND INTER-INSTITUTIONAL COOPERATION IN LEGAL AID SERVICE PROVIDER INSTITUTIONS

Although providing legal aid service is an obligation of bar associations in Turkey, it is observed that women prefer applying to non-governmental organizations when they encounter legal problems in Konya, especially in those cases where problems are considered in the context of family life. This situation requires understanding about how such authorities and institutions handle legal problems and how they support the applicants. For this very reason, during the site visits and meetings conducted as part of the project, information was obtained on the status of public institutions and non-governmental organizations engaged in women's issues in Konya and the relations between these institutions.

2.2.1. Lack of Capacity in Institutions Which Need to Offer Legal Information Support for Women

The failure of institutions, other than the bar association, to have lawyers in their organization and to offer legal information support is one of the most pronounced problems. There is a significant lack of legal information/jurists in non-governmental organizations. Since there is no NGO that offers legal support in the area of legal aid and gives legal information in Konya, this burden is placed entirely on the bar association, which states that they need institutions that can share the work load. Considering that the currently active associations do not have enough knowledge and experience, their capacity to help the bar association in this field is limited.

Recommendation: When it is taken into account that women prefer applying to non-governmental organizations or social services when they are subjected to unjust treatment, the legal infrastructure of these organizations needs to be further developed. The NGOs should have lawyers within their own structure or employees who do not have a legal background should be given comprehensive legal education in order to inform and guide women correctly and accurately. At this point, the development of relations between the bar association and civil society are of high importance. It should be taken into consideration how the legal aid service offered by the bar association can be extended to women who prefer applying to non-governmental organizations and thus how the connection between civil society and the legal aid provider can be improved. Women should be enabled to access legal information by means of continuous and systematic efforts performed by public institutions, the university and the NGOs. The legal literacy of women from low socio-economic groups should also be further developed. Although the establishment of the Legal Awareness Raising Association at Selçuk University can be considered as an important development, it is far from sufficient at this stage.

2.2.2. The Approach of Institutions Towards Legal Problems Encountered by Women

In parallel with the countrywide situation, various institutions have underlined many times that women who live in rural areas of Konya in particular, are subjected to violence but do not voice it because they shy away from

familial issues going public. An observation made based interviews that were held during the site visit in Konya is that the issue of women is considered equal to "family" in general.[20] It is thought that the circumstances that women are exposed to such as violence and unfair treatment should be solved through traditional means and methods of dispute resolution, not through seeking judicial remedies. Many family associations and other institutions act accordingly. The perception that domestic problems become unsolvable when they are brought to the courts is an issue expressed by many bodies and institutions. However, failure to bring to the courts the problems which need to be regarded as legal issues constitutes a barrier to access of justice for women. If women's legal needs cannot be met due to structural or certain ideological reasons, this situation should be evaluated as matter of access to justice.

Recommendation: Since women prefer applying to non-governmental organizations when they face a problem, the majority of NGOs interviewed believe that these problems should be solved through social mechanisms. This offers positive aspects such as a fast and cost-free process of solving needs which can be met without resorting to jurisdiction. However, adopting the same approach for situations which tend to be trapped in the private space and which need to be matter of law, such as violence and divorce, is unfavorable for women. In these cases, the NGOs should aim to provide legal support and should be responsible for meeting the applicants' legal needs, instead of trying to solve them through social mechanism.

20 **This situation is in parallel with the current political discourse and practices. For example, during the reorganization of ministries, the Ministry of Family and Social Policies was established as a line ministry in the place of the Ministry of State for Women and Family through the Decree Law no. 633. See. *OG*, June 8, 2011, No: 27958 (Duplicate).**

3. Access To Justice For Juveniles: A Case Study Of İstanbul

This section of the study will cover access to justice for juveniles at the stage of Public Prosecution Offices with specific reference to juveniles pushed into committing crimes.[21] The principle of excluding juveniles from the criminal justice system and criminal procedure as far as possible, which is one of the fundamental principles of the juvenile justice system, offers a seemingly contradictory approach in terms of access to legal procedures. When it comes to children, the objective is to exclude children from legal procedures as far as possible. However, the principles of human rights should also be observed when trying to achieve this objective. The rules of fair trial should not be violated when trying to apply the principle of excluding children from the justice system.[22]

A Public Prosecutor who is responsible for conducting the investigation on a child who has allegedly committed an offense will try to keep the child away from legal procedures as much as possible while securing the right of access to justice. In this respect, the role of the Public Prosecutor and the way he/she performs that role is very important.

In order to fulfill this role in the Turkish legal system, the law stipulates the establishment of a specialized unit at the Public Prosecutor's Office: Public Prosecutor's Juvenile Bureaus.[23] Besides carrying out investigation procedures related to juveniles, these bureaus have child-specific duties such as ensuring cooperation between relevant institutions for the implementation of measurements to be taken with regard to juveniles.[24]

Site visits, performed as part of the project, included an examination of the operation of Public Prosecutor's Juvenile Bureaus within the scope of rights of access to justice for juveniles. TESEV's research team conducted in-depth interviews with representatives from various institutions[25] during the fieldwork that the team conducted in Istanbul on February 16-20, 2015. During these interviews, the team tried to identify the barriers to access to justice for juveniles pushed into crime in Istanbul. The expert meeting workshop, which was held in April 2015 in Istanbul, brought together jurists from Turkey and the Netherlands who are experts in the area of access to justice for juveniles and restorative justice. During the workshop, the problems regarding access to justice for juveniles in Istanbul were examined thoroughly and relevant recommendations were developed with consideration of the case of the Netherlands. Furthermore, problems surrounding access to justice for juveniles and solution-oriented practices in the Netherlands were examined during the study visit held in May 2015 in the Netherlands. On June 10,

21 **As an institution which controls the access of juvenile to justice and one of the organizations responsible for establishing the justice by keeping them outside the justice system, the Public Prosecution Offices and investigation procedures run by them were preferred and it was decided to focus the project on this field considering the limitations of the study..**

22 **Rachel Hodgkin, Peter Newell, Çocuk Haklarına Dair Sözleşme Uygulama El Kitabı, Translator and Editor: Şebnem Akipek, Issue 2., Ankara, UNICEF, 2003, p. 609.**

23 **Juvenile Protection Law no. 5395 (ÇKK) Article 29.**

24 **Juvenile Protection Law, Article 30.**

25 **Interviewed Institutions: İstanbul 2nd Juvenile High Criminal Court, Public Prosecutor's Office of İstanbul, İstanbul 4th Juvenile Court, Juvenile Bureau of Public Prosecutor's Office of İstanbul, Marmara University Faculty of Law, Youth Re-Autonomy Foundation of Turkey**

2015, the meeting of experts was held in Konya. At this meeting, the problems and solution proposals that were identified in previous site visits were evaluated and concrete recommendations were developed.

The data obtained from interviews and discussions held during the meetings can be summarized according to two main questions:

1. How effectively are the child-specific legal procedures applied in the investigation stage and what are the ways to strengthen them?

2. What are the opportunities for cooperation between persons and institutions who take part in the investigation stage and how can these be developed?

3.1. CHILD-SPECIFIC LEGAL PRACTICES IN THE INVESTIGATION STAGE

3.1.1 National Law

3.1.1.1. Arrest and Alternatives

The arrest, detention or imprisonment of a child should be used only as a measure of last resort and for the shortest possible period of time.[26] The principle of last resort is adopted under the Juvenile Protection Law.[27] According to this law, a statement from the child who is subject to an investigation must be taken by summoning the child.[28] However, if this summoning is not observed, an arrest warrant or an arrest order may be issued and following this a subpoena may then be enforced.[29]

The alternatives, which are stipulated so that arrest is only used as a last resort, are the following: judicial control[30], safety measures[31], prohibition of arrest[32].

3.1.1.2. Criminal Action and Alternative Dispute Resolution Methods

The Committee on the Rights of the Child of the United Nations stipulates that compliance of an effective juvenile justice system can be evaluated with the following questions[33]:

1. Do legislation, policy and practice provide measures for dealing with children alleged as, accused of or recognized as having infringed the penal law without resorting to judicial proceedings?

26 **Convention on the Rights of the Child, Article 38.**

27 **Juvenile Protection Law, Article 4/1-i.**

28 **Code of Criminal Procedure, Article 145.**

29 **Code of Criminal Procedure, Article 146.**

30 **Juvenile Protection Law Article 20, Code of Criminal Procedure, Article 109. Judicial control is a remedy that can be resorted to avoid arrest if the conditions of arrest exist. If this remedy is used, the person is not arrested but asked to fulfill the obligations set out in the Law. Some of these obligations are specific to juveniles: a) No moving outside specified peripheral boundaries. b) No access to certain places or access to certain places only. c) No contact with specified persons and organizations.**

31 **Juvenile Protection Law, Article 11, Turkish Criminal Law Article 56. Safety measures are one of the responses to offences and an alternative to penalty. (Turkish Constitution, Article 38). The safety measures may be applied with respect to juveniles who are pushed to crime and who do not have penal liability. (Juvenile Protection Law, Article 12). 5 protective and supportive measures listed in Article 5 of the Juvenile Protection Law are applied as safety measures in this case.**

32 **Juvenile Protection Law, Article 21. An arrest warrant cannot be issued for juveniles who have not yet completed age fifteen for acts that require an imprisonment penalty with an upper limit of five years.**

33 **Hodgkin, Newell, ibid., p. 613.**

2. Do these alternatives include the following?

- Care order
- Mental health treatment
- Counseling
- Education
- Vocational training courses
- Foster care
- Other alternatives to institutional care
- Victim reparation/restitution
- Probation
- Guidance and supervision order

3. If such alternatives exist, are safeguards provided for the child who believes himself/herself to be innocent?

Accordingly, we need to evaluate the system based on the Handbook developed by the Committee and look primarily into legal opportunities relating to alternatives to the prosecution processes. Following this, we need to look at other stipulated methods and lastly to the safeguards available for those who believe themselves to be innocent.

Legal opportunities alternative to prosecution processes

The Code of Criminal Procedure and the Juvenile Protection Law stipulate three institutions that would enable law enforcement officers to keep juveniles outside of the prosecution process in the investigation stage: *postponing of the filing of the public prosecution, settlement and advance payment*.

The first method, *postponing of the filing of the public prosecution*[34], is an exception made to the "principle of filing a public prosecution"[35] which is accepted by the Code of Criminal Procedure. However, this exception can only be applied in very limited cases. In order to decide on postponing of the filing of the public prosecution, all of the following conditions must co-exist:[36]

- There should be no way of settlement,
- Investigation and prosecution of the offense should be subject to a complaint and require imprisonment at the upper level of one year or less,
- The suspect must not have been convicted for a prior intended crime with an imprisonment term,
- The belief that the suspect will refrain from committing further crimes in case of postponing of the filing of the public prosecution,

34 Code of Criminal Procedure, Article 171.

35 Code of Criminal Procedure, Article 170/2.

36 Türkiye'de Çocuklar için Adalet, Çocuk Adalet Sistemi Çalışanları Eğitim Programı: Sosyal Çalışma Görevlileri için Eğitim Kitabı, Ankara, 2013, p. 86.

- Postponing must be more beneficial for the suspect and society than the filing of public prosecution,
- The damage caused to the victim or the public must be indemnified completely via exact return, restoration to the original state as was before the crime or via paying compensation.[37]

The conditions cover such a limited number of circumstances that the possibility of postponing of the filing of the public prosecution never exists for most children. For example, the upper limit of punishment stipulated even for the petty form of theft, which is one of the most common offenses committed by children, is three years.

The second alternative method set out in the legislation is *settlement* which ends the investigation or prosecution.[38] In order to resort to settlement, there must be sufficient evidence that the child committed the crime and the parties must be willing to resort to settlement. Settlement is also a mechanism that is used in very limited cases however. In order to offer settlement, the crime must be among the offences prosecuted on complaint or the law must clearly set out that settlement can be resorted to.[39]

In order to resort to *advance payment*[40], another alternative which may prevent inclusion of children in the process of criminal prosecution, the crime must require an administrative fine or imprisonment with an upper limit of less than three months. Moreover, the child must pay the imposed fine within 10 days after the notice has been served by the Public Prosecutor.

What are the other ways of exclusion from investigation and prosecution?

When a child is kept outside of the criminal justice system by means of postponing the filing of a public prosecution, settlement or advance payment, the first seven ways listed by the Committee on the Rights of the Child as an alternative to appearing before courts are protective and supportive measures.[41] In other words, when the Juvenile Bureau Prosecutor resorts to one of these alternatives, she/he can claim the ruling on the protective and supportive measures set out in the Juvenile Protection Law at the same time.[42]

Victim reparation can be made by means of advance payment and settlement, while guidance and supervision orders can be met with the implementation of postponing of the filing of public prosecution, advance payment and settlement mechanisms together with the supervision order. In case of advance payment and settlement, the suspect is asked to indemnify the victim. It would be helpful to make an arrangement that will enable indemnification in any way other than exact return or paying compensation when it comes to juveniles.

According to the Juvenile Protection Law, the decision to take a child under supervision must be made based on the principles of supervision with a supervision officer appointed to the child in order to guide him/her towards the purpose the decision was enforced for.[43]

37 **Juvenile Protection Law, Article 19/1, CMK Article 171/3.**

38 **Juvenile Protection Law, Article 24/1, Article 253.**

39 **For offences prosecuted on complaint as of March 2015, see: http://www.avukatportal.org/hukuki-calismalar/mesleki-gelisim/tckda-sorusturulmasi-ve-kovusturulmasi-sikayete-bagli-suclar/, July 31, 2015.**

40 **Turkish Criminal Law, Article 75.**

41 **Juvenile Protection Law, Article 5.**

42 **Juvenile Protection Law, Article 15/3.**

43 **Juvenile Protection Law, Article 36.**

Is there any remedy (right to object to the decision) that exists for those who believe him/herself to be innocent?

Availability of a remedy that will protect the right to acquittal of the juvenile under suspicion under non-judicial control mechanisms such as postponing of the filing of public prosecution, settlement, advance payment and granting the child the right to object to verdict is considered as a requirement of the right to a fair trial.[44] In the case of settlement and advance payment mechanisms, a public case will be filed for the child under suspicion if she/he fails to accept these remedies. However, in case the postponing of the filing of public prosecution or safety measures are applied by deciding that prosecution is not required due to the child being a minor, there is no opportunity to protect the right to acquittal.

3.1.1.3. Arrangements Relating to Keeping Juveniles Outside the Prosecution Process and Implementation of These Arrangements

During the interviews and workshops conducted as part of the project, it was stated that the method of summoning before arrest is almost never used in practice. Further, detention is enforced without examining its necessity and indispensability, the detention period is generally used for the maximum duration and is not controlled; and resorting to alternative practices such as legal control and safety measures is very limited.

It was also emphasized that the mechanisms which allow for using alternative measures are almost never resorted to in practice. Its reasons are listed as follows:

- The law is regulated based on the crime control model and takes the type of crime as its basis, not the case of the child.
- In the law, the means of resorting to these methods are very limited and these limitations are not suitable in the case of juveniles.
- Because of the following reasons, almost no one resorts to settlement in the investigation stage, which is one of the most important non-judicial mechanisms;
    - it has a very limited scope,
    - pedagogical means are not stipulated,
    - obligations which a child cannot fulfill, such as covering expenses, are enforced.
- Judges and prosecutors are reluctant to resort to alternatives since the files they are looking into remain open and they have doubts about the functionality of the measures taken. Lack of personnel and infrastructure in institutions that would implement the measures set out in the law supports this doubt as well.
- In cases where alternative methods with safety measures are used, there is no procedure which protects the right to fair trial; even if a sufficient doubt is stated about the child, no possibility of acquittal is provided due to prohibition of prosecution.

3.1.2. The Case of the Netherlands

Considering the findings related to child-specific practices in the investigation stage of juvenile justice systems in Turkey and the Netherlands, the most basic similarities and differences are as follows:

44 **Hodgkin, Newell, *ibid*., p. 609.**

a. Both Turkey and the Netherlands have non-judicial methods provided for the investigation stage.

b. In Turkey, the means of resorting to non-judicial mechanisms are extremely limited and these mechanisms are not used frequently whereas in the Netherlands, the scope of resorting to such mechanisms is extensive and they are used broadly.

c. In Turkey, there have not been many studies on non-judicial mechanisms, the ways of using them, their effects or the reasons for not resorting to such mechanisms. In contrast, there are regular studies being carried out in order to develop these practices in the Netherlands. Findings suggest that the inadequacy and cost of criminal justice are the underlying factors.

d. Pre-trial detention time is limited both in Turkey and in the Netherlands. However, there is no child-specific regulation in Turkey. According to general regulations45, the maximum period of detention is one year if the crime is not within the jurisdiction of the high criminal courts; if necessary, this period may be extended to 18 months. If the crime is within the jurisdiction of the high criminal courts, it is 18 months and it may be extended to 3 years where necessary. This period is 140 days in the Netherlands.

e. Improving the alternative methods of dispute resolution is a government policy both in Turkey46 and in the Netherlands. There are studies on alternative methods of dispute resolution and the cultural impacts of this policy in the Netherlands.

3.1.3. Suggestions

In light of these findings, the suggestions for improving the practices of justice for children at the stage of investigation are as follows:

- Turkish Penal Law, Code of Criminal Procedure and Juvenile Protection Law should regulate extrajudicial means and alternative measures applicable when recourse is to be had to these means. This being said, recourse to extrajudicial means is very limited. The conditions in which procedures such as compromise for children and postponing the filing of public prosecution are applicable and the way they are implemented must therefore be regulated specifically for children. There must be a regulation that is primarily based on the child, not the crime. It must always be possible to use extrajudicial means whenever it is beneficial for the child.
    - In particular, regulations must be made in such a way that they cover actions made frequently by children (crimes against property such as theft and plunder).
    - At the same time, restrictive provisions, such as the provision which prevents recourse to extrajudicial means in cases where effective repentance is provided, are47also applicable.
- Extrajudicial means make sense when considered together with the measures applicable within the juvenile justice system. Therefore ensuring that the child is not involved in the judging process is not sufficient, rather it must be made sure that an intervention is made to remove the cause that brought the child into the judicial

45 **Code of Criminal Procedure, article no 102.**

46 **Republic of Turkey, Ministry of Justice, Directorate General for Strategy Development, Judicial Reform Strategy, 2015, p. 17, (Online) http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf, July 31, 2015.**

47 **Code of Criminal Procedure, article no 253/3: Seeking a settlement is not possible in case of crimes where effective repentance provisions are applicable and crimes against sexual immunity even if the same are inquired and proceedings are commenced upon complaint.**

system in the first place. Therefore another modification required to be made, in order to ensure that extrajudicial means are used more effectively, is to make sure the measures stipulated in the law are implemented:

- Institutions and services must be consolidated with functional programs.
- They must be extended across the country.
- Personnel in adequate number and quality must be appointed.

- A regulation must be made in consideration of the criteria for the right to a fair trial for all cases where extrajudicial means are applicable. This includes the following;
  - The child must be granted the right to oppose,
  - A prohibition that further covers the investigation procedures for children who are not liable for penalty must be introduced and the principle of referring to social service intervention must be made essential.
- It is not only important to have effective recourse to extrajudicial means, but also to avoid restriction of liberty. If the judging process is required, then restriction of liberty must be avoided. Again, detention must be regulated for children and accordingly;
  - The legal regulation and authorization necessary for the decision of detention made by the juvenile judge must be provided.
  - The maximum term for being jailed for a pending trial must be shortened in accordance with the principle that "restriction of liberty must be ended as soon as possible".
- Resolution of an issue with regard to disruption of social balance via extrajudicial means is a cultural issue as well. In cases where one of the parties to the issue is a child, it must be considered that the resolution also needs to aim to support the development of the child. Children cannot be expected to be free of errors. We need to establish a system in which it is known that children will commit errors but focuses on their capabilities of learning from mistakes and correcting them. It is also important to reflect this approach in society. Therefore mere legal regulation of extrajudicial means or alternative measures is not enough to ensure their implementation. It is necessary to create a willingness and belief in society, in legislators and in enforcers in this regard. Therefore;
  - Conditions of referring to extrajudicial means must be observed, their impact must be inquired upon and shared with enforcers and the public.
  - Campaigns and work for raising awareness in the public about the significance and necessity of extrajudicial means and alternative measures for children must be conducted.

3.2. COOPERATION BETWEEN PERSONS AND ORGANIZATIONS THAT WILL TAKE PART IN THE STAGE OF INVESTIGATION

3.2.1. National Law

With regard to the procedures of investigation, the powers of enforcement and prosecution are different compared to those for adults.[48] Both enforcers and Public Prosecution Offices are obliged to simultaneously ensure the

48 **Juvenile Protection Law, article no 15.**

protection of the child and to conduct the investigation procedure if any crime is committed.[49] On the other hand, authorities which are responsible for the protection of the child are also required to take part in the process.[50] The task of maintaining cooperation between the organizations that are responsible for ensuring implementation of the measures is assigned to the Juvenile Bureau.[51]

3.2.1.1. Taking Part in Decisions

Informing the child and his/her family and thus ensuring their participation in the resolution process is a fundamental principle of the Juvenile Protection Law.[52] In order for this principle to be implemented,

The child unit of the enforcement is now required to inform the child's parent, guardian, or person who takes care of the child, and the representative of the institution if the child stays in a public institution, about the child's status upon commencing proceedings for children who need to be protected or who are led to commit a crime.[53]

- At the same time, a relative of the child needs to be allowed to stay with the child while she/he stays in the enforcement unit.[54]
- The child, his/her parent, guardian or the family who takes care of the child or the representative of the institution if the child stays in an institution are entitled to attend the trial.[55]
- It is essential that the opinion of the child whose intellectual capability is deemed sufficient is heard before making the injunction.[56]

Informing the relatives is carried out in order to satisfy the obligation of informing the relatives of the suspect as required in the[57] Code of Criminal Procedure. The Juvenile Protection Law aims to ensure that an appropriate adult stays with the child and therefore requires that a notification is made to the parent, guardian and the institution of social service (Ministry of Family and Social Policies Provincial Directorate).

Even though asking one's opinion is required in addition to a notification, how this is to be carried out is not described and law enforcers do not have any experience or expertise in this regard. It is therefore not possible to say that such rules operate in such a way to ensure the participation of the child and his parent in the decision process.

3.2.1.2. Participation of Related Institutions

Cooperation of the child, his family, related persons, public institutions and non-governmental organizations is another fundamental principle of the Juvenile Protection Law.

49 **Juvenile Protection Law, article no 15, 31; Turkish National Police, Child Department / Bureau Chief Office, Directive of Foundation, Commission and Work, article no 7.**

50 **Juvenile Protection Law, article no 6, 31.**

51 **Juvenile Protection Law, article no 30.**

52 **Juvenile Protection Law, article no 4/1-d.**

53 **Juvenile Protection Law, article no 31/2.**

54 **Juvenile Protection Law, article no 31/3.**

55 **Juvenile Protection Law, article no 22/1.**

56 **Juvenile Protection Law, article no 13.**

57 **Code of Criminal Procedure, article no 95.**

The Public Prosecution Office Juvenile Bureau is required to ensure cooperation with other institutions on behalf of the Court of Justice.[58] This duty relates to ensuring the cooperation necessary for implementing the injunction made for a child who is taking part in the judicial process. In other words, the juvenile bureau bears the obligation of managing the process with regard to necessary cooperation for a child and for a solid situation, i.e. with regard to case study in order to ensure the resolution is fulfilled.

There are two legal means that might be referred to in fulfilling the obligation for ensuring cooperation on a case level:

1. Informing the Family and Social Policies Provincial Directorate regarding the procedure carried out for the child59 will ensure that social service agents accompany the child right from the beginning of the process. It also ensures that the social service institution, responsible for the protection of the child, immediately processes the need of the child for protection.

2. Another important tool for cooperation among institutions is social inspection. The report will communicate the details regarding the persons and institutions that may be cooperated with to the Public Prosecutor. The information will concern the services of organizations which are responsible for the child's needs, his social environment, in particular his family, and his protection.

It is required to establish Child Protection Coordination in order to ensure cooperation at [60] central and provincial levels. Even though it is not named as a board, the requirement here is to create a board which includes representatives of institutions which are responsible at central, provincial and district levels. Child Protection Coordination measures are however only responsible for creating services and policies that remove any disruptions found in applications rather than managing cases. Various works have been carried out in order for these boards to work effectively since the year 2005 when they were first established.[61] Finally, the Ministry of Family and Social Policies prepared[62] the Application Plans[63] for the Child Protection Strategy. In addition to this, the training programs for the provincial Coordination boards that will implement these strategies have been prepared.[64]

Certain mechanisms for implementing the principle of cooperation are required. However, these are not classified according to the purpose which they serve and were not prepared in such a way to contain sufficient details in terms of method.

3.2.1.3. Regulations With Regard to Keeping the Child Outside of Criminal Action

It is mentioned that in practice, cooperation between the child and his parent or between the employees in the system at the stage of investigation is very weak.

58 **Juvenile Protection Law, article no 30/1-c.**

59 **Juvenile Protection Law, article no 6, 31.**

60 **Juvenile Protection Law, article no 45/3; Directive Regarding the Application of Protective and Supportive Injunctions Made According to Juvenile Protection Law, articles no 19, 20, 21.**

61 **For the Project of Restructuring the Juvenile Justice System in the EU Harmonization Process, see The Conference Report on Restructuring the Juvenile Justice System in the EU Harmonization Process, British Council, 2005; for Children First: Project on Modeling Children Protection Mechanisms on a Provincial Level, see: Certificate of Strategy on Coordination in Child Protection Services 2011 - 2015.**

62 **Certificate of Strategy on Child Protection Services 2014 - 2019.**

63 **Certificate of Strategy on Child Protection Services, Application Plans 2014 - 2019.**

64 **Child Protection Services Coordination Training, Ankara, 2013.**

The reasons for this are as follows:

- Social inspection allows us to get to know the child and to understand his needs so that we can refer to extrajudicial means at the beginning of the investigation. However since this inspection cannot be made prior to the stage of prosecution, the measures that would protect the child's benefit and safety cannot be taken.
    - There is no social worker at any part of the investigation stage (in the public prosecution office or in the enforcement unit). The method, wherein all caseworkers are considered as officials of the courthouse and are assigned before the requesting authority according to certain requirements, is being experimented with under a project currently being conducted in Ankara Westside Courthouse (Sincan) with the cooperation of the Ministry of Justice and UNICEF.
    - On the other hand, it is necessary to consider the reasons why social workers who are at the stage of prosecution fail to fulfill their assignments properly.
        - The infrastructure for the inspection of family and social environments is inadequate.
        - The fact that caseworkers are employed at the court which they report to does not comply with professional principles in terms of independence or supervision.
        - There is no internal audit or an effective feedback mechanism for caseworkers who are employed within the body of the Ministry of Justice.
        - The law allows persons who are not trained on social inspection to be employed as caseworkers as well[65] and thus persons who have not been adequately trained are also employed.
    - Public prosecutors, judges and lawyers who constitute the sole mechanism for inspection, do not have sufficient knowledge with regard to social inspection or the scope and method of the consequent report that is to be issued.
- The pattern and method for cooperation between enforcement, the prosecution office, the counsel, juvenile judges, caseworkers and the institutions that will enforce the measures taken has not been established. Moreover, there is no description of any role or responsibility in this area other than general regulations regarding the duties of each and every person and institution.
- In addition, it is mentioned that the powers and responsibilities of each subject in the juvenile justice system are not regulated properly. According to the following remarks, this causes conflict over the duties and powers in implementation:
    - It is observed that the enforcement unit carries out various operations such as taking statements even though it is not authorized to do anything other than checking for identification.
    - There are no rules with regard to the information shared in social inspection reports or shared with the parties and with the institutions that will enforce the measure.
- Public Prosecution Office Juvenile Bureaus were not structured in such a way to fulfill duties such as cooperation that are specific to the juvenile justice system and assigned by the law. Public Prosecutors consider their sole duty is the investigation of the crime and juvenile bureaus consider themselves as the prosecutor's secretary. Here is how this is reflected in the operation of mechanisms required by the law with regard to ensuring cooperation among institutions:

65 **Juvenile Protection Law, article no 3/1-e.**

- The requirement for the notification commencing the cooperation between the Ministry of Family and Social Policies Provincial Directorate is never implemented.
- The coordination meetings where institutions working on children come together are rarely held, and prosecution office juvenile bureaus which are authorized with this assignment by the law do not take any responsibility in this regard.

3.2.2. The Case of the Netherlands

The possibilities of cooperation between the persons and institutions that play a role in the stage of investigation in the juvenile justice systems of Turkey and the Netherlands were considered. The findings with regard to utilizing these possibilities and the most fundamental differences and similarities are as follows:

Ensuring the participation of the child and his family is considered as an important principle in both countries. However, although required mechanisms such as *as soon as possible meetings* ensure that this principle is implemented in the Netherlands, no such mechanisms are available in Turkey.

There are guidelines in the Netherlands to ensure a standard application for evaluating the child's needs, referring to extrajudicial means and for what needs are to be fulfilled upon referring to these means. Such guidelines are not available in any part of the process in Turkey.

The fact that the service is offered by civil society itself is a major factor that reinforces the cooperation between the public and civil society. In the Netherlands, almost all of the extrajudicial means and services at the stage of alternative measures are offered by civil society. In Turkey however, even accommodationists are appointed from among public officials in most places[66] following the last modification to the regulations.

The prosecutor is required to conduct social inspections and to employ the mechanisms that take into account the opinions of the child and his family in the Netherlands. However, both of these are ambiguous in Turkey. There are no regulations with regard to procuring any social inspection for the investigation stage, and injunction is up to the discretion of the authority that makes the decision.[67] However, since the social inspection report will also be used in designating the penal obligation[68], some authors advise that[69] it should be a requirement to issue these at the stage of the investigation. With regard to the regulation of principles, the 4th article of Juvenile protection law regulates the hearing of opinions of the child and his parent and the 22nd article of the same law regulates the right of the child and his parent to attend the hearing. However, only a brief mention about the hearing of the opinion of the child who is capable of building opinions is mentioned in regulating the procedure with regard to making injunctions.

66 **Code of Criminal Procedure, article no 253; Directive Regarding Application of Conciliation According to the Code of Criminal Procedure, article no 13.**

67 **Juvenile Protection Law, article no 7/2.**

68 **Juvenile Protection Law, article no 35/1.**

69 **Ahmet Tüysüz et al.,Legal Assistance for Children Who Are Led to Crime: Educator's Handbook, Ankara,TBB, 2010, s. 134.**

3.2.3. Suggestions

Based on these findings, the suggestions for increasing cooperation at the stage of investigation are as follows:

- A guideline which regulates the details of the process following a legal regulation with regard to the purpose and operation pattern of the process must be created. This will ensure the obligation for notification and that the social service institution is involved in the process. The mission of the social service institution is protecting the child's benefit and representing him/her at the stage of investigation. This guideline is currently applicable and a similar version is available in the Netherlands.
    - Each child detained must be contacted by a social worker,
    - The system must have a pre-interview report and a guiding function at the beginning of the investigation regarding the decisions required to be made by the prosecutor such as immediate injunction or extrajudicial means,
    - No bill of indictment must be issued without making a social inspection first,
    - If the police have a social worker, his/her only role must be to welcome the child and to inform him/her regarding his/her rights.
- Caseworkers must be appointed to a separate unit in the Ministry of Justice and must be appointed in the courthouse -not in courts- in the provinces, and it must be ensured they are also appointed by the Public Prosecutors at the stage of investigation.
- It must be ensured that the Public Prosecution Office Juvenile Bureaus are structured in such a way as to carry out the functions stipulated by the law. In particular it must be ensured that they have the necessary infrastructure to cooperate with other institutions in this regard.
    - Local resources need to be mapped out.
    - Control lists indicating what needs to be done with a child when an investigation is commenced must be prepared for the Juvenile Bureau employees.
    - An adequate number of personnel who are experienced on issues such as communication with children must be appointed.
- Regulations regarding the mechanisms that ensure cooperation between the child and his family as well as the child and the institutions working with him/her must be made. These regulations must cover the following:
    - Periodical meetings for implementing case management. This will ensure cooperation between the police, social workers, prosecutors, judges and institutions of measure to be held on a case to case basis,
    - Principles of sharing information between these parties,
    - Meetings which involve asking the opinions of the child and his family, etc.
- The participation of civil society in the presentation of services in the juvenile justice system must be organized. Planning must be made with the attendance of civil society over issues such as the standards for services that they will offer. Other issues also include the inspection mechanisms for the suitability of candidate organizations and the transparency of the process. It is imperative that civil society organizations take steps aimed at specializing on these areas.

- Another area that needs to be functional in order for the system to operate effectively and for observation and evaluation to be made objectively, is clear identification of the roles and responsibilities of those who will take part in the system. Preparation of guidelines that would ensure a standard operation of procedures is therefore needed. For this purpose;
  - Guidelines regarding the process such as how the Juvenile Bureau Prosecution Offices will carry out their duties as mentioned in the law,
  - How social inspection will be carried out,
  - How extrajudicial means will be referred to or what will be done thereafter.

4. Access to Justice With Regards to the Environment: An Examination of Trabzon

Article 56 of the Turkish Constitution states that everyone is entitled to the right to live in a healthy and balanced environment[70]. The protection of environmental rights and environmental health, improving the environment and preventing environmental pollution have thus been defined as both the duty of the state and of the citizens. Another fundamental legal regulation that defines environmental rights is the Environmental Law no. 2872. The purpose of this law is defined in its 1st article as "ensuring the environment, which is the common asset of all living things is protected pursuant to sustainable environment and sustainable development principles"[71]. Despite this however, recent investment projects in the areas of energy, infrastructure and transportation in Turkey have led to instances where environmental rights are being frequently violated. Citizens and non-governmental organizations have begun to see an increased need for access to justice in cases where rights with regard to the environment are violated.

With this situation in mind, an examination has been carried out based on the evaluations of local actors with regard to environmental violations in the province of Trabzon in the framework of 'environment and access to justice'. Trabzon is well known for its infrastructure projects such as the Green Road and Black Sea Coastal Road and was selected because it is one of the provinces with the most hydroelectric power plant (HPP) projects in Turkey. Trabzon is often considered as lying at the center of the Eastern Black Sea region where many provinces are in a similar situation. It is also assumed that Trabzon may have non-governmental organizations and civil society networks already in place which have experience on the issues of access to justice with regard to the environment. With this assumption in mind, the last issue of this project aims to study access to justice and the environment based on the legal struggles of these organizations against projects that cause harm to the environment.

Pursuant to this goal, the TESEV research team made a site trip to Trabzon on 26-27 February 2015, and discussions were had with academicians from Karadeniz Technical University, the Department of Environmental Sciences, the Department of Forest Engineering and lawyers from Trabzon Bar Association and the Environmental Committee. Moreover, discussions regarding hydroelectric power plant projects were had with public officials from Trabzon State Hydraulic Works and from the Ministry of Environment and Urban Planning Trabzon Provincial Directorate. Jurists from Turkey specializing on the environment together with a leading expert from the Netherlands working on the environment and access to justice, attended an expert meeting workshop in Istanbul in April 2015. The issues observed in the Netherlands, regarding access to justice in terms of the environment and proposals for solutions, were examined during a study trip in the Netherlands in May 2015. Finally, the issues established during the previous activities and suggestions for solutions were considered and attempts were made to form solid suggestions during the expert meeting held in Trabzon on 15 June 2015. Representatives from local public institutions authorized as decision makers on the projects that formed the subject of the lawsuits were also invited to the meeting.

70 Constitution of 1982, article no 56, Official Gazette dated: 20.10.1982, Issue: 17844.

71 Environmental Law, article no 1, Official Gazette dated: 11.08.1983, Issue: 18132.

These studies made it possible, for not only civil actors but also public employees holding administrative powers, to think and develop suggestions on the legal and practical aspects of environmental issues in Trabzon. In this way a dialogue platform was created in which the actors working in the area of environment in Trabzon could express their expectations and obligations to one another. This platform allowed civil actors and actors from public administrations to establish common solutions for existing issues regarding the environment. Discussions further focused on how effective civil society and the Trabzon Bar Association were with regard to the environment and what kind of an approach they needed to develop in order to become more effective. In doing so, examples of best practice on cooperation between public administrations and civil society and how these could be further enhanced were also discussed.

The section on the environment for this report was prepared based on the topics established during the activities of the study and from the suggestions that were subsequently made. This section was addressed within the framework of the following headings; access to environmental information, participation in decision-making processes with regard to environmental issues and judicial processes regarding the environment. Whilst it is possible to draw a broader framework for access to justice on environmental issues, the report is limited to the activities made during the project and the opinions expressed by the participants within the scope of the fieldwork. Wherever necessary, background knowledge was sought and evaluations made on the regulations and area of application. It is crucial to note however, that the fundamental arguments expressed in this report were formed based on the statements made by the organizations and experts who participated in the project activities. Thus it was aimed to develop constructive policy proposals for protecting the environmental rights of Trabzon and thus contribute to judicial reform based on the demands of the local actors.

The concept of access to justice is generally understood within the framework of access to courts, judicial processes and legal services. However, as we see in the case of Trabzon, when it comes to projects that affect the environment the request of citizens for justice occurs long before the judicial processes begin. The inability of citizens to take part in the decision-making and planning stages of projects that affect the environment together with the obstacles preventing them from obtaining information regarding these processes are issues that are just as important as those experienced in judicial processes in environmental lawsuits. This point of view was frequently expressed by attendants during various activities of the study. For this reason therefore, the environmental section of the report addresses not only the issues experienced by citizens in the judicial processes regarding environmental lawsuits and suggestions for solutions but also participation in decision-making processes and issues of obtaining information.

In addition to this, the experts participated in this study mentioned that EIA (Environmental Impact Assessment) reports and the EIA process was in fact the most fundamental issue regarding projects that cause harm to the environment. Issues surrounding the EIA process create obstacles for citizens attempting to access information and participating in those projects as well. Therefore issues regarding the EIA process were also addressed in the report.

4.1. OBTAINING INFORMATION REGARDING THE ENVIRONMENT AND PARTICIPATION

4.1.1. Access to Environmental Information

There are various legal regulations in Turkey governing how citizens are informed on environmental issues. Among these regulations, the one most directly related to the environment is the *Public Attendance Meeting* as mentioned in the EIA Directive, article no. 9. This article requires that the public is informed about the project that is to be

carried out, that the opinions and suggestions of the public regarding the project are heard and that a meeting is held in a place which the public can easily access for these purposes.[72]

Additionally, the 8th article of the EIA Directive requires the administration to inform its citizens and the public about future planned projects. Pursuant to this article, citizens are informed by the Governor's Office via mediums such as announcements, notices and the internet. Citizens are informed that an application has been made for an investment project that might have an impact on the environment such as HPP and mines. This application file will then be offered to the opinion of the public and once the EIA process has commenced these opinions and suggestions will be heard before the completion of the process.

Aside from this, another legal text which provides further access to environmental information for citizens in Turkey is Law no. 4982 on the *Right to Obtain Information* which came into effect in 2003. Although this law does not contain specific regulations regarding access to environmental information, citizens are entitled to request information and documents via applications made in accordance with the provisions of this law. In this way they are able to obtain information regarding environmental issues.[73]

Current regulations in Turkey are thus limited when compared to the right of access to environmental information as mentioned in the Aarhus Agreement. The Aarhus Agreement addresses the right to obtain environmental information directly and specifically. According to the 4th article of the Aarhus Agreement regulating the issue of access to environmental information, governmental authorities are obliged to provide environmental information requested from them for the use of individuals without seeking any condition of benefit. The concept of "environmental information" is interpreted quite broadly in the agreement. Indeed, one can make the case that the Aarhus Agreement covers every kind of information that might come to mind when considering the environment.[74]

During the discussions and expert workshop in Trabzon, the following fundamental issues regarding access to environmental information were explored in applicable situations:

- Public announcements regarding projects are usually made in the Governor's Office buildings. This means that citizens who live in residential areas such as villages or towns far from the official center receive information about the projects at a far later time.
- No comprehensive information regarding the project is provided to citizens prior to public attendance meetings. This means that citizens and non-governmental organizations are informed of the content of the project at very late stages in the process. Undoubtedly, this hinders the use of their rights of objection.
- In some projects it is observed that public attendance meetings are held in very inconvenient places that make it extremely difficult for local people to attend, e.g. meetings held in hotels in the city center.
- Non-governmental organizations such as village foundations and foundations on the conservation of nature, associations of architects and agricultural environmental engineers who are both experts on the environment and affected by the project in question, are usually not invited to the public attendance meetings.

72 **Environmental Impact Assessment Directive, article no 9, Official Gazette Date: 25.11.2014, Issue: 29186.**

73 **Law on the Right to Obtain Information, Official Gazette Date: 09.10.2003, Issue: 25269.**

74 **Ahmet M. Güneş, An Examination Regarding the Aarhus Agreement, Gazi University, Journal of Faculty of Law C. XIV, Y. 2010, Issue 1, p. 307.**

- If people are not effectively informed by the government and the companies who own the projects, this creates a sense of distrust against all actors involved. In many cases, there is a strong feeling of distrust felt by citizens towards non-governmental organizations, bar associations and lawyers. This manifest distrust results in a perception that these institutions act contrary to the benefits of citizens.

Suggestions:

- In accordance with the directive, official information about the projects must be provided via notifications to those persons who are directly affected by the projects. Moreover, in order for announcements to be informative, it would be appropriate for these announcements to be sent directly to the heads of neighborhoods, environmental foundations, and non-governmental organizations in the area, the chamber of agriculture and the chamber of architects.
- In order to better inform the public about a project, leaflets or brochures should be prepared in a language that is easy to understand. This material can then be distributed effectively amongst the local population.
- The environmental committees of bar associations can hold public information meetings regarding the potential harms caused by projects to the environment. In explaining the legal aspects related to the projects they can better inform citizens about their rights and the legal options they may have.
- Some of the public attendance meetings are not sufficiently attended. Oftentimes this means that a significant number of people living in a particular residential area is not informed about a project. In light of this, it would be more appropriate to make a pre-condition - via a modification made to the existing regulations – that a minimum percentage of the local people who will be affected by the projects must attend the meetings.

4.1.2. Participating in Decision Making Processes on Environmental Issues

In Turkey, the fundamental regulation ensuring the participation of citizens in environmental issues is the EIA Directive regarding participation of the public. According to the Directive, meetings must be chaired by the Environment and Urban Planning Provincial Director or another official in order to be authorized. During the meeting it is made certain that the public is informed about the project and that their opinions, questions and suggestions are heard. The chairman may ask the attendants to provide their opinions in writing. The minutes of the meeting are submitted to the Ministry and a copy remains with the Governorate.[75]

Undoubtedly, this regulation contains a number of fundamental shortcomings related to citizens' participation in decision-making processes for projects that directly affect them. According to this framework, there is no requirement about the degree of consideration given to suggestions made during the meeting. In this sense, as has frequently been observed in applications made in Trabzon, the influence of public attendance practices in Turkey on the decision-making process is much below the standard introduced by the Aarhus Agreement. According to article no. 6/8 of the Aarhus Agreement, the public institutions conducting the project have to guarantee that suggestions and complaints expressed in the public attendance meeting are taken into account in the decisions that are made regarding the project.[76]

The attendants expressed the following basic concerns during the in-depth interviews we made during the Trabzon site visit and during the expert workshop:

75 **EIA Directive, article 9(1)(b).**

76 **Aarhus Agreement, article 6(8).**

- The opinions of citizens and NGOs are rarely asked during the conception and early planning stages of infrastructure and hydroelectric power plant investments that violate environmental rights. The projects are not revised pursuant to the requests and needs of citizens and NGOs during the formation stage.
- Despite being a part of the EIA process, issues and requests put forward by local citizens during public attendance meetings are not generally effective during the EIA process. Positive and negative opinions expressed during the public attendance meeting are not reflected in the EIA report objectively. Essentially, this problem arises when meetings are organized only to fulfill the procedure in appearance only. Regardless of the results of the meeting, as they are not legally binding, the decision-making authorities will publish the EIA report without adequately reflecting the demands of the citizens.
- Because central governance is the final decision maker in environmental cases, the powers of local public authorities are far weaker in this regard. Even if they decide to take more decisions that prioritize environmental protection, they might feel pressure from their superiors within the central government. This also inhibits the will and opinions of local citizens from being adequately reflected in the respective decisions made.
- The fact that there is a distinct lack of experience in creating policies and conducting activities in cooperation with NGOs at both central and local level administration in Turkey generally also affects the way environmental matters are addressed. The fact that state organizations and the government have not developed a culture of dialogue with civil society on environmental matters is another issue that is subject to criticism.

Suggestions:

- The most immediate step to be taken for greater participation of the public in decisions regarding the environment in Turkey, is for Turkey to sign the Aarhus Agreement and fulfill the obligations of that agreement. This will enable citizens and NGOs to take part in legislation processes related to the environment and thus provide suggestions for the planning of environmental projects in the area from their initial stages. It will also make sure that the modifications expressed by citizens and NGOs during public attendance meetings organized through the EIA process are adequately reflected in the application.
- In order for the positive and negative opinions of citizens on a project to be understood more clearly, it is important to encourage local people to attend these meetings. To ensure this, a modification should be made in the regulations so that criticisms and requests expressed during the meeting will influence the final decision.
- If meetings are held before an objective and independent person such as an ombudsman, the opinions expressed during the public attendance meeting will be reflected in the EIA report more objectively. In this way, the government's and the investing company's impact will be balanced with citizens' opinions.

4.1.3. EIA Reports

Environmental impact assessment preparation files and reports are issued pursuant to the 10th article of the Environmental Law. They establish the possible harms caused by planned investment projects to the environment and the measures that will be taken against these harms.[77] The main purpose of this process is to ensure that human health and the environment are protected and natural resources are used in a sustainable way.

77 **Environmental Law, article 10; EIA Directive, article 6(3).**

As mentioned in the expert workshops during the discussions in Trabzon, the following issues were highlighted with regard to the EIA process:

- The EIA Directive first entered into effect in 1993 and has since been modified, either partially or entirely, a total of 18 times. The frequency of modifications was subject to criticism in the EU-Turkey Progress Report for the year 2014[78] since it weakens the knowledge of citizens regarding the regulations. In turn this restricts citizens' rights to resort to legal proceedings with regard to the environment.
- EIA application files and reports are prepared by private organizations or institutions which are considered by the Ministry of Environment and Urban Planning to be appropriately qualified[79]. In order to realize an investment project, it is therefore necessary to apply to one of these organizations or institutions to have an EIA application file and report issued. The institution or organization that will prepare the EIA application file or report is financed by the owner of the investment project. This leads to a company-customer relationship between the organization or institution taking part in the EIA process and the project owner, which compromises objectivity and independence.
- When the content of most EIA reports are considered, the experts claim that the area on which the investment project will be built is not subject to a detailed and comprehensive examination and that versatile research has not been made.

Suggestions:

- In order to resolve the issue of independence surrounding EIA reports, it would be more appropriate for investors to pay the costs necessary for the EIA report to the Ministry instead of applying directly to the authorized institution/organization. The Ministry can thereupon procure an independent organization to prepare the report for the investors. Additionally, the participation of universities in the area must also be provided in order to ensure that the EIA reports are prepared and inspected with more independence.
- Another important reason why EIA reports are not prepared comprehensively and in the necessary format is that requests are often made to finish the EIA process as soon as possible so that investment projects can commence immediately. In order to avoid this, a further modification can be made to the regulations requiring a specific length of time required for the provision of EIA reports.
- A 'special criteria' should be made to the regulation of EIA to ensure that special conditions of the living area where the project is to be carried out are adequately reflected in the EIA reports.

4.2. JUDICIAL PROCESSES REGARDING THE ENVIRONMENT

Despite the legal framework that protects environmental rights in Turkey, there are still a number of serious obstacles confronting citizens and NGOs within the judicial process. Those who carry out a legal struggle against violations of environmental rights via the justice system are faced with shortcomings regarding existing regulations and administrative practices. The major issues among these are as follows:

78 Turkey Progress Report for the Year 2014, European Commission, SWD (2014) 307, Brussels 08.10.2014, p. 70, http://www.ab.gov.tr/files/ilerlemeRaporlariTR/2014_ilerleme_raporu_tr.pdf (e.t.: 11.09.2015).

79 EIA Directive, article no 6(1), article no 26 (1).

One of the major issues encountered in lawsuits filed against applications and administrative decisions that violate environmental rights is the high cost of expert opinions needed during the preparation period.

- The issue of legal assistance in environmental lawsuits has not been considered deeply enough and improvements need to be made in this area. Although it is possible for citizens and non-governmental organizations to obtain legal assistance for environmental lawsuits, normal legal assistance procedures usually happen too late given that environmental projects are often subject to urgent expropriation.
- Another major issue in the lawsuit process is closely related to the trial procedure. The modification made to the Code of Administrative Procedure on 18 June 2014 introduced the "urgent trial procedure".[80] In cases where this procedure is applicable, it is observed that the term for filing a lawsuit is reduced from 60 days to 30 days, applications made to the authority who carries out the procedure or the higher authority prior to lawsuit do not suspend the term for lawsuit, no objection can be made to resolutions of suspension of execution, the possibility of appeal against the resolutions is reduced to 15 days and the resolutions made following appeal are final. Undoubtedly, limiting the period of filing a lawsuit to 30 days in the urgent trial procedure dramatically endangers the right to legal remedies. Particularly in environmental lawsuits, owing to the technical aspect of the projects, opinions regarding these technical areas, analyses and scientific data need to be added to the file. In other words, the preparation of expert opinions to be added to the file requires longer than a month.
- When we look at recent State Council decisions, we see that the qualification of bar associations for lawsuits was not accepted. The main justification behind these decisions is that the legal, personal and current benefits of bar associations are not affected considering the purposes bar associations are founded upon.
- In environmental lawsuits in Turkey, courts appraise very high expert fees. Considering that experts need to be consulted in almost every lawsuit wherein essential inspection is made, expert fees at the end of the trial are high. This appears to be another major obstacle facing citizens and non-governmental organizations claiming their rights in environmental lawsuits.
- The distinct lack of judicial professionals who specialize in the environment is another major issue preventing access to justice.
- Pursuant to current regulations, it is not possible for ordinary citizens who are not a party to the lawsuit to gain access to local court decisions. The access of citizens to Supreme Court decisions is subject to the discretion of the Supreme Court, however, there are no clear principles as to how the Supreme Court uses this discretion. Although it is currently possible to gain access to Supreme Court decisions via the internet, the web pages that enable this are paid sites. This poses an obstacle to the access and sharing of information regarding issues such as environment on which specialization is limited.
- The lack of application of the resolutions on suspension of execution issued by courts is another major issue that damages the trust that citizens and NGOs place in justice with regard to the environment. Further to this, even when the court issues a resolution on suspension of execution, transmission to related administrative units can take a long time. During this waiting period the project may continue and be completed thus bringing about irrevocable consequences for the environment and weakening the faith of citizens in the justice process.

80 **Code of Administrative Procedure, article 20/A.**

Suggestions:

- If the requested expert costs were offered via an independent organization and paid for by the public this would eliminate issues surrounding the high cost of expert opinion.
- Issues related to legal assistance on environment cases may be avoided by way of developing expertise on the environment within legal assistance groups. It would be useful to create a pool of experts who specialize in environmental lawsuits, such a lawyer group could then offer legal assistance. This way, lawyers who have specialized in this field of study can get involved in the lawsuit faster.
- The 30 days term for filing and resolving a lawsuit, examining the project, preparing for the lawsuit and completing the judgment process is not appropriate for the ordinary flow of procedures. In order to eliminate this problem, the term for filing a lawsuit must be lengthened through a modification of existing regulations to 60 days, as it was prior to the modification made in 2014.
- It would be appropriate to recognize the qualifications of bar associations for filing lawsuits on issues regarding the environment, as everyone is entitled to the value of the environment. It must be clearly established in the existing law that bar associations are qualified to file lawsuits regarding the environment and be a party of that lawsuit.
- To ensure the prevention of non-recoverable harm to the environment, the Administrative Court must issue a decision on suspension of execution. In many cases where decisions on suspension of execution are not made or are declined, the activities carried out until the lawsuits are finalized can often cause significant damage. Following this, even if a favorable decision is made as a result of the trial, the ecosystem in the project area has by then already experienced irreparable harm. In these cases it is either not possible to repair the damage caused or to do so would require very high costs. The regulations therefore need to be reorganized in such a way to eliminate loss of rights.
- The resolution made by the Council of State in the Lawsuit of Lagoon of Yumurtalık[81] regarding expert fees is a positive example. The Council of State decided that expert fees need to be paid by the defendant administration or the finance treasury and that the party who is found guilty at the end of the lawsuit should pay this fee after the inspection of the procedure was completed. Despite this decision however, the lawyers and environmental organizations who were contacted for fieldwork, mentioned that in other lawsuits their requests for the administration or finance treasury to pay the expert fee in accordance with the decision of the Council of State were declined and the parties were asked to pay the expert fee. It would be more appropriate if the Council of States' resolution, which is a positive step forward in environmental law, was incorporated into the process of legal assistance through a modification made to the regulations.
- Requiring judges who rule on environmental cases to take part in environmental law training, including the international aspects of environmental law, would make a significant contribution to future decisions related to environmental rights. Communicating the environmental perspective of the European Court of Human Rights in such training programs would be particularly appropriate. It would also be appropriate to add a separate topic for the environment to the European Court of Human Rights jurisprudence training given to judges and prosecutors for this purpose.

81 **Council of State, 14. D., T. 25.06.2014, E. 2012/1672, K. 2014/7044.**

- In order to eliminate the problem of restricted access to resolutions issued at the end of environmental lawsuits, it would be beneficial to provide open access to all court decisions via UYAP (national judiciary informatics system) for citizens and lawyers without discrimination. In addition to this, establishing a network of coordination will ensure that first instance court decisions in particular are shared among environmental lawyers. This would constitute a major step forward in the further sharing of information.

5. Conclusion: General Evaluation

This report aimed to address the issues experienced by local citizens and non-governmental organizations in access to justice in Turkey. The report aims to make a contribution to the judicial reform efforts by developing policy proposals to resolve these issues. It also aims to provide support the efforts of communication between civil society and decision makers to create common solutions for judicial reform.

The report addresses *women's access to justice* based on the legal assistance mechanism. In this section of the report, the issues found with regard to women's need for access to legal assistance are classified under two main topics. The first is the inadequacy of legal assistance services provided by the bar association and the shortage of legal infrastructure of other institutions that provide information. The second is support for women in terms of legal assistance as well as lack of cooperation between organizations.

The inadequacy of legal assistance services includes the list system in appointing lawyers, issues regarding application documents and certain issues related to lawyers who provide legal assistance. Suggestions for solutions to these issues are offered through a consideration of current practices in the Netherlands. The restrictions on physical access to legal assistance services can be resolved without changing the regulations. It is suggested that a Legal Assistance Office is opened in the city center of Konya province, a legal information service via phone is made available, the number of refuge houses for women is increased and that a law clinic is commissioned in Selçuk University. Deficiencies in the legal infrastructure of organizations, insufficiency and lack of connection between these organizations can also be resolved without making any modification to the regulations.

On the other hand, there is a well-established belief in society that in cases of domestic violence and issues victimizing women, the issue needs to be resolved by social mechanisms without referring to jurisdiction. Whilst this has some positive aspects such as quick and cost-free resolution of certain issues, it may also bring about serious issues in cases that are susceptible to being confined in a certain area such as violence and divorce. The relationship between NGOs and public institutions which provide information and support to women with regards to law and justice mechanisms must be questioned. Here the relationship between bar associations, NGOs and universities is crucial. It must be established how many applications for support received by civil society result from legal needs and how many evolved without referring to the law. Settlement and mediation are important alternative dispute settlement mechanisms that have positive aspects such as offering quick solutions, mitigating tangible burdens and reducing the workload of jurisdiction.

Firstly, a detailed analysis showing the current capacity of organizations and the relationships between them must be made in order to increase the current capacity of institutions, reinforce connections between organizations and establish new relationships. In this way, organizations with incomplete or insufficient legal infrastructure can be identified and the bar association and university can provide support on these matters. If bar associations and universities organized training programs together on these matters this would not only increase the capacity of organizations that provide information to women but also reduce the burden placed upon bar associations.

The fieldwork on access to legal assistance conducted in Konya can be considered a significant contribution in terms of demonstrating these issues and resolving them with the participation of local actors at points which comply with practices in the Netherlands. However, the study also demonstrates the requirement for a much larger and deeper field of research. First and foremost, the purpose of this fieldwork should be to establish the legal requirements of legal assistance. What people know about legal assistance must be demonstrated. In the second stage, the kind of legal needs that people have and how the legal assistance mechanism can be used for fulfilling those needs must be established. While establishing these needs, what people expect from legal assistance must also be considered. Such work would make it easier for the bar association to convince the board of directors that these issues can be solved and would facilitate encouraging the bar association to take a more active role in such matters. It would create a framework for similar works to be made in other bar associations across Turkey as well. Cooperation between the university and the bar association is also critical here.

The section of the report addressing *children's access to justice* establishes the practices of justice for children and the issues regarding cooperation between individuals and organizations taking part in the inquiry process. The section covers access to justice for children at the stage of inquiry.

Social inspection is indispensable for a child protection and justice system which considers the characteristics and needs of children. The position of social inspection in the justice system must be reinforced and an organization model that enables social workers to act independently of the jurists that they work with, as well as equipping them to conduct any research that their profession requires, must be developed. It is expected that studies will be conducted for research into the appropriate model as it is one of the steps of the Child Protection Coordination Strategy.

In order for employees who are employed in the area of juvenile justice to work in cooperation for a joint purpose, each member of the profession needs to have similar expertise. Earning the necessary expertise for working with children is a major obligation of the units coordinating this system. It must be ensured that trainings are institutionalized, and for this purpose, training programs must be established that continue throughout the term of the profession, are repeated periodically and are subject to assessment and evaluation. Related organizations must also be established.

Furthermore, to make a more comprehensive transition to a restorative justice paradigm will eliminate the highlighted fundamental shortcomings that face criminal justice for children. In terms of daily needs, it is not possible to use the current juvenile justice system in the way it is meant to function. This is because the child protection system and the services in the current system do not possess solid grounds for any practice of restorative justice and instead refer to extrajudicial means. While these services are not impossible to provide, they face a number of problems. For instance, it is impossible to protect the benefit of a child when they remain outside the supervision of an adult for a long time. Likewise, it is impossible to protect the benefit of a child without an inspection official for guidance or by using a program which is found to be dysfunctional. These problems can be solved by effectively implementing the concept of restorative justice. Therefore, a paradigmatic change in the way the juvenile justice system is viewed must be followed by popularizing the services related to protective and supportive measures stipulated in the laws. It is necessary to regulate the trial procedures, the duties and responsibilities of the parties that will take part in the process and the paths to be taken in accordance with the purposes of restorative justice. This includes the following;

- Readily available restorative justice applications such as settlement must be revised according to both these purposes and to the overall purposes of juvenile justice. They must be re-organized so that they are given a pedagogical formation.
- Facilities of referring to extrajudicial means such as postponing the filing of public prosecution must have an expanded scope so that they can be used with a restorative justice perspective in mind. Their rules of practice must therefore be re-organized.
- Methods such as societal and family group conferences must be organized in such a way that they ensure the participation of families and responsible institutions who can then step in as soon as a child is charged with a crime. In many countries, whenever recourse is made to alternative methods, the services required to be offered to the child and his/her family are performed via non-governmental organizations. NGOs who conduct studies related to the system of justice in Turkey have stated that they are ready to contribute and various projects have already been conducted with the cooperation of NGOs and the Ministry of Justice. Despite this however, it is necessary to create a service provision model that satisfies the professional conditions required for fulfilling an obligation defined therein. In this model, the services that are normally provided within the justice system are instead provided via private enterprises. In order to implement this approach, which is considered to be useful in terms of providing services in an extensive and effective manner, standards for the service and then for the candidate organizations that could provide this service must be established and an accreditation model must be created. Since it has been seen that privatizing such services has various drawbacks in addition to its advantages, protecting the child and his rights and benefits must be considered a priority while establishing the standards. A procedure that would ensure utilizing past experiences must also be followed in order to create the model accordingly.

The re-organization of the juvenile justice system with a restorative justice approach is a significant need in Turkey. However, this is a long-term objective. First, a strategy that indicates the path to be taken in order to accomplish this goal is needed. It can be said that such a strategy actually exists. The Child Protection Strategy prepared by the Ministry of Justice, with application plans developed by the Ministry of Family and Social Policies and expected to be commissioned in 2014 to 2019, is a document that may serve this purpose. This strategy can contribute to ensuring the juvenile justice system operates with a restorative justice approach in the near future. It can also be revised and input can be made to the planning stage of the next period if further revision is needed.

It is important to take the steps for ensuring regulations which comply with the applicable juvenile justice principles are fully implemented in order to obtain results in the short term. The gains made from these steps will facilitate the development of a juvenile justice system in line with the restorative justice approach. Among the most important changes to be made are organizing mechanisms such as appointing social workers to the chief public prosecutor's offices and ensuring that social inspection and social service support is commenced as soon as possible following the moment of arrest. Equally important are hearing the opinions of the child and his family and ensuring that they take part in the resolution. These changes made at this stage of the investigation will reinforce the access of children to justice by increasing the facilities for referring to extrajudicial means.

The section of the report named **access to justice in terms of environment** addresses the access of citizens to environmental information, their participation in decision-making processes and the issues encountered in EIA processes and environmental lawsuits based on the case of Trabzon. Access to justice in terms of environment covers a broader area than judicial methods such as legal assistance, access to legal and technical information, access to courts and rights of representation in courts. The participation and notification of citizens in decision-

making and planning processes is one of the most important mechanisms for fulfilling the needs of citizens for justice on environmental matters.

As observed in the case of Trabzon, issues encountered at different stages of access to environmental information and environmental decisions lead citizens and NGOs to prevent environmental violations via jurisdiction. This increases the workload of judges responsible for administrative jurisdiction, reduces its efficiency and brings about qualitative and quantitative issues in the judicial services offered to citizens.

Therefore, as environmental rights are not given adequate priority in terms of judicial reform and access to justice in Turkey, this matter needs to be included more in judicial reform policies and practices. In order to do so, the opinions of the public, citizens and NGOs regarding the application and regulation issues they encounter, must be considered and established through extensive field research. Finally, in light of such research, a thorough regulations and administrative structure reform relevant to these requests must be made.