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# DECISION ANALYSES SERIES

# 3

## Analysis of the Decision of the Ombudsman Institution on Child Monitoring Centers

Atty. Selmin Cansu Demir



AMER  
Association  
for Monitoring  
Equal Rights

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## INTRODUCTION

The Ombudsman Institution (Kamu Denetçiliği Kurumu), one of the non-judicial oversight bodies of the administration, issued an important recommendation on Child Monitoring Centers (CMC) on 16.06.2023. According to the application numbered 2022/19030, the applicant stated that children brought to the CMCs due to suspicion of sexual abuse should be allocated funds for each center to meet their daily nutritional and clothing needs, that most of the CMCs working on a 24/7 basis were located in city centers, that in some cities, if there were no CMCs, the victimized children were brought to CMCs located in remote locations, and that there might be problems in meeting the daily needs of the victimized children and their families during the procedures there. The applicant requested a recommendation to allocate separate funds to CMCs to meet the daily needs of victimized children in the status of children in need of protection, stating that these needs were not met in hospitals, that there were no funds allocated to this issue by the administrations in coordination boards, and that the needs of children were met by the efforts of the staff and irregular donations. The administrations subject to the application were the Ministry of Family and Social Services, the Ministry of Health, and the Ministry of Justice.

The decision was rendered by the Ombudsman regarding the functioning of CMCs with the aim of structuring the juvenile justice system with a restorative justice approach based on the principle of protecting the child and safeguarding the best interests of the child. The Ombudsman advised the Ministry of Health, the Ministry of Justice, and the Ministry of Family and Social Services to take into account the following recommendations on Child Monitoring Centers:

- The opinions of relevant public and non-governmental organizations should be taken into consideration in the ongoing work on the Regulation on Child Monitoring Centers,
- The relevant Regulation should include clear and decisive regulations to meet the daily needs of children who are victims of sexual abuse while they are in the centers,
- Coordination and cooperation between the relevant administrations should be established and the ongoing work should be completed as soon as possible in accordance with the regulation in the first paragraph of Article 11 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, titled “Principles” that sets forth “Each Party shall establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person responsible for their care,”

- The above-mentioned recommendations on Child Monitoring Centers should be taken into account in the work of the Advisory Board, which was established to “increase the effectiveness and efficiency of the services provided to persons in need of judicial support and victims of crime, to make suggestions regarding the solution of the problems encountered in service provision and to ensure the coordination of the services provided” as stated in Article 12 of the Presidential Decree No. 63 on Supporting Victims of Crime, Regulation on Child Monitoring Centers should be completed and published as soon as possible.
- The above-mentioned recommendations on Child Monitoring Centers should be taken into account in the work of the Advisory Board, which was established to “increase the effectiveness and efficiency of the services provided to persons in need of judicial support and victims of crime, to make suggestions regarding the solution of the problems encountered in service provision and to ensure the coordination of the services provided” as stated in Article 12 of the Presidential Decree No. 63 on Supporting Victims of Crime,
- Regulation on Child Monitoring Centers should be completed and published as soon as possible.

This study aims to analyze the above-mentioned decision and assess the status of the Ombudsman Institution within the framework of the standards of national human rights institutions. The decision is analyzed within the framework of the “Principles Relating to the Status of National Institutions” established for the promotion and protection of human rights (Paris Principles) adopted by the United Nations by Resolution 48/134 of 20 December 1993 and the “Principles on the Protection and Promotion of the Ombudsman Institution” (Venice Principles) endorsed by the Committee of Ministers of the Council of Europe on 2 May 2019.

Since independent national human rights institutions are considered to be important mechanisms for ensuring the implementation of the United Nations Convention on the Rights of the Child (the Convention), to which Turkey is a party, and since the decision is directly related to the rights of the child, analysis of the decision also incorporates the General Comment No. 2 “The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child” published by the United Nations Committee on the Rights of the Child in 2002. In its General Comment, the Committee defined the role of these institutions as independently monitoring the progress made by States in complying with and implementing the Convention and doing all possible work to ensure full respect for the rights of the child. The Ombudsman Institution, one of the independent human rights institutions established in Turkey, stated in its Child Rights Strategy Document

prepared and published with UNICEF in 2019 that the Ombudsman aims to seek, protect and realize the rights of all children living in Turkey, and in this context, the Ombudsman works with the vision and mission to act in accordance with the Convention on the Rights of the Child with the recognition that all children have independent rights, and to listen to and take into account the views of children by applying the principle of the best interests of the child in all complaints concerning children.<sup>1</sup>

Further, in its concluding observations on Turkey in June 2023, the UN Committee on the Rights of the Child welcomed the establishment of the Human Rights and Equality Institution and noted the Ombudsman Institution's handling of child complaints, making two critical recommendations on these two institutions: First, that the institutions should take further steps to ensure their independence, including funding, mandate, immunity and membership, in full compliance with the Paris Principles. The Committee also recommended that the institutions strengthen mechanisms to receive, investigate and address complaints filed by children in a child-sensitive and child-friendly manner, ensuring the privacy and protection of child victims; carry out monitoring and follow-up work; and take steps to ensure visibility among children across the country.<sup>2</sup>

Although this study consists of an analysis of a single Ombudsman decision that resulted in a recommendation, in light of the standards described above, by focusing on the research, evaluation and decision-making processes of the Ombudsman, this study aims to the ways in which the institution has impacted access to justice for disadvantaged groups and how it has used an important opportunity to contribute to public policy-making on children.

## **FINDINGS ON THE REVIEW AND EXAMINATION OF THE APPLICATION**

In this section of the study, the review and examination conducted by the Ombudsman following the application was filed is evaluated. In this context, the institutions from which information and documents that may shed light on the subject matter of the application were requested, whether on-site examinations were conducted, whose opinions were consulted, the compliance of the legislation in the decision with the subject matter of the application, and the time elapsed between the application and the decision were analyzed.

1 <https://kdkcocuk.gov.tr/kdk-pdf/cocukhaklaristratejisi/mobile/index.html> (Erişim Tarihi: 20.12.2023)

2 Concluding observations of the Committee on the combined 4th and 5th reports of Turkey: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FTUR%2FCO%2F4-5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2FTUR%2FCO%2F4-5&Lang=en) For unofficial translation see: [https://epi-turkiye.net/web/wp-content/uploads/2023/06/CRCCTURCO4-5\\_52894\\_TUR-\\_Revize-14.6.23.pdf](https://epi-turkiye.net/web/wp-content/uploads/2023/06/CRCCTURCO4-5_52894_TUR-_Revize-14.6.23.pdf) (Accessed on 20.12.2023)





## Assessment of the Information and Documents Collected

According to the Paris Principles, national human rights institutions should hear all persons and collect all information and documents necessary to assess the situations falling within their jurisdiction. Under the Venice Principles, the ombudsman should have the right to request the cooperation of any person or organization that may assist in the investigation and to have unrestricted access to all relevant information and documents. This right should include unhindered access by the ombudsman to institutions and persons, including those deprived of their liberty. In connection with these standards, the Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution stipulates in Section 5 titled “Examination and Investigation” that the Ombudsman would examine and investigate all kinds of actions and transactions, attitudes and behaviors of the administration in terms of compliance with law and equity and good governance principles within the understanding of justice based on human rights; if the subject matter of the complaint is related to human rights, fundamental rights and freedoms, women’s and children’s rights, on-site investigation and research may be conducted, information and documents may be requested from the administration, experts may be appointed and witnesses may be heard.

When the content of the decision subject to the study is examined, it is seen that after the summary section on the claims and demands of the application, only the statements of the administrations regarding the application and the relevant legislation are included. Accordingly, within the scope of its authority to examine the application, the Ombudsman sent information and document requests to the Ministry of Justice, the Ministry of Health, the Ministry of Interior, the Union of Turkish Bar Associations and the Ministry of Family and Social Policies and only included the responses in the decision. Apart from the aforementioned administrations, there is no information in the decision that the opinions of non-governmental organizations working in the field of children’s and women’s rights were requested. Although the opinion received from the Union of Turkish Bar Associations on the application is very important in terms of revealing the extent of violations of rights against children and identifying the problems, there is a need to consult the experience and opinions of relevant non-governmental organizations in order to evaluate the actions and measures of the administration subject to the application in detail, to see the experiences of children from a multilateral perspective and to find effective solutions to rights violations.

As reflected in the aforementioned decision, there has been criticism of the pluralistic representation of the Ombudsman Institution. According to the Paris Principles, the



selection of members of national human rights institutions should be carried out in accordance with procedures that allow for all guarantees to ensure the pluralistic representation of civil society particularly concerned with the promotion and protection of human rights. The Paris Principles also state that national human rights institutions should, as a modus operandi, foster relations with civil society organizations working in the field of human rights and in particular the protection of vulnerable groups such as children, persons with disabilities and migrants. In the same vein, the Committee on the Rights of the Child's General Comment No. 2 states that national human rights institutions should be composed of civil society organizations, social and professional organizations, and experts working in the field of children's rights to ensure pluralistic representation, and that civil society organizations play a vital role in the promotion of human rights and rights of the child and should work in cooperation with human rights institutions. When these international standards are evaluated together, it becomes apparent that it is an important necessity for the Ombudsman Institution, which cannot provide pluralistic representation with its members as in Turkey, to strive to improve its cooperation with civil society organizations in order to compensate for this lack of representation.

## **Assessment of the Authority for On-Site Inspection**

In its recommendation, the Ombudsman did not use its authority to conduct on-site examinations and investigations in case the subject matter of the complaint is related to rights of the child pursuant to Article 22/4 of the Regulation on the Procedures and Principles for the Implementation of the Law on the Ombudsman Institution, as well as its powers to appoint experts, to listen to witnesses or relevant persons pursuant to Articles 24 and 25 of the Regulation, in addition to the powers it has in accordance with the Paris and Venice Principles.

According to the response to a request for information made to the Ombudsman Institution, the Ombudsman appointed experts for around 125 files per year between 2017 and 2021, on-site examinations were conducted for 2 files per year between 2019 and 2021, and witness and related person hearings were used for one file per year. Accordingly, it is understood that expert witnesses were consulted for approximately 2.5% of the cases, while the authority to conduct on-site examinations and to hear witnesses/interested persons was used too little to even be reflected in the statistics; and it is assessed that a supervisory authority that does not sufficiently use the investigation methods within its authority may be limited in its ability to shed light on the problems and to build its power before the administration<sup>4</sup>

3 Karan, Ulaş ve Sever, D. Çiğdem. "Bir İnsan Hakları Koruma Mekanizması Olarak Ulusal Eşitlik Kurumları Kamu Denetçiliği Kurumu ve Türkiye İnsan Hakları ve Eşitlik Kurumu Örneği". Eşit Haklar İçin İzleme Derneği. İstanbul 2020.

4 Aktaş, Kadir. "10. Yılında Kamu Denetçiliği Kurumu Uygulamalarının Geliştirilmesi Sorunu (Bir Uygulamayı Değerlendirme Makalesi)." Yasama Dergisi 45 (2022): 47-94.

According to General Comment No. 2 of the Committee on the Rights of the Child, human rights institutions should be empowered to investigate complaints lodged on behalf of children or directly by children, and should have the authority to interview witnesses, access relevant documents and have access to institutions where children are held in order to carry out such investigations properly. In the relevant laws and regulations, institutions should be granted the right to access children under alternative care of whatever type and all institutions where children are placed for the purpose of private interviews. Although these powers are granted to the Ombudsman Institution by the relevant national legislation in line with international standards, it is understood that effective methods such as on-site investigations, appointing experts and listening to the relevant persons are not used by the institution in practice. However, in places such as the CMCs, where children are subjected to various procedures related to their right to health and access to justice and have to spend a certain period of time, the nature of the examination to be conducted by the Ombudsman is vital in terms of identifying the failing aspects of the service provided to children and systemic problems. Indeed, in the application no. 2015/6136 regarding allegations of unlawfulness in Erzurum Removal Center, which is one of the limited number of decisions of the Ombudsman in which it conducted on-site examinations, the Ombudsman offered comprehensive findings regarding the persons staying in the center and made detailed recommendations to the relevant administrations, from measures to improve the food for children and other disadvantaged persons to the steps to be taken to ensure that children can use playgrounds and their right to education. When the similarities between the decision described and the decision subject to the analysis are evaluated, the importance of on-site investigation becomes clear. It was considered that the Ombudsman did not sufficiently utilize the opportunity to provide a comprehensive situation assessment of the areas that the relevant administrations need to improve and thus to meet the resistance of the administrations to comply with the recommendations more strongly by only conducting desk-based investigations and research.

## **Assessment of Child Participation**

During the investigation phase of the application subject to the analysis, the Ombudsman did not conduct on-site examinations, nor did it listen to witnesses and relevant persons. Considering that the persons concerned with the application are children, whose opinions are not given sufficient importance in society and who do not have sufficient knowledge and experience in using the application mechanisms against rights violations, one can argue that the consequences of the Ombudsman's failure to use these powers are even more severe.

5 <https://paylasim.ombudsman.gov.tr/dokuman/documentuploads/KDK-2016-YILLIK-RAPORU/KDK-2016-YILLIK-RAPORU.pdf> and <https://www.kdkcocuk.gov.tr/kdk-pdf/kdk-kararlar-derlemsi.pdf> (Accessed on 22.12.2023)

According to General Comment No. 2, under the right to participation guaranteed by article 12 of the Convention, national human rights institutions have an important role to play in ensuring that the views of children on matters of concern to them are given due respect by governments and society as a whole, and this general principle should apply to the establishment, organization and activities of national human rights institutions. In this context, institutions should have direct contact with children, ensure their participation in relevant processes and consult with them.

In line with the principles of the general comment, the Ombudsman, while explaining its mission and vision regarding rights of the child in its Child Rights Strategy, stated that it acts in accordance with the Convention on the Rights of the Child and that it hears and takes into account the views of children by applying the principle of the best interests of the child in all complaint applications concerning children. However, in its concluding observations on Turkey mentioned earlier, the Committee on the Rights of the Child emphasized that the Ombudsman needs to improve in its child-friendly handling of complaints concerning children.

According to the Turkish Statistical Institute, 13.7% (approximately 31,900 children) of the 232,739 children who were brought to security units as victims in 2022 were subjected to judicial proceedings for sexual offenses. Judicial statistics on finalized investigations under the Turkish Criminal Code by Public Prosecutors' Offices reveal that in 2021, 44,880 criminal offenses were committed within the scope of sexual abuse of children. These data are quite striking in terms of revealing how many children's lives are directly affected by the center's and also showing that the experiences and opinions of such a large group are not taken into account when making decisions.

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As a result of the failure of the Ombudsman to exercise its powers of examination and investigation meticulously, the decision did not discuss the problematic areas such as how the procedures regarding children under suspicion of sexual abuse under the conditions described in the application affect children, to what extent it reflects on children's self-expression and access to justice, what consequences it leads to in terms of the obligation of effective investigation, etc., and did not include the actions and procedures of the administration that pose a risk of causing secondary victimization of children. However, in investigations carried out on suspicion of sexual abuse of children, the following practices should be implemented in order to reveal the material truth and to ensure rights of the child. To this end:

- 6 Güvenlik Birimine Gelen veya Getirilen Çocuk İstatistikleri, 2022 see: <https://data.tuik.gov.tr/Bulten/Index?p=Guvencilik-Birimine-Gelen-veya-Getirilen-Cocuk-Istatistikleri-2022-49662> (Accessed on 19.12.2023)
- 7 The Judicial Statistics 2022 report has not yet been released. For the Judicial Statistics 2021 published by the General Directorate of Judicial Records and Statistics, see: <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/310520221416422021H%C4%B0ZMETE%C3%96ZELK%C4%B0TAP.pdf> (Accessed on 19.12.2023)

- Children should be provided with safe environments where they can express themselves without shame, fear, blame or embarrassment,
- The authorities should fulfill their obligation of effective investigation by informing in detail about the evidence that can support their statements,
- The authorities should investigate children’s protection needs and take the necessary measures, The authorities should ensure their privacy and security,
- The authorities should prevent them from encountering suspects/defendants and their relatives,
- The authorities should inform them about their rights and judicial processes in a language they can understand,
- The authorities should enable procedures to be handled quickly and easily from a single source instead of exhaust children by complex judicial procedures.

In this way, the CMC practice can serve to remove violations of the right to a fair trial and obstacles to access to justice by balancing the right to defense of the suspect/accused and the best interests of the child. However, the opportunity to develop such discussions on the practice and to look at the issue from the children’s perspective was eliminated due to the fact that the Ombudsman was not satisfied with the responses received from the relevant administrations during the examination and review processes.

The case was not addressed from the perspective of children due to deficiencies in the review processes, nor did the Ombudsman utilize other avenues to ensure children’s participation in the processes that concern them. General Comment No. 2 recommends ways of realizing child participation, such as establishing children’s councils with advisory status to national human rights institutions. Similarly, in the case of Norway, there are expert groups where the ombudsman, together with advisers, can meet with volunteering children with different life experiences: In these groups, children from different backgrounds, such as those who have been subjected to sexual violence, who have experienced violence, whose parents are in prison, or who belong to ethnic minorities, can offer suggestions to the ombudsman and their views can be consulted on how services in institutions can be improved.<sup>8</sup> Looking at other examples of good practice, it is seen that ombudsman institutions have the opportunity to address incidents from children’s perspectives through formations such as children’s panels, children’s commissions and children’s advisory groups, but there is no similar system in Turkey to oversee children’s participation rights and benefit from their consultancy.<sup>9</sup> Addressing this deficiency would be an important step towards the realization of children’s rights both before the institution and the authorities it oversees.

8 Işıklı, Yasemin Mamur and İnce Dođukan. “Çocuk haklarının korunması ve geliştirilmesinde örnek bir model: Norveç Çocuk Ombudsmanı.” Ankara Barosu Dergisi 76.4 (2019): 51-74.

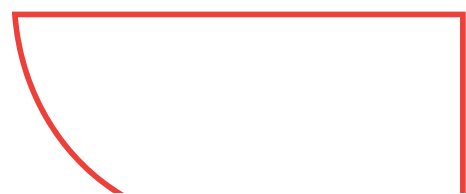
9 Önen, S. Mustafa and Ergüzel Enis. “İskandinavya Çocuk Ombudsmanlığı Sistemi ve Türkiye’ye Uygulanabilirliği.” Ombudsman Akademik 7.14 (2021): 33-65.

## Assessment of the Legislation Used in the Decision

The Constitution, the United Nations Convention on the Rights of the Child, General Comment No. 10 of the United Nations Committee on the Rights of the Child on the Rights of the Child in Juvenile Justice, General Comment No. 14 of the Committee on the Right to Prioritized Consideration of the Best Interests of the Child, The provisions of the United Nations Rules on Children Deprived of their Liberty (Havana Rules), the United Nations Standard Minimum Rules for the Implementation of the Juvenile Justice System (Beijing Rules), the Turkish Criminal Code, the Code of Criminal Procedure, the Regulation on the Use of Audio and Video Information Systems in Criminal Procedure, the Child Protection Law, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse were referred to in the “Relevant Legislation” section of the decision on the application on the problems faced in the functioning of CMCs.

In the Ombudsman’s Strategic Plan on the Rights of the Child, referring to the Convention on the Rights of the Child and related international instruments in its decisions is listed as an example of international good practice. It is a positive development that the aforementioned decision refers to some articles of the Convention and includes other international legal texts. However, there are some shortcomings in the underlying legislation. Although this General Comment, published in 2007, focuses on juvenile delinquency, the Committee published General Comment No. 24 on the same subject in 2019, which replaced General Comment No. 10 in the light of developments in science and law. Therefore, General Comment No. 10 in the decision is outdated. The decision also referred to the Havana and Beijing Rules, two important instruments in the field of juvenile delinquency. Although these rules apply to places where children are detained, the fact that legal documents of a similar nature that directly concern child victims are not included in the decision can be considered as another shortcoming. For example, the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime adopted by the Economic and Social Council at its meeting dated 22 July 2005 (2005/20) and the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice of the are legal texts to be used in relation to the application. Similarly, the decision does not include Article 12 regulating children’s right to participation, nor does it mention the General Comment No. 12 on the “Right of the Child to Participation” issued by the United Nations Committee on the Rights of the Child in 2009.

The “right of the child to freedom from all forms of Violence” in Article 19 of the Convention on the Rights of the Child and the Committee’s General Comment No. 13 published in 2011 on this article were not referred to in the decision. However, Articles 51 titled “Investigation” and 54 titled “Judicial Involvement” of the General Comment are guiding for the Ombudsman. These articles are as follows respectively:



*Investigation of instances of violence, whether reported by the child, a representative or an external party, must be undertaken by qualified professionals who have received role-specific and comprehensive training, and require a child rights-based and child-sensitive approach. Rigorous but child-sensitive investigation procedures will help to ensure that violence is correctly identified and help provide evidence for administrative, civil, child-protection and criminal proceedings. Extreme care must be taken to avoid subjecting the child to further harm through the process of the investigation.*

*Child victims of violence should be treated in a child-friendly and sensitive manner throughout the justice process, taking into account their personal situation, needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity.*

In addition to the international legal documents, some regulations in the national legislation were not referred to in the decision. For instance, the Regulation on the Establishment, Duties and Operation of the Child Branch Directorate/Bureau Chief of the General Directorate of Security, the Presidential Decree No. 63 on Supporting Victims of Crime, the Regulation on Judicial Support and Victim Services, the Prime Ministry Circular No. 2012/20 on Child Monitoring Centres, the Ministry of Justice Circular No. 176 dated 01.04.2021 on Judicial Interview Rooms and the Ministry of Justice Circular No. 170/1 dated 30.10.2022 on Criminal Investigations into Crimes Committed Against Sexual Immunity are texts that could have guided the evaluation of the appropriateness of the actions and conduct of the administration. The inclusion of current international and national documents directly related to the subject matter in the “relevant legislation” section of the decision might have strengthened parliamentary and public support for the Ombudsman and encourage administrations to comply with its recommendations.

## **Assessment of the Period between the Application and the Decision**

In the Ombudsman’s 2022 Annual Report, the average time to finalize the applications made to the institution was stated as 54.11 days.<sup>10</sup> In the decision subject to review, it is seen that the application was made on 20.12.2022, while the decision was rendered on 16.06.2023, 4 days before the 6-month deadline expired. Since the flow of time is not perceived in the same way by children and adults, delays in decision-making processes for long periods of time may have particularly negative effects on children going through developmental process. Therefore, it would be appropriate to prioritize the processes affecting children and to complete them

<sup>10</sup> <https://paylasim.ombudsman.gov.tr/dokuman/documentuploads/2022-Yillik-Rapor-web/2022-Yillik-Rapor-web.pdf> (Accessed on 15.12.2023)

as soon as possible.<sup>11</sup> However, in the time that has passed since the applications to the Ombudsman, the needs of children may change and the harm that may be caused to the child by remaining unresponsive for a long time should be evaluated in accordance with the basic principle in subparagraph f of Article 4 of the Child Protection Law, an expeditious procedure should be followed in proceedings related to children. In the light of the information explained, the Ombudsman should take faster action in decisions related to children and prioritize children's applications as a requirement of the principle of the best interests of the child.

## **FINDINGS ON THE IMPORTANCE OF THE POWER TO DRAFT A SPECIAL REPORT IN THE FACE OF LACK OF VENUE TO ACT EX OFFICIO**

The Ombudsman can only act upon application, contrary to the Paris and Venice Principles. The institution is not authorized to investigate and decide on human rights violations ex officio. General Comment No. 2 of the United Nations Committee on the Rights of the Child also states that national human rights institutions should investigate cases of violations of children's rights in their mandate, either on complaint or ex officio.

The "Expectations" section of the Ombudsman's 2022 Annual Report emphasized that it was important for ombudsmen to conduct ex officio examinations and investigations; in the vast majority of world practices, ombudsman institutions have the power to take ex officio action. Within the scope of these powers, it is stated that they regularly visited prisons, places where children are kept under surveillance, psychiatric centers, refugee camps and other similar places regardless of complaints, and that granting the institution the power of ex officio examination can make significant contributions to the establishment of a culture of human rights and to finding solutions to the problems of the disadvantaged groups in the society such as disabled people, children and women.<sup>12</sup>

Although it is important that the Ombudsman Law does not authorize the institution to conduct ex officio examinations and that the Institution has expressed the need for a legal amendment in this regard, Article 7 of the Law titled "Duties of the Chief Ombudsman and the Ombudsman" and Articles 40, 41 and 48 of the Regulation on the Procedures and Principles for the Implementation of the Law on the Ombudsman Institution stipulate that special reports can be prepared on issues deemed necessary without waiting for the annual report. Considering the above explanations, this authorization can be used as an effective method in combating violations of children's rights.

11 United Nations Committee on the Rights of the Child. General Comment No. 14 on the right of the child to the primary consideration of his or her best interests, Article 93 (2013)

12 <https://paylasim.ombudsman.gov.tr/dokuman/documentuploads/2022-Yillik-Rapor-web/2022-Yillik-Rapor-web.pdf> (Accessed on 21.12.2023)

According to the Paris Principles, institutions have a responsibility to prepare reports on the situation of human rights at the national level in general and on more specific issues. According to General Comment No. 2, national human rights institutions should organize visits to places where children are placed or cared for, prepare reports and develop recommendations to improve the situation, in accordance with article 3 of the Convention, which regulates the best interests of the child and imposes an obligation to ensure that the institutions, services and facilities responsible for the care and protection of children comply with established standards.

When one studies the ways in which this authority has been used, it is seen that the Ombudsman has published 10 special reports since its establishment in 2012.<sup>13</sup> When these reports are analyzed, it is understood that only one of them is directly related to children's rights. Accordingly, in the Special Report on Violations of Rights in Child Delivery and Poverty Alimony published in December 2019; the applications made to the institution on the subject, recommendations, responses of the administrations against the recommendations, meeting notes made with the relevant administrations, workshop outputs on the prevention of violations of rights in child delivery, research, statistics and examples of international practices were included and in this context, the conclusions and recommendations of the Ombudsman on the subject were conveyed.

Although analyzing the content and methodology of the relevant special report in terms of human rights and evaluating its compliance with rights of the child is beyond the scope of this study, the current stage should be taken into consideration in order to see the impact of the Ombudsman through its special reports. With the Law No. 7343 on the Amendment of the Execution and Bankruptcy Law and Certain Laws published in the Official Gazette (No. 31675) of 30 November 2021, all articles on child delivery and establishing personal relationship with the child were removed from the Execution and Bankruptcy Law No. 2004, and regulations on the subject were introduced in the Child Protection Law No. 5395. Subsequently, the "Regulation on the Execution of Writs and Measure Decisions on Child Delivery and Establishment of Personal Relationship with Children" was published in the Official Gazette (No. 31913) of 04.08.2022 and entered into force. In particular, the recommendations of the Ombudsman, which were included in the recommendations and the special report, such as the removal of child delivery from execution, the establishment of child delivery centers, the costlessness of the procedures regarding child delivery, the application of counselling measures on the custody obligor when necessary, and the counting of the prevention of personal relationship among the reasons for the change of custody, have found their direct place in the legislation. The legislative impact of the special report of the Ombudsman has shown that the authority to prepare special reports can be used as an important step in the development of children's rights.

13 <https://kdk.gov.tr/Yayinlarimiz/OzelRaporlar> (Accessed on 21.12.2023)



Similarly, the Ombudsman's Strategic Plan on Children's Rights stated that the authority to prepare special reports was a tool that could be used to make progress in the field of children's rights and that this tool could be used more frequently. It is also stated that through special reports, the Ombudsman, acting on behalf of children who are too disadvantaged to file a complaint on their own, would raise issues related to children's rights and demonstrate its determination in this regard. In the same strategic plan, the number of special reports initiated by identifying the places where children are disadvantaged was proposed as an indicator and it was announced that it was aimed to initiate 3 special reports in 2020. However, although the authority to authorize special reports has been sensitively addressed and emphasized in the strategic plan, the fact that special studies have not yet been carried out on this issue has made the Ombudsman open to criticism.

The Ombudsman's use of the special report authorization instead of being hampered by the lack of venue to conduct ex officio investigations fills a different gap in terms of ensuring children's rights. Even though the Ombudsman is the only institution that can receive applications directly from children and other persons on behalf of children, as discussed in the strategy plan, it is common for children to be concerned about the protection of confidentiality, to fear retaliation, to have developed the belief that it will take a long time for applications to be finalized, to lack information that they can apply free of charge, to assume that they will not be taken seriously, to be stigmatized, and to be concerned that their families will be affected differently. Thus, it is not realistic to think that children can use the application mechanisms effectively, and it is clear that these difficulties can only be overcome with additional efforts to make children's voices heard.

In such an important issue as sexual abuse of children, the fact that the use of the special report authority of the Ombudsman will be effective in terms of preventing violations of the rights of children, and that the Ombudsman can mobilize the relevant authorities to implement its recommendation by showing its determination in favor of ensuring children's rights should not be ignored. In the absence of the Ombudsman's ex officio examination authority in violation of the Paris Principles, the Venice Principles and General Comment No. 2, it should be considered that the Ombudsman should use its special report authority more until this authority is expanded.

## FINDINGS ON THE IMPACT OF THE DECISION ON DISADVANTAGED GROUPS

Pursuant to Article 6 titled “Principles of good governance” of the Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution, the Ombudsman should take into account the principles of equality and prevention of discrimination listed among these principles when examining the compliance of administrations with the principles of good governance, and in this context, it is clear that the Ombudsman should make a separate assessment in terms of disadvantaged children.

According to General Comment No. 2 of the United Nations Committee on the Rights of the Child, NHRIs should endeavor to reach all children, particularly those in the most difficult and disadvantaged situations. The Committee states that disadvantaged children include, but are not limited to, children under care or supervision, members of indigenous and minority groups, persons with disabilities, persons living in poverty, migrants and refugees, children living in the streets and children with special needs in areas such as culture, language, health and education. When the decision subject to review is examined, it is understood that no evaluation was made in terms of disadvantaged children at the stages of application, investigation of the application, content of the decision and publication of the decision and that the decision contains shortcomings in this respect.

Although it is not clear from the content of the decision who lodged the application, it is known that disadvantaged children may face difficulties in applying to the institution. In this context, “introducing special changes in complaint processes for refugees and other disadvantaged children” is stated as an activity scheduled to be implemented in the Ombudsman’s Child Rights Strategy Implementation Calendar prepared for 2018-2023. In view of the fact that migrant and non-Turkish-speaking children are open to the risk of all kinds of abuse due to their inability to express themselves comfortably due to the language barrier, it should be taken into account that a different system should be developed in order to enable these children to express their complaints comfortably.

When the evaluation, justification and decision sections of the decision subject to review are examined, it is seen that the application is not addressed in terms of disadvantaged children. Although it is understood that the Ombudsman requested

14 Kahraman, Nilgün. “Çocuk Haklarının Korunmasında Çocuk Ombudsmanlığının Önemi: Norveç Ve Türkiye Çocuk Ombudsmanlığı Karşılaştırması.” *Akademik Yaklaşımlar Dergisi* 11.2 (2020): 185-203.

information and documents from the relevant administrations in order to determine whether there was need for improvement regarding the functioning of the CMCs subject to the application and directed a number of questions to the administrations for this purpose, there was no question or request specific to disadvantaged children among them. In the relevant legislation section of the decision, Article 2 of the Convention, which regulates the prohibition of discrimination, is only mentioned and no examination and evaluation is made in terms of disadvantaged child groups.

The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, adopted by the United Nations Economic and Social Council (No. 2005/20) on 22 July 2005, stipulates that the support services provided to child victims and their families and the justice process should be based on the age, wishes, understanding and gender of the child, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste, socio-economic status and migration or refugee status, as well as the special needs of the child, including health, abilities and capacities, and that professionals should receive training on such differences.<sup>15</sup> The fact that such a finding, which may be included in the content of the recommendation, may encourage the relevant administrations to include disadvantaged children in their agenda in the steps to be taken on the subject has been ignored.

Further, it is observed that the decisions are not accessible to children. Although the decision is included in the decisions database of the Ombudsman website, it has not been added to its children's website,<sup>16</sup> a child-friendly version has not been published and it has not been translated into languages other than Turkish. Opportunities should be created to ensure access to the decision for all children and disadvantaged groups.

It is known that applications to national human rights institutions are generally made by educated, middle-aged, working men, and that people with disabilities, not knowing the official language, illiteracy, neurodevelopmental differences, etc. are unable to make their voices heard due to their unfamiliarity with the institutions and difficulties in accessing them.<sup>17</sup> According to the analysis of the applications made in 2022, 13,455 applications were made by men, while only 3,491 applications were made by women; when analyzed by age group distribution, it is seen that the highest number of applications were made by applicants between the ages of 35-44 with 30.74%, while 153 applications from children corresponded to 0.86% of the total applications.<sup>18</sup> As explained under the previous heading, since the Ombudsman does not have the authority to act ex officio, it would provide an important support

15 <https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf> (Accessed on 17.12.2023)  
<https://kdkcocuk.gov.tr/>

16 Naomi Creutzfeldt, Nick O'Brien and Marek Nowicki. *A Comparative Review on Ombuds: Recommendations of Action for the Turkish Ombudsman and Guidelines for the Ombudsman and Public Authorities*. Project on

17 Improving the Effectiveness of the Administrative Judiciary and Strengthening the Institutional Capacity of the Council of State. Council of Europe, August 2021.

18 See Tables 2 and 3: <https://paylasim.ombudsman.gov.tr/dokuman/documentuploads/2022-Yillik-Raporweb/2022-Yillik-Rapor-web.pdf> (Accessed on 21.12.2023)

line for children’s access to justice if it offers separate assessments and uses its authority to prepare special reports for children, who are among the leading groups that may experience intersectional discrimination (due to gender inequality, migration, disability, etc.) and have difficulty in accessing support mechanisms.

## **FINDINGS ON THE CONTENT OF THE DECISION**

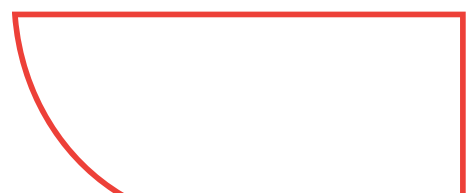
According to the Paris Principles, the national institution examines the laws in force, administrative provisions, as well as drafts and proposals for legislation, makes such recommendations as it deems appropriate to ensure that these regulations are in conformity with fundamental human rights principles and, if necessary, recommends the drafting of a new law, the amendment of the law in force, the adoption of new administrative measures or the amendment of existing ones. In line with these standards, according to Article 32 of the Regulation on Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution, if it is concluded that the complaint is appropriate as a result of the examination and review, a recommendation is made. The decision includes one or more of the recommendations such as acceptance of the wrongdoing of the administration, compensation for the damage, taking action or steps, amending the legislation, withdrawing or suspending the procedure, changing or correcting it, correcting the practice, reconciliation, taking measures. In addition, the institution may also make a recommendation other than the recommendations in the first paragraph.


The content of the Ombudsman’s decision subject to analysis is presented in the introduction of the study. The Ombudsman’s recommendation emphasizing the necessity to introduce a regulation is of a nature to fill an important gap in the recognition of this need, and the strengthening effect of the recommendation to receive opinions from non-governmental organizations during the preparation of the regulation, which paves the way for cooperation, should not be overlooked. Although it is a positive development that the institution has concluded that the relevant complaint is appropriate, the fact that the institution, in its 5-point recommendation, mainly emphasizes the issuance of the Regulation on Child Monitoring Centers, may prevent the focus on faster solutions to the problem of “children’s basic needs not being met in CMCs.” Until a regulation is introduced, it is possible to issue advisory decisions that will find solutions to the urgent needs of children, such as ensuring their best interests, their right to life and development and their right to protection from violence. In the content of the recommendation decision, it would undoubtedly be a more effective decision reflected in the daily life of children by correcting the current practice and showing the administrations that will take action regarding children and the administrations that can take measures until the regulation on this issue is introduced.

In the response received from the Ministry of Health, it was stated that the decision taken by the Management and Coordination Board of the CMC in 2012 stated that the medical care of the child while in the CMC would be provided by the hospital to which the CMCM was affiliated, and the in-kind needs of the child would be met by the Ministry of Family and Social Services. It has also been stated by the Ministry of Health that in cases where the in-kind needs of the child were not met by the Ministry of Family and Social Services, the hospital to which the CMC was affiliated supported the meeting of the relevant needs. When these explanations are taken into consideration, it is thought that an advisory decision can be made for the Ministry of Health to take the necessary actions and measures until the regulation is introduced, taking into account that medical care that does not meet the basic needs of children is not possible.

Although the applicant does not list the Ministry of Interior among the administrations complained about, according to Article 20/3 of the Regulation on the Procedures and Principles Regarding the Implementation of the Law on the Ombudsman Institution, in the event that the administration complained about is incorrect, the institution may ex officio determine the correct administration and proceed to the examination phase. It is also possible to include the Ministry of Interior among the administrations subject to the application due to the direct relation of the criminal investigations carried out regarding the suspicion of sexual abuse with the General Directorate of Security. This is because the procedures related to children subjected to abuse and crime are carried out through specialized police units established at the level of Children's Branch Directorate in Provincial Security Directorates and Children's Bureau Chief in District Security Directorates/Administrations. According to the provisions of the Regulation on the Establishment, Duties and Operation of the Children's Branch Directorate/Bureau Chief of the General Directorate of Security, the child police are responsible for ensuring the protection of children who are suspected of being in need of protection, who are reported to be subjected to neglect and abuse, and who are exposed to crime. In the same Regulation, it is set forth that the obligatory needs of the child under custody, such as shelter, nutrition, communication, cleaning and, when necessary, health treatment should be fulfilled by the Social Service Bureau/Section Chiefs in the Children's Branch/Bureaus of the Security Directorate. The Ombudsman, on the other hand, did not evaluate this area of duty of the Ministry of Interior when making its recommendation.

Finally, there is a need to make an important reminder regarding CMCs. In the concluding observations of the United Nations Committee on the Rights of the Child in 2023, it was stated that Child Monitoring Centers, which provide child-friendly and multidisciplinary investigations by providing support and services to child victims,





should strengthen their effectiveness by ensuring that they have adequate resources, including increasing the number and capacity of professionals such as social workers and psychologists, and that they have broad coverage throughout the State party. As stated in the concluding observations of the Committee, the problems related to CMCs go beyond the budget discussions on meeting the basic needs of children. Since it is beyond the scope of this study, it will be sufficient to mention two important problems that children are exposed to in practice:

- The provision introduced to paragraph 5 of Article 236 of the Code of Criminal Procedure in 2019, which implies that CMCs are centers for the crime of aggravated sexual abuse, causes problems in practice. This regulation suggests to practitioners that when taking the statements of children, a distinction should be made between simple or aggravated sexual abuse. For this reason, the prosecutor or the police may ask children informal questions that focus on determining the nature of the crime in order to determine the place where children's statements will be taken, and accordingly carry out the referral procedures to the CMCs. Although the Office of the Prime Minister's Circular No. 2012/20 on CMCs and the Ministry of Justice Circular No. 170/1 dated 30.10.2022 on Criminal Investigations on Crimes Committed Against Sexual Immunity states that the referral to the CMCs is essential for the crime of sexual abuse of children, referring children to CMCs on initiative by trying to learn the nature of the crime from children in a surreptitious manner not only causes secondary trauma to children, but also violates the obligation of effective investigation.
- Another problem in the working of the CMCs is about the provision added to Article 236/6 of the Code of Criminal Procedure stating that the victim's statements in the offence of aggravated sexual assault in Article 102 of the Code of Criminal Procedure will be taken in the same manner as Article 236/5. According to the Provisional Article 5 of the Code of Criminal Procedure, "The centers required to be established pursuant to the regulation made in the fourth and fifth paragraphs of Article 236 shall be put into operation until 1/9/2020 at the latest. Until this date, the current practice shall continue." However, on the date of the decision of the Ombudsman, although nearly 3 years have passed since the provisional article, the relevant centers have still not been established. With the Circular No. 170-1 dated 31.10.2022, it was stated that in investigations and prosecutions related to the aggravated sexual assault crimes regulated in Article 102/2 of the Turkish Criminal Code, the victim statement must be taken in the centers established by the Ministry of Health and providing services for these procedures, and in CMCs where these centers are not available, and in investigations and prosecutions related to the sexual assault and sexual abuse crimes regulated in the first paragraphs of Articles 102 and 103 of the Turkish Criminal Code, the victim

statement must be taken in CMCs or centers established by the Ministry of Health and providing services for these procedures. This situation causes a serious overcrowding in existing CMCs and shows that regulations introduced to protect children from secondary trauma can lead to loss of rights by becoming dysfunctional when necessary investments are not made.

In this section of the study, the review and examination conducted by the Ombudsman following the application was filed is evaluated. In this context, the institutions from which information and documents that may shed light on the subject matter of the application were requested, whether on-site examinations were conducted, whose opinions were consulted, the compliance of the legislation in the decision with the subject matter of the application, and the time elapsed between the application and the decision were analyzed.

## FINDINGS ON THE PUBLICATION OF THE DECISION

In the decisions section of the Ombudsman's website for children, there is a link to a report in which the examples of decisions compiled from the annual reports brought together as a result of the work carried out in the field of children's rights between 2013-2020 are published, with the aim of presenting the decisions of the Ombudsman in different areas related to children in a holistic manner. Apart from this report, there are also some decision summaries prepared specifically for children in the decisions tab, and accordingly, it is seen that the most recent recommendation decision dated 06.08.2021 regarding the application numbered 2021/6111 was published. It is understood that no new decisions have been published on the website for children of the Ombudsman for more than 2 years and that the child-friendly version of the CMC decision under review has not been disseminated. The relevant decision can only be accessed from the decisions section of the main Ombudsman website. The decision subject to the analysis is not visible for children and is not comprehensible for children as there is no version prepared for them. In the Strategic Plan on Rights of the Child, while justifying the strategic priority of raising awareness on children's rights in Turkey, the limited experience of children with public administrations is emphasized and it is stated that promoting the good practices of the Ombudsman can alleviate the concerns of children who are hesitant to apply. While publicizing decisions protecting

19 <https://rayp.adalet.gov.tr/resimler/1/dosya/170-1-nolu-genelge-8059639418-02-11-20221-48-pm.pdf> (Accessed on 17.12.2023)

20 <https://www.kdkcocuk.gov.tr/kararlarimiz> (Accessed on 17.12.2023)

children’s rights is listed among the good examples, it is stated that writing decisions in a language that children and families can understand will serve children and families of all generations to learn about children’s rights. Similarly, publishing decisions on children’s rights on the children’s pages of the Ombudsman, implementing the them in accordance with the Convention on the Rights of the Child and raising awareness on children’s rights in Turkey are listed among the first stage activities of the strategic priorities. In order to comply with these objectives adopted by the Ombudsman, a child-friendly version of the decision should be prepared, published and publicized on the Ombudsman’s website for children. In its concluding observations on Turkey in 2023, the Committee stated that the Ombudsman should take steps to ensure its visibility among children throughout the country. Both the Committee’s concluding observations and the road map in the strategic plan should be taken into consideration to increase the awareness and accessibility of the Institution among children.

## CONCLUSION

In its strategy on the rights of the child, the Ombudsman listed the implementation of children’s rights in line with the Convention on the Rights of the Child and progress in the field of children’s rights in Turkey among its strategic priorities. In this context, it is stated that the Ombudsman would be the leading institution in putting an end to situations and practices that violate children’s rights, and would also play an effective role by leading the prevention of situations that prevent the full protection of children’s rights and the elimination of systematic obstacles.

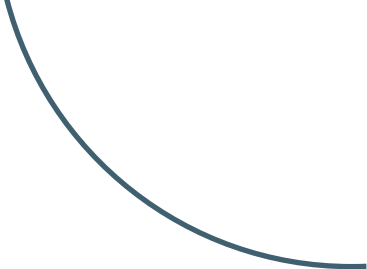
Children’s ombudsman offices are institutions that aim at the implementation of children’s rights, identify violations of children’s rights, act as a party on the side of the child, collect and report data on children and create public pressure.<sup>21</sup> In Turkey, taking into account the obstacles to children’s access to justice and the situation of children reflected in statistics, it is considered necessary to establish an independent children’s ombudsman office that can act ex officio; it is also recommended to establish a special unit dealing with children’s complaints within the Ombudsman and to further specialization.<sup>22</sup>

The fact that the Ombudsman receives applications on children’s rights from both children and anyone without any requirement of interest is a very positive step that can consolidate advocacy activities in the field of children’s rights. The relevant

21 Işıklı, Yasemin Mamur, “Türkiye’de Çocuk Refahı İçin Çocuk Ombudsmanlığı Önerisi”, *Journal Of Emerging Economies And Policy*, Vol.1, December 2016, S.125-135.

22 Dilaveroğlu, Arzu. “Çocuk Haklarının Korunmasında Kamu Denetçiliği Kurumu’nun Rolü.” *Ombudsman Akademik* 8.15 (2021): 103-133.





decision analysis also aims to show the aspects of the Ombudsman that can be improved, taking into account both its leading role and its obligations in terms of international standards. In the content of the decision analysis within this scope, when the examination and review processes of the Ombudsman regarding the applications received within the framework of international standards are examined, it is observed that the Ombudsman did not use its powers of on-site examination, hearing witnesses, relevant persons and experts, did not make evaluations on disadvantaged groups and did not consult children while making decisions. In addition, in the decision analysis, recommendations were developed on issues such as using the Ombudsman 's examination and review authority and legislative review more appropriately to the subject of the application, improving relations with civil society organizations, prioritizing applications related to children, taking measures for disadvantaged groups to access the institution, expanding recommendations, ensuring child participation, disseminating child-friendly versions of decisions, and using the authority to prepare special reports in the absence of ex officio examination authority.

It should be remembered that the fact that children are more vulnerable to human rights violations due to their stage of development, that their views are not sufficiently taken into account, that they cannot take part in political processes, that they face difficulties in resorting to legal remedies and that they have limited access to organizations defending their rights are reasons why children's human rights should be given special attention.<sup>23</sup> The listed grounds are even more multifaceted for disadvantaged children. Therefore, national human rights institutions such as the Ombudsman should independently monitor States' obligations towards children and do all possible to ensure respect for children's rights.

23 United Nations Committee on the Rights of the Child. General Comment No. 2 "The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child." (2002)



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