

MONITORING THE APPLICATIONS OF CSOS
TO THE DIRECTORATE OF COMMUNICATIONS
(CIMER) AND THE OMBUDSMAN INSTITUTION

RIGHT OF PETITION AND NGOS



OCTOBER 2021



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OMBUDSMAN INSTITUTION

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ABBREVIATIONS AND SHORTENED FORMS

CESCR	Committee on Cultural Economic and Social Rights
CİMER	Directorate of Communications of the Presidency of the Republic of Turkey
CİSST	Civil Society in the Penal System Association
CSO	Civil Society Organisation
ECHR	European Convention on Human Rights
EIA	Environmental Impact Assessment
EU	European Union
GNAT	Grand National Assembly of Turkey
HAKİM	Animal Rights Watch Committee
ICCPR	International Covenant on Civil and Political Rights
Istanbul Convention	The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
KDK	Ombudsman Institution
KİH-YÇ (WWHR)	Women for Women's Human Rights - New Ways
Law 6284	Law to Protect Family and Prevent Violence against Women
Mor Çatı	Mor Çatı Women's Shelter Foundation
NHRI	National Human Rights Institution
Paris Principles	Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights
SHUDER	Turkish Association of Social Workers
TİHEK	Human Rights Institution of Turkey
TPC	Turkish Penal Code
TOHAD	Social Rights and Research Association
UCİM	Saadet Öğretmen Association for Struggle with Child Abuse
UN	United Nations
Venice Commission	European Commission for Democracy through Law

1. EXECUTIVE SUMMARY

This report was prepared to assess the applications filed by civil society with the Directorate of Communications of the Presidency of the Republic of Turkey (CİMER) and the Ombudsman Institution (KDK), two of the institutions that are authorised to receive applications as part of the right to petition under the Presidential System of Government on the basis of international human rights standards and to identify to what extent CSOs are able to use the right to petition in the case of rights violations under the right to find effective solutions and redress.

The first monitoring study titled *Monitoring the Right to Petition Applications by the CSOs*, prepared with the support of the Etkiniz EU Programme before this study, analysed the applications filed by civil society actors to three specialised commissions authorised to receive petitions in the Grand National Assembly of Turkey (GNAT - Committee on Petitions, Committee on Human Rights Inquiry and Committee on Equality of Opportunity for Women and Men).

As part of the study conducted between March-July 2021, 7 civil society organisations were interviewed about the applications they filed with CİMER and the KDK after archive, media and literature reviews. In-depth interviews were held with available representatives and relevant experts after reviewing activity reports and the applications filed with relevant institutions as part of the rights to request information and petition.

A comparison of the applications filed with CİMER and the KDK between the years 2015-2020 according to human rights criteria showed that applications of CSOs remained at a low level under the Presidential System of Government, as under the former Parlia-

mentary System, and that CSOs did not utilise their right to petition efficiently. Findings of the study revealed that CSOs more frequently preferred CİMER and the number of applications to the KDK was lower. The main reason for this is thought to be that the KDK is known less by the public and is not considered to be an efficient mechanism for eliminating rights violations. On the other hand, although CİMER is perceived as a relatively more active institution, it has limited impact on eliminating rights violations.

It was decided that political conditions should be included in the analysis for an assessment of the use of the right to petition by the civil society under the Presidential System of Government. It was found that as with other rights, the efficient use of the right to petition by civil society and positive results from applications for the elimination of rights violations is only be possible if a democratic environment that is compatible with human rights criteria is present in Turkey. The reasons for CSOs being unable to use the right to petition effectively are given within the framework of the experiences of the CSOs that utilised this right.

This study has reached the conclusion that the right to petition can be an effective method in eliminating rights violations provided that there is a political environment in Turkey that complies with human rights criteria and abides by the requirements of participatory democracy.

2. AIM OF THE STUDY

The Report on Monitoring of the Right to Petition Applications by CSOs to CİMER and the KDK aims to assess the applications filed by CSOs with CİMER and the KDK, two of the institutions that are authorised to receive

3. METHODOLOGY, LIMITATIONS AND HUMAN RIGHTS INDICATORS

applications after the transition to the new governmental system in Turkey, within the framework of human rights monitoring indicators.

The main goals of the study, as a continuation of the previously prepared report, are to define the right to petition within the framework of international human rights standards, to determine the criteria necessary for this right to apply and to use human rights indicators to assess the applications filed by CSOs with CİMER and KDK between the years 2015-2020.

Although the right to petition is mainly treated under the right to political participation (political application) in the Constitution of the Republic of Turkey, international human rights mechanisms consider this connection to be weak. In international mechanisms, the right to petition is addressed within the framework of the right to redress and obtaining rights through complaints and petitions. From this perspective and given that the right to petition is addressed under the “right to redress”, “right to an effective remedy” and “right to take part in public affairs” in international human rights literature, the analysis proceeded with human rights indicators identified for these rights and freedoms, as well as the “right to request information” and “right to appeal to the ombudsman”.

3. METHODOLOGY, LIMITATIONS AND HUMAN RIGHTS INDICATORS

This report covers field research that was conducted using a quantitative method including in-depth interviews, archive review and analysis carried out between March - July 2021.

The research was designed to allow for comparisons of applications filed by CSOs with CİMER and the KDK during the 2015-2018 and 2018-2020 periods. The human rights monitoring of the applications was limited to the January 1st 2015 - December 31st 2020 period. The aim in doing so was to compare the new Presidential System of Government and the former Parliamentary System in terms of DK databases, in-depth interviews were held with CSO employees who filed applications with both institutions. Previous studies carried out on the topic were also examined as part of the human rights monitoring study, a literature review was conducted and secondary resources were included.

The applications filed by CSOs to the KDK and their contents were obtained from an interview held with the institution and the response to the request for information as well as the annual activity reports of the KDK. The number of applications filed with the institution between the years 2015-2020 and their results were obtained through the interview and information request.

Meanwhile, the information request to CİMER for “the number of applications filed by CSOs and their results” was declined on the grounds that “CİMER does not prefer to share any data requested for the purposes of the relevant study”.

For this reason, it was not possible to obtain the applications filed by CSOs with CİMER, which constitutes one of the most significant limitations of the study. To overcome this limitation, CSOs that work in various rights fields and filed application with CİMER were contacted and a media review was conducted using the keywords “the Ombudsman Institution” and “CİMER” for results between 2018-2020 to identify other civil society actors that filed applications with CİMER.

This study limits “CSOs” to associations, foundations, solidarity networks and platforms in analysing the use of the right to petition. Interviews were held with 8 CSOs that continue to operate in various rights fields

(women's rights, rights of people with disabilities, animal rights, human rights) which had filed an application with CİMER and/or the KDK as part of the right to petition. In addition, in-depth interviews were held with Ombudsman Yahya Akman, Ombudsman Özlem Tunçak and Berrin Sönmez from the EŞİK (Women for Equality) Platform as part of the study.

4. CONCEPTUAL AND LEGAL FRAMEWORK

RIGHT TO REDRESS AND RIGHT TO PETITION

It is necessary at the beginning to explain the right to petition by evaluating it under the "right to redress" in accordance with international human rights mechanisms. The simplest definition of the right to redress (right to legal remedy), which is a right that covers and protects other rights and freedoms, is being able to apply to relevant institutions for the redress of human rights violations and obtaining effective results.

Within the framework of the right to redress, individuals and legal entities are able to file applications to three different branches, namely the judicial (courts), the executive (administration-relevant institutions) and the legislative (GNAT) branches. In other words, the right to redress gives individuals the right to file applications with administra-

tive (public) authorities, the legislative organ (GNAT) and judicial authorities (courts).

Within the scope of the right to redress, the right to petition includes the submission of written requests by individuals (citizens and under certain conditions, foreigners) and legal entities to public bodies for complaints, suggestions and reporting right violations. Unlike the right to request information, the right to petition involves directly reaching state organs and requesting the items in the petition to be enforced.

In democratic systems, individuals or legal entities need the right to redress to enjoy the rights they theoretically possess have, and for this, rights mechanisms need to be available. 1 Due to this necessity, the right to redress is protected by national and international legislation. In this respect, the right to petition makes it possible to redress grievances under human rights law, compensation for damages in the case of rights violations and access to justice as part of the right to redress.

THE CONCEPT OF THE RIGHT TO PETITION AS A HUMAN RIGHT

In the legislation of the Republic of Turkey political rights cover rights such as the right to vote and election to public office, the right to enter public service and the right to file applications to public auditors with the right to petition.² As one of the political rights, the right to petition is a means of application under the right to redress, which is an important tool in the protection of human rights.

The right to petition is a human right that includes individuals notifying the relevant public institutions other than the judiciary, individually or collectively, about matters related

1 İbrahim Kaboğlu, *Özgürlükler Hukuku: İnsan Haklarının Hukuksal Yapısı Üzerine Bir Deneme*, AFA Yayıncılık, İstanbul: 1994. p. 86.

2 Constitution of the Republic of Turkey, Political Rights: Article 66 to Article 74. Access: <https://www.anayasa.gen.tr/1982ay.htm>

4. CONCEPTUAL AND LEGAL FRAMEWORK

to their person or the public in the form of requests or complaints or submitting applications for the redress of injustices they may have suffered. 3

Similar to individuals, NGOs can also file applications to public institutions under the right to petition. Using the right to petition to directly convey request to public institutions is an important means, as it provides the opportunity for civil society to take part in advocacy and monitoring activities and political decision-making processes.

More importantly, the right to petition allows NGOs to convey requests, complaints, suggestions, wishes and rights violations to public institutions through petitions, institutionally or through their beneficiaries, to redress grievances of civil society actors, to prevent rights violations, to convey complaints and suggestions to the public and to provide the basis for making legal changes.

INTERNATIONAL LEGISLATION

This report will take into account the following documents of international law, to which the Republic Of Turkey is a party, in discussing the right to petition.

UN INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Article 16 of the United Nations International Covenant on Civil and Political Rights (ICCPR) states that everyone has the right to recognition everywhere as a person before the law and Article 17 contains the provision that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful

attacks on his honour and reputation and everyone has the right to the protection of the law against such interference or attacks”. Within the framework of these provisions, individuals and legal entities can file applications to relevant public institutions under the right to petition.

Additionally, Article 25 of the UN Human Rights Committee General Comment No. 25 states that the provision “entering public service” has a wider meaning than “the right to elections” and citizens have the right to take part in decision making processes outside election periods.4

Furthermore, the sections containing “implementation of the right to redress in domestic law and prohibition of discrimination” in Article 2 of the UN ICCPR can also be considered under the right to petition.

UN HUMAN RIGHTS COMMITTEE GENERAL COMMENT NO. 31

The paragraphs 16 and 17 of the UN Human Rights Committee General Comment No. 31 regarding the provisions in the UN ICCPR are parts of the international human rights legislation to be taken into account under the right to petition.

Paragraph 16 of the General Comment No. 31 contains the provisions for State Parties to make reparations to any individuals whose rights under the Covenant have been violated, and in addition to explicit reparation, notes that, where appropriate, reparation can involve restitution, rehabilitation, guarantees of non-repetition, changes in relevant laws and practices and the bringing to justice of perpetrators of human rights violations.

3 S. Mustafa Önen, “Kamu Yönetiminin Denetlenmesinde Dilekçe ve Bilgi Edinme Hakkının Kullanılması: Kamu Denetçiliği Kurumu ile İsveç Parlamento Ombudsmanlığı’na Yapılan Şikâyetlerin Değerlendirilmesi”, *Social Sciences (NWSASOS)*, 2016 11 (2), p. 66.

4 Lema Uyar, “Birleşmiş Milletler’de İnsan Hakları Yorumları, İnsan Hakları Komitesi ve Ekonomik, Sosyal ve Kültürel Haklar Komitesi, 1981-2006”, p. 75-83. https://insanhaklarimerkezi.bilgi.edu.tr/media/uploads/2016/05/05/BMde_Insan_Haklari_Yorumlari_1981_2006.pdf

5 Lema Uyar, 2006, p. 116-123.

Paragraph 17 states that failure of State Parties to take measures to prevent a recurrence of a violation constitutes a violation of the obligation integral to Article 2 of the Covenant and that taking the measures, beyond a victim-specific remedy, to avoid recurrence of the type of violations in question may require changes in the State Party's laws or practices.

In other words, individuals or legal entities can apply to public bodies within this framework and request redress for the violations in question and demand changes to the law to avoid repetition when they experience a rights violation.

This study assesses whether or not Turkey acts in compliance with its obligations arising from being a State Party to the UN ICCPR in terms of the right to petition (within the framework of the applications filed with CİMER and KDK) within the framework of human rights criteria.

THE PROVISION ON THE OBLIGATIONS OF STATE PARTIES IN GENERAL COMMENT NO. 3 OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Another international provision binding on Turkey in terms of the right to petition is the article in paragraph 5 of the General Comment No. 3 of the Committee on Economic, Social and Cultural Rights (CESCR) that clarifies paragraph 1 of Article 2 of the UN ICCPR. This paragraph mentions "the obligations of State Parties to remedy the violations experienced by individuals and find solutions".⁶

Paragraph 5 of the CESCR General Comment No. 3 underlines that the enjoyment of the rights recognised, without discrimination, will often be appropriately promoted, in part,

through the provision of judicial or other effective remedies. In other words, any State which is a party to the ICCPR, such as Turkey, is obligated to establish the means for legal remedy and enable individuals to claim their rights – including the right to petition – through various means.

GENERAL COMMENTS NO.2 AND NO.5 OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

The section "providing remedies for breaches of children's rights" in both General Comment No.2 and General Comment No.5 of the Committee on the Rights of the Child states that Independent National Human Rights Institutions (NHRI) "must have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children" and also that they "must have the powers to compel and question witnesses, access relevant documentary evidence to be able to effectively carry out such investigations".⁷

Furthermore, this section also underlines that NHRIs have a duty to have established independent advice, advocacy and complaints procedures for cases of rights violations and should undertake mediation and reconciliation over complaints where appropriate.

In addition, the section states that NHRIs should have the power to support children involved in court cases including the power to litigate cases concerning children's issues and to intervene in court cases to inform the court about the human rights issues involved in the case.

Applications were filed with CİMER and the Children's Commission of the KDK based on the General Comment No. 2 and No. 5 of

⁶ Lema Uyar, 2006, p. 136-142.

⁷ General Comment No 2 of the Committee on the Rights of the Child, The role of Independent National Human Rights Organisations in the Promotion and protection of the Rights of the Child (General Comment II-2002) and General Comment No. 5 on the General Measures of Implementation of the Convention on the Rights of the Child (General Comment V-2003 <http://cocukhaklariizleme.org/storage/app/uploads/public/5ef/5cd/be9/5ef5cdbe9cae6376576827.pdf>)

4. CONCEPTUAL AND LEGAL FRAMEWORK

the Committee on Human Rights to assess whether Turkey acts in compliance with these obligations arising from the Convention on the Rights of the Child on the basis of human rights criteria and identified indicators.

EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

The right to petition, or in a broader sense, the right to enjoy political rights, is not explicitly protected under the European Convention on Human Rights (ECHR). Nevertheless, the European Court of Human Rights has found applications filed by media organisations and CSOs with public bodies to request information to be acceptable under Article 10 of the Convention and included in its scope.⁸

Aside from this Article, Article 13 of the ECHR includes the provision that any individual whose rights and freedoms recognised in the convention have been violated has the right to seek effective remedy before a national authority regarding the violation in question as part of the “right to effective remedy”. The provision is interpreted to allow rights violations to be redressed by filing applications with public bodies under the right to petition.

EUROPEAN UNION LEGISLATION AND THE CHARTER OF FUNDAMENTAL RIGHTS

Provisions in the EU legislation regarding the right to petition are important for Turkey for compliance with EU Acquis, as the Republic of Turkey is a candidate country for EU accession.

Article 227 of the Treaty on the Functioning of the EU dated 2009 offers any citizen of the Union, and any natural or legal entity residing or having their registered office in a Member State, the opportunity to enjoy the right to petition limited to matters which fall within the Union’s fields of activity. Meanwhile, the EU Charter of Fundamental Rights⁹ provides EU citizens or natural or legal entities residing or having their registered office in a Member State with the right to petition the European Parliament (Article 44).

Therefore, the EU grants the right to petition not only to EU citizens but also to persons and entities resident in any Member State.

Article 20 of the Treaty on the Functioning of the EU also includes the right to apply to the European Ombudsman among the rights of EU citizens. According to Article 227 of the Treaty, any citizen of the Union and any natural or legal entity residing or having their registered office in a Member State has the right to apply to the European Ombudsman elected by the European Parliament.¹⁰

VENICE PRINCIPLES AND PARIS PRINCIPLES

Ombudsman institutions are some of the leading independent human rights institutions for the enjoyment of the right to petition. The European Commission for Democracy through Law (Venice Commission) is the advisory body for the Council of Europe on constitutional matters.¹¹ The Principles on the Protection and Promotion of the Ombudsman Institution (Venice Principles) approved by the Venice Commission in 2019 defines the Ombudsman as an institution

⁸ Ulaş Karan and Gökçeçicek Ayata, “Sivil Topluma Aktif Katılım: Uluslararası Standartlar, Ulusal Mevzuattaki Engeller, Öneriler”, TÜSEV, 2015, <https://www.tusev.org.tr/userfiles/images/MevzuatRapor.15.09.15.pdf>

⁹ EU Charter of Fundamental Rights, https://sbb.gov.tr/wp-content/uploads/2018/11/Avrupa_Birligi_Temel_Haklar_Sarti%E2%80%8B.pdf

¹⁰ İslam Safa Kaya and Huzeyfe Karabay, “Ombudsmanlığın Uluslararası Hukuk Sistemlerindeki Yeri”, Ombudsman Akademik, Year: 6, Issue: 11, July-December 2019 p. 213.

¹¹ For more detailed information on the European Commission for Democracy through Law see: <https://insanhaklarimerkezi.bilgi.edu.tr/tr/content/32-avrupa-konseyi-denetim-usulleri/>

taking action independently against maladministration and alleged violations of human rights and fundamental freedoms affecting individuals or legal persons.¹²

In terms of these provisions, which are also binding on Turkey, the institution's own activity report states that the Constitution of the Republic of Turkey, the Law 6238 on the Ombudsman Institution and other legislation are "in conformity with a very large part" of the Venice Principles.¹³

Aside from the Venice Principles, the fundamental principles of NHRIs, as means of effective pre-judicial application for cases of human rights violations, are regulated under the 1993 Principles relating to the Status of National Institutions¹⁴, briefly referred to as the "Paris Principles" by the UN. ¹⁵ The Ombudsman Institution in Turkey was established in conformity with the Paris Principles under Article 74 of the Constitution titled "The Right to Petition, Information and to Apply to the Ombudsman Institution".

ISTANBUL CONVENTION

The Istanbul Convention (Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence) , which Turkey was the first to ratify in 2012, is of great significance for CSOs working in the field of gender equality. Although Turkey has withdrawn from the Convention by Presidential Decree as of July 1st 2021, there is ongoing debate on the legal status of this decision.

The Istanbul Convention covers violence and discrimination against LGBTI+ as well as violence against women. In this regard, the Istanbul Convention is known as one of the most comprehensive international conventions ever drawn up on violence against women and gender-based discrimination.

Law 6284 on the Protection of the Family and Preventing Violence against Women, which Turkey enacted to fulfil its obligations arising from the Istanbul Convention, was based on the Istanbul Convention in terms of the preventive and protective measures it contains. Despite the decision to withdraw from the Istanbul Convention, the Law 6284 on the Protection of the Family and Preventing Violence against Women¹⁶ obliges public authorities to prevent rights violations and redress grievances in the case of violations.

NATIONAL LEGISLATION

The right to petition is one of the most important means of the right to redress in Turkey. The right to petition is guaranteed by the Constitution, Turkish Penal Code (TPC) and the Law on the Exercise of the Right to Petition and the Law on the Right to Information.

The right to petition is one of the oldest rights in Turkey, first introduced in the Ottoman Constitution of 1876 and later included in the Republic of Turkey's 1924, 1961 and 1982 Constitutions. Article 74 in the "Political Rights and Duties" section of the 1982 Constitution includes the right to petition. As part of the amendment made to the Constitution in 2010 for harmonisation with the EU

¹² "Protection, Promotion and Development of the Ombudsman Institution", Council of Europe, Access: <https://rm.coe.int/ombudsman-k-kurumunun-korunmas-desteklenmesi-ve-gelistirilmesi/1680a139ff>, p. 16.

¹³ Ombudsman Institution, 2020 Activity Report, p. 576.

¹⁴ Principles Relating to the Status of National Institutions (Paris Principles). Access: <https://insanhaklarimerkezi.bilgi.edu.tr/content/27-birlesmis-milletler-diger-belgeler/>

¹⁵ Ulaş Karan and Çiğdem Sever, "Bir İnsan Hakları Koruma Mekanizması Olarak Ulusal Eşitlik Kurumları Kamu Denetçiliği Kurumu ve Türkiye İnsan Hakları ve Eşitlik Kurumu Örneği", Monitoring for Equal Rights Association (EŞİK), 2021. Access: <https://www.esihaklar.org/wp-content/uploads/2021/04/ESHID-ulusal-insan-haklari-kurumlari-TR.pdf> p. 55.

¹⁶ Law 6284 on the Protection of Family and Preventing Violence against Women <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6284.pdf>.

4. CONCEPTUAL AND LEGAL FRAMEWORK

Acquis, Article 74 was re-formulated as “the Right to Petition, Information and to appeal to Ombudsman”.

“The right to information”, which was recently included in the national legislation and is defined in broader scope than the right to petition - one of the oldest political rights in Turkey since the Ottoman Empire -, covers the rights of individuals to obtain information from all state institutions and organisations through applications. The right to information is one of the new political rights in Turkey, introduced to the national legislation with the Law on the Right of Information issued in 2003.

According to the Prime Ministerial Circular on the Use of the Right to Petition and Information dated 2004, “the right to petition is one of the political rights that ensure receiving information by obtaining answers to questions, supervision by issuing complaints and democratic participation by offering requests and suggestions”.¹⁷

As the right to petition is considered to be one of the most important tools for individuals’ and institutions’ right to redress, the TPC criminalises “preventing the exercise of the right to petition” and includes penal provisions for this crime. According to article 121 of the TPC “Where the lodging of a petition to a relevant public authority, in order to exercise a certain right is not accepted (without a legal basis), the offender shall be sentenced to a penalty of imprisonment for a term of up to six months.”

The following provisions in the Constitution of the Republic of Turkey and other legal documents guarantee the protection and enjoyment of the right to petition:

- Law 3071 on the Exercise of the Right to Petition
- Law 4982 on the Right to Information No

- Presidential Decree No. 14 on the Organisation of the Department of Communication
- Presidential Circulars:
 - 2004-12 Prime Ministerial Circular on the Exercise of the Right to Petition and Information
 - 2016-21 Prime Ministerial Circular on the Petitions Filed with Administrations
 - 2018/2 Presidential Circular on the Institutions Affiliated, Relevant and Related to Ministries

There are eight legal remedy organisations that may receive applications in Turkey:

- **Legislative branch:**
 - GNAT Petitions Commission
 - GNAT Human Rights Commission
 - GNAT Committee on Equality of Opportunity for Women And Men
 - The Ombudsman Institution
- **Executive branch:**
 - Directorate Of Communications of the Presidency of the Republic of Turkey (CİMER) under the Presidential System of Government
 - In the previous Parliamentary System where the prime ministry was the head of the executive branch, Directorate of Communications of the Prime Ministry of the Republic of Turkey (BİMER)
- **Other public administrations:**
 - Human Rights and Equality Organisation of Turkey (TİHEK)
 - Right to Information Assessment Board
 - Council of Ethics for Public Service (KGEK)

- Personal Data Protection Authority (KVKK)
- The Council of Judges and Prosecutors (HSK)
- Banking Regulation and Supervision Agency (BDDK)
- Radio and Television High Council (RTÜK)

A COMPARISON OF NATIONAL AND INTERNATIONAL LEGISLATION

A comparison of the international and national legislation regulating the right to petition shows that Turkey has comprehensive regulation in place regarding the right to petition and that these provisions are in compliance with the international law in many aspects. The fact that the right to petition and response time to applications are included in Turkey's Constitution and other relevant regulations and the existence of binding provisions encourages the use of the right to petition and obtaining results.

The implementation of the provisions in Article 2 of the UN International Covenant on Civil and Political Rights which reads "State Parties making reparations to any individuals whose Covenant rights have been violated, and in addition to explicit reparation, notes that, where appropriate, reparation can involve restitution, rehabilitation, guarantees of non-repetition, changes in relevant laws and practices and bringing to justice the perpetrators of human rights violations" is only possible in Turkey with effective use of the right to petition. An assessment of legislative provisions reveals that, in theory, it is possible for individuals and legal entities in Turkey to obtain results from their applications as part of the right to redress.

5. ENJOYMENT OF THE RIGHT TO PETITION IN CIMER AND KDK

DIRECTORATE OF COMMUNICATIONS OF THE PRESIDENCY OF THE REPUBLIC OF TURKEY (CIMER)

The Directorate of Communications of the Prime Ministry of the Republic of Turkey (BİMER) was renamed CİMER after the transition to the Presidential System of Government in 2018. CİMER currently continues its activities under the Directorate of Communications. CİMER is an electronic public service tool designed for access to both the right to petition and the right to information.¹⁸

CİMER receives applications by phone (150 Direct Presidency Hotline), fax, personal application and e-government. In online applications (cimer.gov.tr and the e-government portal), the owner of the application can send the application directly to the relevant institution through CİMER after creating the application text.

With the application named "CİMER Automation", CİMER ensures that all forms of requests, suggestions, reports, complaints and opinions are directed to the relevant public institution. In this respect, aside from being a structure that enables the use of the right to petition, CİMER acts a means of communication for individuals and legal entities to obtain information and convey suggestions.

CİMER's institutional mission is defined as providing resources for policies to be de-

¹⁸ CİMER in 50 Questions, p. 11. <https://www.cimer.gov.tr/50sorudacimer.pdf>

5. ENJOYMENT OF THE RIGHT TO PETITION IN CİMER AND KDK

signed by receiving the opinions, complaints and suggestions of the citizens about the government's work and actions and practices of the public administration. 19 Officially, CİMER's vision is stated to be "faster and easier enjoyment of the right to petition and information that are listed among the constitutional rights and provision of a quality service based on this goal".

Applications filed with CİMER are sent to relevant public institutions as soon as possible under the right to petition and information and replies are ensured as soon as possible. There are five different categories of applications that can be filed with CİMER: requests, complaints, reports, opinions-suggestions and information. It is noted for applications to be filed with CİMER that the right to petition cannot be used so as to convey criminal content including insults, threats, cursing, belittlement, slander as governed by the freedom of thought and expression.²⁰

CİMER guarantees that information request applications will get a response from public institutions within 15 working days, while complaints and report applications will get a response within 30 days. Any citizen of Turkey over the age of 12, private persons/entities and foreigners covered by reciprocity in accordance with international agreements can apply to CİMER.

Unlike other institutions that are authorised to receive petitions, CİMER is not obliged to directly examine and assess the applications. CİMER acts as an intermediary and monitoring institution to ensure that the applications filed with public institutions are conveyed to the relevant public institution to be actively, rapidly and accurately concluded

and the institutions' responses are conveyed back to the applicant. ²¹

THE RIGHT TO PETITION IN THE PRESIDENTIAL SYSTEM OF GOVERNMENT

The transition to the Presidential System of Government did not cause any fundamental changes in the legislative provisions regulating the right to petition.

The functions of the public institutions that function as legal remedy and authorised to receive petitions in Turkey are different; therefore the contents and application methods of the applications filed with these institutions are also different. CİMER and KDK should be separated in terms of legal remedy functions, as applications filed with CİMER can be filed with various reasons such as requests, complaints, suggestions and obtaining information.

Meanwhile, applications filed with KDK fall under political supervision and rights-based complaints. ²² In addition, applications filed with CİMER, which is under the Presidency acting as the head of the executive branch, is assessed as part of administrative audit. As a natural consequence of this, there may be differences in the responses given by CİMER and the response of the KDK as part of political supervision to an application made on the same topic.²³

THE OMBUDSMAN INSTITUTION - KDK

There are ombudsman institutions with various competences at national, regional or lo-

¹⁹ *ibid.*, p. 11.

²⁰ *ibid.*, p. 25.

²¹ Kadir Aktaş, "Mükerrer Dilekçelerin İncelenmesinde Hak Arama Kurumları Arasında İş Bölümü Üzerine", *Ombudsman Akademik*, Year: 6, Issue: 11 (July-December 2019), p.174. <https://dergipark.org.tr/tr/download/article-file/920825>

²² Sivil Sayfalar, "STK'ların Dilekçe Haklarının İzlenmesi, 2020, p. 21. Access: <https://www.sivilsayfalar.org/wp-content/uploads/2020/09/STKların-Dilekçe-Hakki-Basvurularinin-İzlenmesi.pdf>

²³ *ibid.*, p. 21.

cal levels in more than 140 countries across the world. The Ombudsman Institution (KDK) established in Turkey in 2013 is counted among the institutions that can receive applications under Article 74 of the Constitution.

The KDK's goal of establishment is to create an active and independent complaint mechanism in public services and the institution is affiliated to the GNAT, is a legal entity and has a special budget. Although it is stated that the goal is to preserve the KDK's independent nature and structure it accordingly, the facts that the Chief Public Auditor selected by the GNAT and the institution is affiliated with the Assembly are points that should be assessed carefully in terms of the impartiality and independence of the institution.

The foremost and most significant topic emphasised in both the Paris and Venice Principle is that ombudsman institutions such as the KDK can be organised in various ways, but under all conditions their independence must be ensured. Both set of principles emphasise the importance of the ombudsman having preferably constitutional, but at least legal basis.

Article 6 of the Venice Principles states that: "The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the Institution. The Ombudsman is selected by the parliament, preferably with a qualified majority." 24 The Venice Principles state that election of the ombudsman with a qualified majority in the parliament is a better method. According to this, the KDK meets the criteria

with its ombudsman both having a constitutional basis and being elected by the Parliament. 25

Unlike CİMER, the KDK is listed among NHRIs, which are one of the basic mechanisms for protection and development of human rights at national level. 26 Thanks to this, the KDK is able to directly receive applications related to all types of human rights violations where the public authorities are responsible. 27

Another difference of the KDK with CİMER is that it allows the possibility for easier and free-of-charge applications in redressing rights violations compared to judicial audits. The fact that applications can be filed with the KDK online and free of charge enables the matters subject to complaints under the right to petition to be solved without being taken to court. The fact that applications filed with the KDK freezes the time period for filing lawsuits forms another layer of security in protection of rights. 28

Established as an institution under the Presidency of GNAT, the KDK looks into complaints related to functioning of the administration and offers suggestions after investigating all types of actions, processes, attitude and behaviours of public bodies.

The decisions taken by the KDK are conveyed to relevant public institutions as "recommendations". By ensuring that these decisions are far away from being concrete enforcements and the institution is impartial, the goal was to have its enforcement power come from the respect to the institution.

Applications can be filed with the KDK by various means such as mail, e-mail, documents

24 Venice Principles, Article 6 "Protection, Promotion and Development of the Ombudsman Institution", Council of Europe, Access: : <https://rm.coe.int/ombudsmanl-k-kurumunun-korunmas-desteklenmesi-ve-gelistirilmesi/1680a139ff>.

25 Karan and Ayata, 2015, p. 57.

26 Ulaş Karan and D. Çiğdem Sever, 2021, p. 5. <https://www.esihaklar.org/wp-content/uploads/2021/04/ESHID-ulusal-insan-haklari-kurumlari-TR.pdf>

27 ibid, p. 55.

28 ibid, p. 59.

5. ENJOYMENT OF THE RIGHT TO PETITION IN CİMER AND KDK

delivered by hand, fax and e-government. The KDK can make various decisions such as invalidating the application, amicable solution, rejection, partial recommendation and partial rejection with recommendations. Admission of the applications filed with the KDK is regulated by the Constitution and the Law on Ombudsman Institution. Both real and legal entities can apply to the institution and applications can be kept confidential upon the applicant's request.

As the KDK focuses on protection and development of the rights of women and children, the institution assigns an ombudsman specifically for these two topics. KDK website also contains separate sections for children and women.²⁹

PERSONS WITH THE RIGHT TO APPLY

In terms of persons and institutions with the right to apply, a distinction is made between Turkish citizens and non-citizens. Foreigners who are not Turkish citizens can apply to CİMER and the KDK with a petition under certain conditions. However, conditions such as having an officially registered residence in Turkey, granting of the right to petition to foreigners based on the reciprocity principle and drafting of the petition in Turkish makes it difficult for foreigners to file applications and limits the enjoyment of the right.

PETITION LANGUAGE

Turkish language requirement leads to a constraint for foreigners, immigrants and refugees. CİMER and the KDK also receive applications within the framework of this basis. Foreigners who want to apply to CİMER “can apply by letter or fax within the reciprocity principle pursuant to international agree-

ments”. Therefore, a foreigner does not have the option to apply to CİMER by e-petition in any language other than Turkish.³⁰ In the case an application is filed in a foreign language, its translation into Turkish need to be provided.

Taking into account the Venice Principles, including the preference to base the Ombudsman institution on a solid legal foundation at a constitutional level (Article 2), it is seen that the KDK is, for the most part, compatible with the Venice Principles under the Constitution, Law 6238 on the Ombudsman Institution and other legislation.³¹ This means that the right to appeal to Ombudsman in Turkey substantially corresponds to international legislation.

6. PRESENT SITUATION

This chapter assesses whether or not the applications filed by CSOs with CİMER and the KDK comply with human rights criteria within the framework of the provisions in the international conventions listed above regarding the right to petition, to which Turkey is a party. By doing so, this chapter answers the question whether or not the right to petition is used effectively by the civil society.

Filing of applications obliges both institutions (CİMER and the KDK) with duties and responsibilities such as accepting the application, registering it, conveying it to the relevant public institution, informing the applicant (petitioner) about the process, examining the petition, acting as an intermediary between the applicant and the relevant pub-

²⁹ KDK Children: <https://www.kdkcocuk.gov.tr/>; KDK Women: <https://kadin.ombudsman.gov.tr/>

³⁰ CİMER in 50 Questions, p. 17. Access: <https://www.cimer.gov.tr/50sorudacimer.pdf>

³¹ Ombudsman Institution, 2020 Activity Report, p. 576.

lic institution and finally, concluding the petition and informing the applicant about the results.

By including this entire process in the monitoring study, it is possible to assess whether there are legislative provisions that affect the exercise of the right to petition under the right to redress or whether there are issues that prevent the enjoyment of this right in practice or make it difficult to exercise this right effectively and conclude the matter subject to the petition.

PRESENCE OF A STRUCTURE ENCOURAGING CIVIL PARTICIPATION

As the subject of this study is to monitor the petition applications of the civil society with human rights criteria, it is deemed important whether or not the participation of civil society is encouraged in regulations on the right to petition.

Legislative provisions on the right to petition (the Constitution, relevant laws, laws and regulation on CİMER and the KDK) does not include a separate provision on the applications of civil society actors. CSOs are able to file applications with CİMER and the KDK as a legal entity or as persons representing an institution. CİMER does not have a structure that encourages the growth of applications by CSOs and analysis of their results.

Unlike CİMER, the KDK makes efforts to cooperate with CSOs in their activities and carry out studies to encourage civil participation.

In accordance with the criteria “any individual or legal person, including CSOs, shall have the right to free, unhindered and free of charge access to the Ombudsman, and to file a complaint” mentioned in Article 15 of

the Venice Principles, CSOs can also file applications with the KDK along with other legal entities.

Furthermore, pursuant to the legislative provisions regulating the institutional structure of the KDK, in the case an application filed with the institution is about human rights, fundamental rights and freedoms, women’s rights, children’s rights and general issues of public interest, the condition of being directly subjected to violation of rights and freedoms or benefit is not required. In other words, all real and legal entities can file applications even if they did not directly experience any violation of rights or benefits within the abovementioned headings. Thanks to this opportunity, CSOs operating in the relevant field can file applications with the KDK along with the individuals who experienced grievances.³² Said opportunity also obliges CSOs to follow-up rights and rights violations, record rights violations and file applications with relevant institutions by petitions.

This responsibility aims for CSOs to file more applications, increase the role they play in auditing the administration and promote cooperation with the institution. In line with this goal, the KDK conducts regular meetings, mutual business visits and workshops with the civil society at national and local levels.³³

Ombudsman Yahya Akman, who emphasised that CSOs act as an intermediary between the citizen and public institutions in the interview held with him at his office, stated that the number of applications filed by the civil society with the KDK is low and that the KDK is not utilized as an active application authority by CSOs. Akman states that there might be various reasons for this, such as the ombudsman mechanism not being well-known and the KDK not being recognised as an active actor.³⁴

³² Response given by the KDK to our information request, June 2021.

³³ Response given by the KDK to our information request, June 2021.

³⁴ Interview held with Ombudsman Yahya Akman, Ankara, June 2021.

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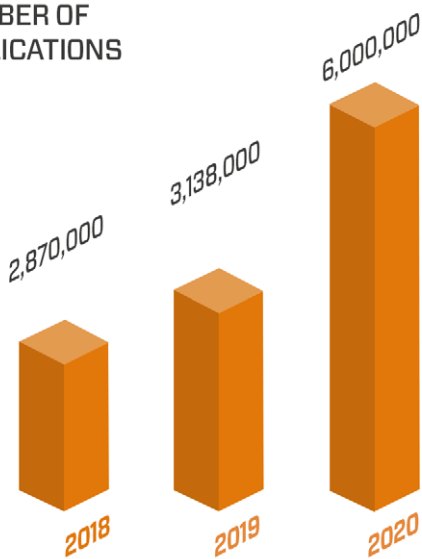
APPLICATIONS WITH CİMER AND THE KDK, THEIR CONTENTS AND ATTRIBUTES

The number of applications filed with the institutions, their contents and attributes are important indicators in identifying to what extent CİMER and the KDK are effective in redressing rights violations.

It is seen that the number of applications filed with the KDK and CİMER has been steadily increasing over the years. It was identified that the number of applications filed with CİMER has been significantly increasing every year with the transition to the new government system. There were 2,870,000 applications in 2018, this figure increased to 3,138,000 in 2019 and to more than 6 million in 2020 with an increase of 90 per cent. Relevant authorities shared that the number of applications with CİMER has increased approximately 200 per cent during the pandemic and the trend continues. ³⁵

NUMBER OF PETITIONS AND INFORMATION REQUESTS WITH CİMER

NUMBER OF APPLICATIONS



It is aimed to increase the visibility of the institutions and the enjoyment of the right to petition by sharing on social media some of the important decisions reached as a result of applications filed with both CİMER and the KDK.

Although CİMER website does not have a separate section regarding the number of applications and their results, the Directorate of Communications shares the number of applications and their contents on social media.

Receiving more than 6 million applications last year, CİMER has released the number, contents, results and statistics of petitions on its website. The contents of the applications filed with CİMER and the public institutions which received the most applications vary by years. ³⁶ The facts that applications related to public personnel acquisition, military service processes and healthcare services are prominent in every period; the Ministry of Labour and Social Security and the Ministry of Health receive the most applications among the ministries; and that the number of requests has increased despite the number of complaints has decreased during the pandemic³⁷ show that CİMER is perceived mainly as “an intermediary in finding solutions to daily problems” by the public.

Data on the right to petitions is available on the KDK website. However, some data is uploaded to the website with delay or never uploaded at all. It is seen that most of the applications to the KDK, the national human rights institution, are focused on appointments, public personnel regime, education-training and labour and social security subjects. Making efforts to increase the accessibility of the decisions issued, the KDK prefers to publish a limited number of decisions on its website and has introduced a search engine

³⁵ “CİMER’e başvuru yaşıyor: Rüya anlatan da var yemek tarifi soran da”, Hürriyet, 9 May 2021. <https://www.hurriyet.com.tr/gundem/cimere-basvuru-yagiyor-ruya-anlatan-da-var-yemek-tarifi-soran-da-41807073>

³⁶ Ibid.

³⁷ Ibid.

application in 2020. Data added to this section does not include all decisions issued by the institution.³⁸

FOLLOW-UP OF CSO APPLICATIONS WITH DISAGGREGATED DATA

In order to assess the applications filed by CSOs with CİMER and the KDK by taking into account human rights criteria, both institutions need to have a database that allows access to disaggregated data on vulnerable groups and share the results of applications.

Although the contents and number of applications filed by CSOs with the KDK are sorted, CİMER does not have a similar practice. CİMER does not share detailed information and data on more than millions of applications with the public. This makes it difficult to analyse the number of applications filed by CSOs to CİMER, their contents and the responses to these applications.

The petition we filed with CİMER as part of the study to request the number, content and results of the applications was rejected as follows: "According to the provision in Article 7 titled 'the quality of the information or document to be requested' of Law 1982 on the Right to Information, which states 'Institutions and organisations may reject applications requesting a type of information or document that can be created using a separate or private study, research, examination or analysis' your request [for information] could not be fulfilled."³⁹ For this reason, it was not possible to carry out an analysis this study on the number and content of the applications filed by CSOs with CİMER.

The statistics on the applications filed by CSOs with the KDK were shared by the institution. It is seen that the number of applications by CSOs has increased after the

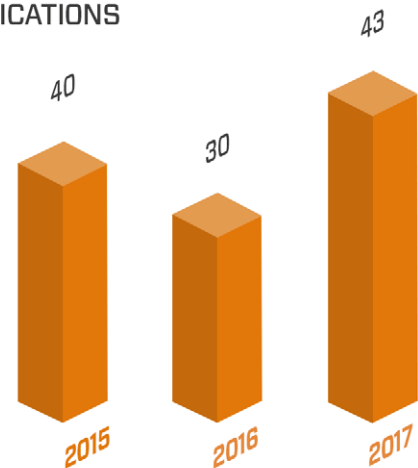
transition to the Presidential System of Government. For example, the number of applications by CSOs, which was 40 in 2015, has increased to 109 in 2019 and 137 in 2020 after transitioning to the new system.

An analysis of the applications over the years shows that the number of applications filed with the KDK, which has completed its 8th year, has been increasing regularly each year and the decisions of the institution are more accessible.⁴⁰ As mentioned in its Activity Report, about three times the annual average of applications were filed with the KDK (more than 90,000) in 2020 due to the pandemic. It is expected for the number of applications in 2021 to be around 30,000, after the impacts of the pandemic clear away.⁴¹

APPLICATIONS FILED BY CSOS WITH THE KDK BETWEEN THE YEARS 2015-2017

Distribution by Number of Applications:

NUMBER OF APPLICATIONS



Source: Response given by the KDK to the request for information by Sivil Sayfalar

³⁸ Ulaş Karan and D. Çiğdem Sever, 2021, p. 64.

³⁹ For our applications see: Annex-5

⁴⁰ Ulaş Karan and D. Çiğdem Sever, 2021, p. 73.

⁴¹ Ombudsman Institution, 2020 Activity Report, p. 578.

6. PRESENT SITUATION

Distribution by Content:

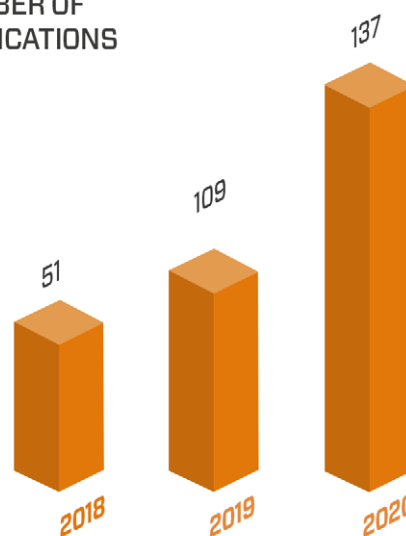
Subject, Field and Sub-Field	2015	2016	2017
Economy, finance and taxes		1	2
Public Personnel Regime	16		13
Education-training, Youth and Sports	1	3	4
Justice, National Defence and Security	5	7	2
Services run by Local Administrations	1	1	3
Labour and Social Security	6	2	4
Public Personnel Regime-1 (Sub-topics related to the rights of individuals working as employees at the administration born from the labour law and contract of employment)		6	
Social Services	1	2	
Health			1
Children's Rights			
Rights of the Persons with Disabilities			3
Energy, Industry, Customs and Commerce	3	1	1
Transport, Media and Communication	1		1
Right of Ownership	1		
Forestry, Water, Environment and Urbanisation		1	4
Population, Citizenship, Refugee and Asylum Seeker Rights	1		
Human Rights	1	5	1
Protection of Family			1
Food, Agriculture and Livestock		1	
Science, Art, Culture and Tourism			
Other Rights and Fields	3		1
Women's rights			2
Total	40	30	43

Source: Response given by the KDK to the request for information by Sivil Sayfalar

APPLICATIONS FILED BY CSOS WITH THE KDK BETWEEN THE YEARS 2018-2020

Distribution by the Number of Applications:

NUMBER OF APPLICATIONS



Source: Response given by the KDK to the request for information by Sivil Sayfalar

Distribution by Content:

Subject, Field and Sub-Field	2018	2019	2020
Economy, finance and taxes	1	4	7
Public Personnel Regime	13	30	33
Education-training, Youth and Sports	3	9	8
Justice, National Defence and Security	7	27	35
Services run by Local Administrations	3	2	1
Labour and Social Security	7	8	6
Public Personnel Regime-1 (Sub-topics related to the rights of individuals working as employees at the administration born from the labour law and contract of employment)		3	12

Social Services			1
Health		2	
Children's Rights	1	2	
Rights of the Persons with Disabilities	1		1
Energy, Industry, Customs and Commerce	1	3	
Transport, Media and Communication	2	4	3
Right of Ownership		5	4
Forestry, Water, Environment and Urbanisation	1		1
Population, Citizenship, Refugee and Asylum Seeker Rights	1		1
Human Rights	7	10	6
Protection of Family			17
Food, Agriculture and Livestock			
Science, Art, Culture and Tourism		2	1
Other Rights and Fields	1		
Women's rights	2		
Total	51	111	137

Source: Response given by the KDK to the request for information by Sivil Sayfalar

1.12 per cent of the applications filed with the KDK in 2019 fell under the "human rights" heading. The applications under the "human rights" heading in the KDK Activity Reports include topics such as rights violations in punitive institutions, rights to petition and information, voting and election to public office, citizenship, travel, assemblies and demonstrations, freedoms of thought, conscience and belief and prohibitions of torture and abuse. For example, the 2020 KDK Activity Report states that "many applications were filed with the institution on claims of fundamental rights and freedom violations,

most of the applications were of a personal nature and a series of concrete claims of violations were filed by lawyers, civil society organisations and professional organisations".⁴²

Meanwhile, just 4.3 per cent of the applications filed with the KDK were classified under the rights of women, children and persons with disabilities. It is worth noting that the number of applications under the human rights heading did not increase despite the increasing number of overall applications. On the contrary, they displayed a tendency to decrease in 2019.

With a special focus on protection and development of women's and children's rights and assigning a separate ombudsman to the two issues, the KDK contacts the women and children who filed or wish to file a complaint application and by doing so aims to contribute to the development of their rights-seeking culture.⁴³ Despite this focus, the number of applications filed by CSOs with the KDK under the women's and children's rights headings remains low.

For example, while the number of total applications in the field of children's rights in 2018 was 786, the number of applications filed by CSOs in this field was only 2; and there was only one CSO application on children's rights among the total of 351 children's rights applications filed in 2020.

Meanwhile, only one of the 31 complaints filed in the field of women's rights in 2018 was filed by a CSO. The number of total applications in the field of women's rights fell to 6 in 2020 and no application was filed by the CSOs working in the field of women's rights.⁴⁴

⁴² KDK 2020 Activity Report p. 312.

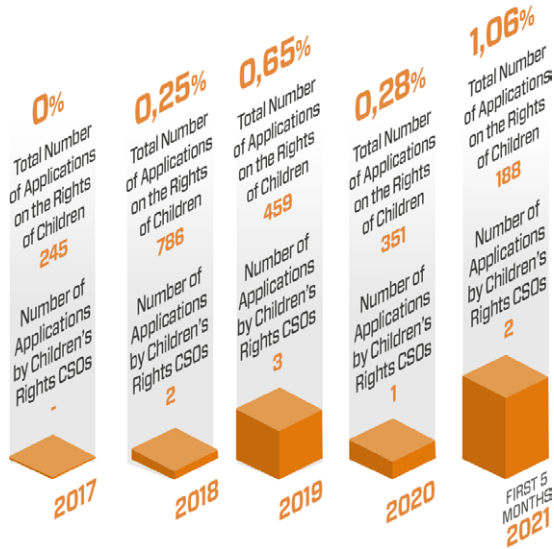
⁴³ Response given by the KDK to the request for information by Sivil Sayfalar

⁴⁴ Response given by the KDK to Sivil Sayfalar as part of the request for information.

6. PRESENT SITUATION

APPLICATIONS FILED WITH THE KDK ON THE RIGHTS OF CHILDREN:

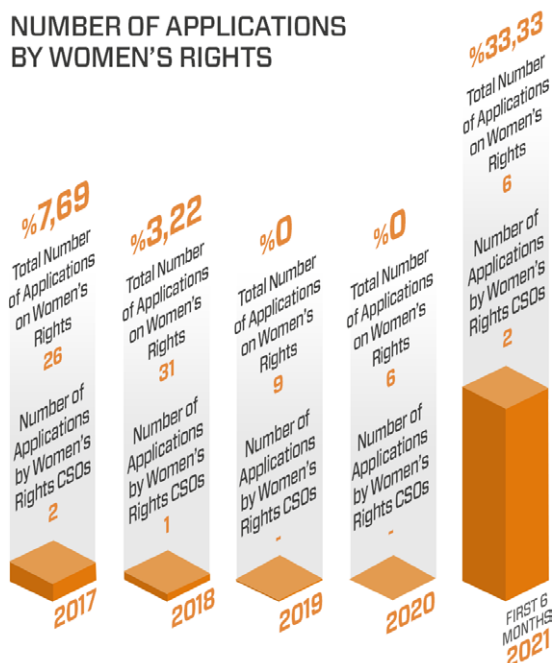
NUMBER OF APPLICATIONS BY CHILDREN'S RIGHTS



Source: Response given by the KDK to the request for information by Sivil Sayfalar

APPLICATIONS FILED WITH THE KDK IN THE FIELD OF WOMEN'S RIGHTS

NUMBER OF APPLICATIONS BY WOMEN'S RIGHTS



Source: Response given by the KDK to the request for information by Sivil Sayfalar

The KDK, which is the only institution that has a Children's Unit, does not charge any application fees with aim of protecting and developing the rights of children and accepts personal applications from children, receives a low number of applications in the field of children's rights, as it does with women's rights. The KDK accepts that its impact on these two topics, having stated "more concrete steps can be taken for protection and development of children's and women's rights".⁴⁵

The number of applications filed with the KDK by women and women's organisations is quite low. It is very much worth noting that CSOs operating in the field of women's rights filed no applications with the KDK in 2020 although the total number of applications increased during the COVID-19 pandemic compared to previous years and the prevention of violence against women became a more prominent issue in Turkey with the debate on the Istanbul Convention.

It should also be noted separately that the requests of six individual applicants to the KDK in 2020 in the field of women's rights were in the field of social services and did not cover any fundamental problems of women as such.⁴⁶

In 2020, the KDK received 86 applications that requested withdrawing from the Istanbul Convention on the grounds that "the Convention is not suitable with the Turkish family structure and the practices it foresees do not serve the purpose of preventing violence against women".⁴⁷ The KDK prepared a preliminary report regarding the applications with the recommendation to "repeal the Istanbul Convention".

⁴⁵ Response given by the KDK to our information request, June 2021.

⁴⁶ Ombudsman Institution, 2020 Activity Report, p. 326.

⁴⁷ Response given by the KDK to our information request, June 2021.

Meanwhile, the application filed by more than 50 bar association presidents with the KDK against the said applications with the request to “issue a recommendation to the GNAT to not withdraw from the Istanbul Convention” is yet to be answered by the KDK. Furthermore, discussions on the Istanbul Convention continued in this period and Turkey ultimately withdrew from the Convention on July 1st 2021 with a presidential decree.

Discussions regarding the withdrawal from the Istanbul Convention continued in August 2020 and women’s organisations applied to CİMER with nearly 1000 petitions, led by the EŞİK Platform. The joint petition drawn up by the organisations requested an end to the controversy over the Istanbul Convention, the preparation of an emergency action plan for the active implementation of the Convention and appeal to the opinions of independent women’s organisations on every development regarding the Istanbul Convention. 48

The response by CİMER to the petitions did not even mention the Istanbul Convention by name.⁴⁹ The response referred to “ongoing work carried out in coordination with all parties including the Ministry of Justice and the Ministry Of Interior Affairs” and stated “the opinions and suggestions in the applications were conveyed to relevant units for assessment”.

The women who applied to CİMER through the EŞİK Platform made another attempt in September on the grounds that “they could not reach the President through CİMER and did not receive a response”. They made an open call to the public for their petitions to be conveyed to the Presidency, which is the main addressee.⁵⁰ These petitions repeated the requests that “independent women’s

organisations should be taken as parties on all issues related to the Istanbul Convention and women” and “no steps should be taken without discussions with women’s organisations and a consensus”.⁵¹

These requests, conveyed to CİMER personally by women and women’s organisations, did not get a positive response and Turkey officially withdrew from the Istanbul Convention as of July 1st 2021.

Another issue that should be underlined is that women’s rights advocates decided not to file an application with the KDK, even though it is a human rights institution, or any other institution authorised to receive petitions (e.g. Human Rights Institution of Turkey). Berrin Sönmez of the EŞİK Platform summarised their reason to apply only to CİMER as “making absolutely sure that their requests were recorded and conveyed to the institutions.”

Sönmez stated that they had discussed filing applications with the Human Rights Institutions of Turkey (TİHEK) and the KDK as they had done with CİMER, but they abandoned this idea because both TİHEK President and the KDK Chief Auditor “[had] for years taken a stand with the people against women and it was quite likely that responses from these two institutions would be negative”. Sönmez continued:

“A negative response from TİHEK and the KDK would have had an obstructive impact on our struggle. We thought that a negative response would be a strong weapon for the other side and gave up on applying to TİHEK and the KDK. In summary, the lack of confidence in TİHEK and the KDK kept us from filing an application. So, as EŞİK, we chose to continue on our path by trusting in ourselves instead of institutions.”⁵²

48 EŞİK Platform <https://esikplatform.net/cimere-basvuruyoruz/>

49 Berrin Sönmez, “CİMER listesinde Fahrettin Altun’la köşe kapmaca”, Gazete Duvar, 15 September 2020. <https://www.gazeteduvar.com.tr/yazarlar/2020/09/15/cimer-listesinde-fahrettin-altunla-kose-kapmaca>

50 ibid.

51 ibid.

52 Interview held with Berrin Sönmez, July 6th 2021.

6. PRESENT SITUATION

Alongside women's and children's rights as discussed in this example, the low number of applications to the KDK under the discrimination and human rights headings indicate that the KDK is not a primary choice for CSOs in cases of a rights violation.⁵³ It is also seen that the number of applications to the KDK on topics such as property, right to respect for private and family life, freedom of expression, meetings and demonstrations, which are frequently subject to rights violations in Turkey, remain at a low level.⁵⁴ The low number of complaints related to human rights matters with the KDK, compared to the accumulation of complaints on headings related to the public personnel regime, is worth noting.

When the number and subject matter distribution of applications are assessed, together with all the factors discussed, it is found that CSOs do not consider the KDK as the primary application authority. Similarly, it is stated that CSOs do not see the KDK "as active as expected from a national human rights institution" in redressing rights violations. From a more general viewpoint, it has been stated that "the perception of potential applicants is that the institution is not human rights-oriented".⁵⁵

Discussions on Canal Istanbul, one of the most important topics on Turkey's agenda, is another topic passed on to CİMER. 25,000 people took part in the "EIA Complaint Campaign" commenced by the civil initiative "350 Ankara" in 2020 and their petitions were sent to CİMER. People from 77 different countries and 69 cities of Turkey took part in this campaign. The response of CİMER to the petitions stated that their complaints will ultimately be assessed in the EIA report.⁵⁶

In addition, other applications filed with CİMER for the suspension of the Canal Istanbul project did not get a positive response and the foundations of the Sazlıdere Bridge were laid as an initial part of Canal Istanbul on June 26th 2021. Similar to the Istanbul Convention, many applications filed within the right to petition for Canal Istanbul not to be implemented were rejected due to the government's determined attitude for the implementation of the project and its political priorities.

Based on the two examples above, it can be said that society's evaluation of the the right to petition is not that it is just about complaints; applications are seen as falling within the right to redress and as a tool of political participation. However, CİMER approaches the said requests predominantly from a complaints perspective.

An assessment on how the right to petition is considered in the decisions of the KDK over another example shows that in an application filed with the KDK with allegations of discrimination based on the gender and sexual orientation of an individual, the institution chose not to assess the issue within the framework of discrimination. In the application filed against the decision of the governor's office of Istanbul, which found the Pride March to be inadmissible, the KDK chose to examine the decision on the bases of the place and route of the march and did not provide a legal opinion in terms of discrimination.⁵⁷

The decisions of the KDK on this application with allegations of discrimination against the LGBTI+, who are systematically discriminated against, and other few applications over gender-based discrimination filed with the

⁵³ Ulaş Karan and D. Çiğdem Sever, 2021, p. 73.

⁵⁴ Ibid., p. 64.

⁵⁵ Ibid., p. 64.

⁵⁶ Serkan Alan, "Kanal İstanbul'a CİMER yanıtı: İtirazınızı nihai raporda değerlendireceğiz", 11 January 2020. <https://www.gazeteduvar.com.tr/gundem/2020/01/11/kanal-istanbula-cimer-yaniti-itarazinizi-nihai-raporda-degerlendirecegiz>

⁵⁷ Ulaş Karan and D. Çiğdem Sever, 2021, p. 72.

institution show that the KDK appears to be drifting away from the international definition and standards of discrimination.⁵⁸ This shows that the KDK is not acting in compliance with Paragraph 5 of the General Comment No. 3 of the CESCR and the necessity for the non-discriminatory use of the rights recognised under the UN International Covenant on Economic, Social and Cultural Rights and that the right to petition is being violated.

EFFORTS FOR ACTIVE USE OF THE RIGHT TO PETITION

Alongside the problems mentioned above, the attempts for the right to petition to be used actively through CİMER and the KDK should be noted to better analyse the current situation.

Both institutions aim to implement improvements under various headings at an institutional level to identify shortcomings in the use of the right to petition, more active use of this right and promotion of the rights-seeking culture.

CİMER has the goals of “pioneering the implementation of a citizen-oriented understanding of public service”, “providing faster, quality and reliable public service to citizens” and “realising a transformation that allows citizens and social elements to take part in decision-making processes”. As part of this goal, the 2020-2024 Strategy Plan prepared by the Presidential Directorate of Communications lists a series of deficiencies regarding the services CİMER offers within the framework of the right to petition and information and goals to eliminate these shortcomings. The Strategy Plan includes the goal of lowering the average response time for applications filed with CİMER from 15 days to 10 days. The government’s 11th Development

Plan targets ensuring that the rights to petition and information, which are guaranteed in the Constitution, are enjoyed actively and rapidly through CİMER. ⁵⁹

In line with the goals of the said plan, the CİMER in 50 Questions booklet was published in 2020; CİMER contact personnel in public institutions and organisations were provided with training and work was carried out to increase the number of personnel. Furthermore, the “ALO 150 Hotline” was introduced.

The KDK also aims to develop its institutional capacity to more quickly resolve applications and shorten the six-month examination period.⁶⁰ Not charging for applications filed with the KDK and resolving petitions within 6 months, which is a very short period compared to judicial organs, requires the active use of the “institution’s potential to be an important tool in ensuring rapid and easy access of individuals to justice”.⁶¹

These arrangements implemented and planned by CİMER and the KDK can be considered as encouraging applications for the enjoyment of the right to petition.

THE ROLE OF CIVIL SOCIETY IN THE ACTIVE USE OF THE RIGHT TO PETITION

The importance of civil society’s participation in the process is revealed by the examination of the kinds of practices followed at CİMER and the KDK for the active and efficient use of the right to petition and remedying and redress of rights violations shows.

The KDK sees civil society as an important stakeholder in line with this goal and makes efforts to improve its relations with CSOs. The sub-sections related to civil society in the KDK Activity Report are listed as the

⁵⁸ Ibid., p. 72.

⁵⁹ Directorate of Communications of the Presidency of the Republic of Turkey 2020-2024 Strategic Plan, Access: https://www.iletisim.gov.tr/images/uploads/dosyalar/%C4%B0leti%C5%9Fim_Ba%C5%9Fkani%C4%B1%C4%9F-C4%B1_2020-2024_Stratejik_Plan%C4%B1.pdf

⁶⁰ Ombudsman Institution, 2020 Activity Report, p. 578.

⁶¹ Ibid., p. 578.

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Rights of Children, Rights of Persons with Disabilities and Social Services, Human Rights and Women's Rights. 62

With the goal of promoting a rights-seeking culture, regular exchange of opinions are held with CSOs and professional organisations in many cities of Turkey. Meetings were held with 600 local CSO representatives in 2020.⁶³

The "Relations with CSOs" sub-section of the "Promotion of the Rights-Seeking Culture and Relations with Stakeholders" section of the KDK 2020 Activity report states that the institution "attaches importance to cooperation with professional organisations, labour unions and bar associations". The report also includes the information that "regular meetings were held with CSOs and labour and professionals' organisations such as TÜRK-İŞ, HAK-İŞ, MEMUR-SEN, Turkish Union of Chambers and Commodity Exchanges, Union of Turkish Bar Associations, Union of Municipalities of Turkey". Furthermore, it is stated that "meetings were held with CSO representatives from TÜRK-İŞ, HAK-İŞ, MEMUR-SEN, KAMUSEN, KESK and DİSK labour unions in the provincial meetings held in Kocaeli, Diyarbakır, Mardin, Nevşehir, Kilis, Trabzon, Mersin, Muş and Bingöl to promote rights-seeking culture". Based on this information, it can be said that the KDK predominantly contacts professionals' and labour organisations among the CSOs at the local level.

The response we received from the KDK as part of our research stated that the KDK does not have the authority to conduct ex officio investigations and stated that "their goal is to have CSOs convey the discrepancies they encountered and witnessed in the

field and the problems arising from legal arrangements by filing more applications with the institution".⁶⁴ In response to the efforts of the KDK for the more active use of the right to petition, it is seen that the CSOs' preference to file applications with the KDK using their right to petition in the cases of rights violations remains quite low. ⁶⁵

The interviews conducted as part of the study show that some CSOs abstained from applying to the KDK as they thought they would not be able to obtain any results.

THE POWER OF CİMER AND THE KDK DECISIONS TO REDRESS RIGHTS VIOLATIONS

Another important criterion in identifying whether the right to petition is used actively is what kind of practices public institutions follow when it comes to redressing grievances in cases when decisions issued by CİMER and the KDK find allegations of rights violations to be valid.

CİMER makes efforts to have the decisions taken by relevant public institutions be implemented and guide the administration. Although there is a unit in CİMER which analyses the results of the applications, analyses of applications are not shared with the public. The analyses are sent to 101 relevant institutions on a monthly basis, thus contributing to the decision-making processes of the institutions by helping them take into account the applications received by CİMER.⁶⁶

Since CİMER does not share the data on the contents of the petitions filed with CİMER, the responses given to them and to what extent these responses were implemented

62 Ombudsman Institution, 2020 Activity Report, p. 297-329.

63 Ibid., p. 34.

64 Response given by the KDK to our information request, June 2021.

65 Ulaş Karan and D. Çiğdem Sever, 2021, p. 64.

66 "CİMER'e başvuru yağıyor: Rüya anlatan da var yemek tarifi soran da", Hürriyet, 9 May 2021. <https://www.hurriyet.com.tr/gundem/cimere-basvuru-yagiyor-ruya-anlatan-da-var-yemek-tarifi-soran-da-41807073>

with the public, it is difficult to accurately identify whether the right to petition is actively enjoyed through CİMER. It is not possible to fully determine whether the rights violations in petition applications are redressed as the press only covers the statements of relevant individuals and some of the important decisions issued by CİMER.

This makes it impossible to carry out an assessment on various topics using the information shared by the persons and institutions applying to CİMER. In other words, the failure to identify the contents of all applications including the applications filed by CSOs and the responses to these applications constitute a rights violation under international human rights standards.

For example, the petition campaign commenced by the Kazdağı Association for Protection of Natural and Cultural Assets in November 2020 with CİMER requesting that the Doğu Biga Mining Company, whose licence for gold prospecting had expired, hand over the gold mining site to the Regional Directorate of Forestry resulted in a positive response. With the petition receiving a final response in March 2021, the licences of the Canadian company Alamos Gold, which cut down 350,000 trees for cyanide gold prospecting in the Kazdağları

region, were cancelled. In this way, it was possible to obtain a positive result in Kazdağları, an important environmental issue, with the acceptance of the applications. 67

There are also some good examples of the KDK being influential in the protection of human rights, cooperating with civil society and resolving complaints against rights violations by receiving the opinions of CSOs in its decisions. The recommendation issued by the institution in line with the opinions of the Social Rights and Studies Association in an application filed with the KDK requesting that Achondroplasia, a hereditary form of dwarfism due to disorders in the FGFR3 gene, is added to the Disability Rates Table led to a significant change in the definition of disability in Turkey.⁶⁸

It is seen public institutions' rate of compliance with the recommendations provided by the KDK after assessing applications has been increasing over the years. The rate of compliance with KDK recommendations was 20 per cent in 2013 and increased to 65 per cent in 2017, 70 per cent in 2018 and 75 per cent in 2019. In 2020, the rate of compliance reached 76.38 per cent.⁶⁹

PUBLIC INSTITUTIONS' RATE OF COMPLIANCE WITH KDK DECISIONS BY YEAR

Years	Rate of Compliance
2013	20
2014	39

67 "350 bin ağacın kesildiği Kazdağları'nda şirketin izni iptal edildi", Cumhuriyet, 7 March 2021. <https://www.cumhuriyet.com.tr/haber/350-bin-agacin-kesildiği-kazdaglarında-sirketin-izni-iptal-edildi-1818853>

68 Ulaş Karan and D. Çiğdem Sever, 2021, p. 60.

69 KDK 2020 Activity Report p. 99.

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2015	37
2016	42
2017	65
2018	70
2019	75
2020	76

On the other hand, the fact that the decisions taken by the KDK are recommendations raise questions in some cases in redressing rights violations.

Ombudsman Yahya Akman states that recommendations contribute to establishing an understanding of “solving problems by ensuring consensus among different segments of society” and making it possible to establish good governance principles. Stating that they are trying to pressure public institutions into complying with the KDK recommendations through by means, Akman lists these means as “using the power of media in important matters, conveying the recommendations into the annual activity reports presented to the GNAT and calling the public administrations which do not comply with the recommendations to the Parliament to ask for an explanation; preparing reports on various topics and demanding information from public institutions which do not comply with recommendations within a month on why they did not do so”.⁷⁰

Based on the evidence above, it seems difficult to say that the applications CSOs file with CİMER and the KDK are at an adequate level and grievances are efficiently redressed by the two institutions in cases of rights violations.

7. FINDINGS

EXPERIENCES OF THE CSOS THAT APPLIED TO CİMER AND THE KDK

This section covers the experiences of seven CSOs that operate in various fields and have filed applications with CİMER and the KDK.

These CSOs are:

- Civil Society in the Penal System Association (CİSST)
- Animal Rights Watch Committee (HAKİM)
- Women for Women’s Rights – New Ways (KİH-YÇ)
- Mor Çatı Women’s Shelter Foundation (Mor Çatı)
- Saadet Öğretmen Association for Struggle with Child Abuse (UCİM)
- Turkish Association of Social Workers (SHUDER)
- Social Rights and Research Association (TOHAD)

This section analyses what kind of results civil society has obtained by using the right to petition with CİMER and the KDK; the matters considered to be obstacles against the active use of the right to petition and the suggestions for eliminating the obstacles.

The findings obtained through the assessment of CSO applications and their results are summarised under the following headings.

⁷⁰ Interview held with Ombudsman Yahya Akman, Ankara, June 2021.

1. CSOs apply to CİMER and the KDK either at an institutional level or individually after mobilising their members.

Among the CSOs included in this study between January 1st 2015 -July 1st 2018 and June 1st 2018 - December 1st 2020, the CİSTT filed the most applications with both institutions (1515 CİMER applications, 10 KDK applications).

The CİSST is also one of the rare civil society organisations that has been regularly filing applications with each of the seven institutions authorised to receive applications in Turkey for years. For this reason, the assessments of the use of the right to petition by the CİSST allows for a comprehensive analysis on the use of the right to petition by CSOs in Turkey and their results in terms of both historical background and content.

2. CSOs state that the applications they filed with both CİMER and the KDK are either never accepted or the rate of acceptance is low.

For example, KİH-YÇ stated that it has never received a response to any of its applications while HAKİM stated that its applications are usually rejected on the grounds that “the persons subject to the complaint in the petition could not be contacted”.

3. CSOs provide differing opinions when comparing responses to applications under the Presidential System of Government and the Parliamentary System

HAKİM stated that they received more responses to their applications under the Parliamentary System, that they cannot even access some data to which they previously had access under the Presidential System of Government and that they do even receive responses to parliamentary questions they posed through MPs.

UCİM stated, without making a distinction in terms of the system of government, that they receive faster responses from CİMER than the applications they filed with the KDK.

The KİH-YÇ included other variables relat-

ed to the political field and thinks that “the Presidential System of Government made public institutions less functional”. The KİH-YÇ stated that the right to petition should be assessed taking into account the political environment and that applications which will not receive a response will still function as “records, an entry in history books”.

Advocating that “the Parliamentary System should be made more functional”, Mor Çatı stated that “the anti-democratic environment and de-functionalisation of the Parliament” under the Presidential System of Government also affected their level of participation. Mor Çatı emphasised that the responses given to petitions “became entirely lacking in quality” as a result of decision-makers disregarding gender equality and in keeping with this, the changing personnel quality in the relevant units.

Advocating that “the Parliament has been rendered non-functional”, TOHAD stated that CİMER applications are not taken seriously by relevant public institutions. For this reason TOHAD prefers to file its administrative and information request applications directly with the relevant institution with a wet signature. If this process bears no results, it applies to the KDK as a final solution.

With the transition to the Presidential System of Government, the Association of Social Services focused its advocacy studies predominantly on Presidential policy boards, particularly Social Policies, Education and Training Policies Boards,

4. CSOs state that in the new government system, other CSOs usually also do not get a positive response to their applications with CİMER and the KDK.

The CİSTT stated that CSOs file fewer applications with both institutions as they think they will not get a response or have negative experiences.

Similarly, HAKİM stated that CSOs operating in various fields cannot get a response to their applications.

7. FINDINGS

Mor Çatı expressed that based on their observations women's organisations choose to file applications with CİMER rather than the KDK.

5. CSOs have differing opinions on whether the right to petition is used actively by civil society actors in general.

According to the CİSTT, civil society does not use the right to petition actively enough because they usually receive negative responses. Meanwhile the number of CSOs which take negative responses as a form of data and keep filing applications is low.

Similarly, UCİM also thinks that CSOs do not use this right effectively. The association stated that there are even CSOs which do not file information request applications under the Law on the Right to Information.

TOHAD also emphasised that the right is not utilised actively and that most CSOs working in the field of disabilities are unaware of this right.

According to HAKİM, which thinks that CSOs use their right to petition actively, applications remain fruitless due to reasons originating with institutions. Mor Çatı stated that CSOs working in the field of women's rights utilise applications efficiently as a means of pressure, civil action and advocacy and that it continues to use this method institutionally.

Arguing that the right to petition is generally used actively by rights-based CSOs, SHUDER thinks that the source of the problem is "CSO requests being disregarded in a state system where participation is not deemed sufficiently important".

6. CSOs agree that even if yields no results, civil society needs to insistently file more applications with CİMER and the KDK and that the requests entering records is important in itself.

The CİSTT and TOHAD are two prominent CSOs which have an advocacy strategy and

make attempts to actively use the right to petition within this framework.

The CİSTT considers it possible for CİMER and the KDK to continue their activities with civil participation through petitions applications and recording possible developments with "reverse reporting". In other words, even though applications filed with both institutions receive negative responses, the aim is to record that the right seeking attempts of civil society have been inconclusive or that rights violations have not been redressed despite applications.

HAKİM keeps using the right to petition as a means of advocacy for applications to be registered even if they are not resolved. The organisation uses the responses it did not receive and the questions and complaints that were left unanswered by the institutions as data.

Similarly, Mor Çatı thinks that insisting on applications is a good tool to use constitutional rights and pressure the state. In addition, the organisation argues that applications serve as an important tool to both remind the institutions of their duties and responsibilities and for CSOs to formulate their own political stance.

The KİH-YÇ stated that CİMER and KDK are "not functional" in responding to petitions and does not consider "transparent and effective communication" with these two institutions possible. However, the organisation state that it is necessary to continue applications to prove present non-functionality and that CSOs should diversify their activities based on the information that "institutions are not functioning" by recording unanswered applications or irrelevant answers without giving up their constitutional rights. Arguing that "public institutions have a fundamentally negative attitude towards human rights, democracy and equality", the KİH-YÇ does not think that using this right efficiently will be possible unless the conditions for participatory democracy are established.

SHUDER stated that it is necessary to diversify the need to develop advocacy strategies by including the right to petition and to pursue it through innovative means.

7. Rather than institutional applications, CSOs prefer to mobilise their members and direct a large number of individual applications, especially to CİMER, when using the right to petition.

SHUDER thinks that the petitions filed with an institutional identity, as CSOs, are not very effective. Meanwhile TOHAD, unlike other CSOs, prefers to use administrative applications directly with relevant institutions (other than CİMER and the KDK) and to start the KDK and administrative justice processes when it fails to receive an answer.

8. CSOs suggest various methods for efficiently applying to CİMER or the KDK and getting results.

According to the CİSTT, applications should be filed insistently and responses to applications should be reported to create a public agenda.

HAKİM stated that when numerous institutions and individuals file applications with the same content, the chances of receiving a positive response or obtaining information increase.

The KİH-YÇ thinks effective responses are not likely and claims that “CİMER and the KDK are structures that are not suitable for using the right to petition actively”.

UCİM thinks that CSOs have shortcomings in legal literacy, political participation and advocacy and believes that cooperation should be established to overcome these deficiencies.

Mor Çatı considers that filing more applications to obtain results, calling the relevant institutions by phone and following up the applications by various means serve as important factors in obtaining results. With the

belief that despite all the problems, applications should be diversified through various channels, Mor Çatı emphasises that they “have to proceed with the methods offered by the current system” and draws attention to the need “to use every kind of method that can be utilised legally, often simultaneously”.

SHUDER thinks that clearly stating the grounds for the petitions sent; receiving the opinions of the subjects related to the complaint in question; making petition campaigns more visible on social media and determining the appropriate strategy for individual institution where the petition will be sent can increase the effectiveness of activities.

TOHAD also thinks that drafting the petition in accordance with the procedures, providing legal bases and awareness raising studies that will help make the issue visible to the public can be effective in obtaining results.

8. CONCLUSION

The findings obtained in this study may be summarised as follows:

1. The national legislation in Turkey regarding the right to petition appears to be in compliance with international legislation for the most part. Despite this, it is understood that in practice, rights-based CSOs in particular are not able to obtain effective results from CİMER and the KDK, two of the institutions that are authorised to receive applications.
2. Study findings show that CSOs are using their right to petition to a limited extent under the Presidential System of Government, similar to under the Parliamentary System.
3. Despite its system which instantaneously measures the reaction of the public to current affairs and issues an alarm when some

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requests exceed a certain limit⁷¹, CİMER does not make public data on the results of the applications it receives and to what extent relevant public institutions have implemented its recommendations. The number of applications filed with CİMER and their results, which is the subject of this study, could not be obtained from the institution. Therefore, it has been difficult to analyse the applications filed under the right to petition with CİMER in line with human rights criteria.

The fact that CİMER does not share with the public disaggregated data on the applications and furthermore, “the preference to not share data” in the response provided by CİMER to the information request filed as part of this study for sharing “data on the applications” by CSOs show that the right to petition as a means of right seeking in Turkey is being violated.

The paragraphs 16 and 17 of the UN Human Rights Committee General Comment No. 3172 regarding the provisions in the UN International Covenant on Civil and Political Rights are a part of the international human rights legislation to be taken into account under the right to petition and are binding on Turkey. As mentioned in Paragraph 16 of the General Comment No. 31, anyone whose rights recognised in the Convention are violated has the right to request the public authority to recognise the opportunity to seek redress, to expressly request opportunity to redress and to request reparation under suitable conditions. As stated in Paragraph 17 of the same Comment, when a State Party fails to take measures to prevent a recurrence of a violation, it is possible for this to be assessed as a rights violation since it would not be possible to identify whether “the obli-

gation to find active solutions and reparation in domestic law” in Article 2 of the UN ICCPR is fulfilled.

In addition to the abovementioned provisions, anyone whose rights and freedoms recognised in the Convention are violated has the right to bring the said violation before a national authority as part of the “right to an effective remedy” under Article 13 of the European Convention of Human Rights. Therefore, the fact that CSOs in Turkey who filed applications with public institutions to redress rights violations using their right to petition and shared their experiences have stated that they could not obtain results from their applications show that their existing rights, the right to redress, the right to seek effective remedy and reparation are not effectively met in practice. This, in turn, can be interpreted to create a new rights violation as the right to petition as a means of redress cannot be used effectively in remedying such violations.

As a matter of fact, the Strategic Plan prepared by CİMER includes an observation that despite the “numerous and intensive” applications, “the system for monitoring and auditing of applications is not effective”.⁷³

4. Within the framework of the information obtained from CSOs whose opinions were asked and data obtained from the KDK, the number of applications filed by CSOs with the KDK and their content show that CSOs do not prefer applying to the KDK using their right to petition in the case of a rights violation.

5. Applications filed with CİMER in any period are concentrated in subjects such as public personnel recruitment, military service processes and education and healthcare ser-

71 “CİMER’e başvuru yağıyor”, Hürriyet, 9 May 2021. <https://www.hurriyet.com.tr/gundem/cimere-basvuru-yagiyor-ruya-anlatan-da-var-yemek-tarifi-soran-da-41807073>

72 Lema Uyar, 2006, p. 116-123.

73 Directorate of Communications of the Presidency of the Republic of Turkey 2020-2024 Strategic Plan, p. 73. https://www.iletisim.gov.tr/images/uploads/dosyalar/%C4%B0leti%C5%9Fim_Ba%C5%9Fkani%C4%B1%C4%9F%C4%B1_2020-2024_Stratejik_Plan%C4%B1.pdf

vices and that despite being a human rights institution, the petitions sent to the KDK similarly focus on appointments, the public personnel regime, education-training and labour and social security. This indicates an acceptance that these two institutions remain insufficient in redressing rights violations in fields such as human rights and the rights of women, persons with disabilities, children and environment in the eyes of the society and CSOs.

6. The KDK, which particularly focuses on the protection and development of women's and children's rights and appoints a separate Ombudsman on for these fields, still receives a small number of applications from CSOs in both fields. This points to the limited effect of the institution in redressing rights violations within women's and children's rights. In conjunction, the KDK 2020 Activity Report states "the need for improvement in promoting the rights-seeking culture".

7. When the applications filed by CSOs with the KDK are assessed as a whole, it may be said that civil society in general does not primarily prefer the KDK for use of the right to petition and does not consider the institution "as active as expected from a national human rights institution" in redressing rights violations.

8. It is seen that public interest focusing on a certain topic and high number of applications can make it easier for requests to be accepted by CİMER and the KDK in certain situations. Despite this, as can be seen from the "Istanbul Convention" and "Canal Istanbul" examples, in controversial topics and matters that conflict with the prioritised political preferences of the government, even the high number of applications does not make it possible for requests to be accepted.

9. When the two institutions are compared in terms of encouraging the participation of

civil society in using the right to petition, it was found that CİMER does not have a structure that encourages CSOs to increase their number of applications and make it possible to analyse the results of these applications while the KDK makes efforts to carry out work that encourages CSO participation and cooperation.

10. Both CİMER and the KDK make efforts to implement improvements under various headings at an institutional level with the aim of identifying shortcomings in the use of the right to petition, more active use of this right and promotion of a rights-seeking culture. Various arrangements implemented by both institutions and the goals stated in their institutional documents to this end show that they are making efforts to encourage the use of the right to petition and eliminate rights violations.

11. In its activity reports, the KDK includes data on recommendations resulting from applications, the extent of redress of grievances in cases of rights violations and to what extent public institutions act in compliance with the recommendations.

Although CİMER conducts analysis on petitions and information request applications and "sends them to 101 institutions on a monthly basis"⁷⁴, it is difficult to identify whether the right to petition is used actively with CİMER as the data is not shared with the public.

12. Despite some examples of the KDK being effective in the protection of human rights and resolving rights violations through active cooperation with civil society and the fact that public institutions' rate of compliance with its recommendations is close to 80 per cent⁷⁵, the low number of applications filed by CSOs can be interpreted as the institution not being considered competent enough to eliminate rights violations.

74 "CİMER'e başvuru yağıyor: Rüya anlatan da var yemek tarifi soran da", Hürriyet, 9 May 2021. Access: <https://www.hurriyet.com.tr/gundem/cimere-basvuru-yagiyor-ruya-anlatan-da-var-yemek-tarifi-soran-da-41807073>

75 KDK 2020 Activity Report p. 99.

8. CONCLUSION

13. Within the framework CSO opinions obtained and other findings, it appears that the right to petition, as with all other rights, can be used actively by civil society and positive results for applications for redressing rights violations can be obtained, only with the presence of a democratic environment that is compliant with human rights criteria, taking into account political conditions under the Presidential System of Government.

Other findings obtained from the CSOs whose opinions were received as part of the study and the applications filed with the KDK may be listed as follows:

1. CSOs predominantly prefer CİMER in their applications. Despite being a human rights institution, the number of applications filed with the KDK by civil society including rights-based organisations remain quite low.
2. Applications filed by CSOs with both CİMER and the KDK are either never accepted or the rate of acceptance is low.
3. It is expressed that the reason why CSOs file applications is generally to use their right to petition as part of their advocacy strategy and put the problems they encountered in the rights field they operate in before CİMER and the KDK to ensure they are recorded rather than redressing of the rights violation and finding solutions to the problems subject to the petitions.
4. Since the number of applications filed by CSOs with CİMER and their results are not made public and the information request filed with CİMER as part of this study with the said request did not receive a conducive response, it was not possible to conduct an analysis based on the data on civil society's use of the right to petition with CİMER.
5. Within the framework of the data obtained and applying the experiences of the CSOs whose opinions were received for this study, it was concluded that the impact of the ap-

plications filed with both CİMER and the KDK and their results is low in redressing rights violations.

6. On the other hand, CSOs sometimes also fail to effectively use their right to petition and convey rights violations to relevant institutions. Some CSOs do not file applications because they do not have adequate awareness of this right while some refrain based on the assumption that they would not receive a positive response. 76

9. SUGGESTIONS

GENERAL SUGGESTIONS FOR ACTIVE USE OF THE RIGHT TO PETITION BY RELEVANT PUBLIC INSTITUTIONS

Active use of the right to petition and redressing of rights violations are frequently addressed by relevant public institutions. The Right to Petition Workshop held on February 12th 2020 under the leadership of the GNAT Commission of Petitions with the attendance of officials from the legislative, executive and judicial branches was aimed to review and improve existing structures.

In the workshop, the steps that should be taken by institutions authorised to receive applications in Turkey including CİMER and the KDK were listed under four headings: "Services provided and legislation; informing and raising awareness of the public; impact analysis on the location of the applications and implemented laws and decisions in identifying the problems in services provided and identification of the requests for legislative changes."

Some prominent headings in the Workshop serve as a guide to obtaining more effective results from the applications of CSOs with relevant institutions:

1. Transformation of the applications filed with institutions authorised to receive applications into public data.
2. Developing statistics, reporting and satisfaction measurement for services provided.
3. Collection of annual statistical data starting from 2010.
4. Taking into account the impact of digitalisation on the legislative preparation and implementation processes.
5. Analysing incoming applications to be used in identifying common problems.
6. Organisation of data that can serve as a basis for the impact analysis of laws.
7. Follow-up and assessment of the applications that require legislative changes through the information and document management system.
8. Development of an information management system that will allow for all institutions authorised to receive petitions to work together.
9. Developing the integration capabilities of institutional systems and a Centralised Petition Management System (National Petition Information Management System).

The suggestions brought forward in the Right to Petition Workshop serve as a guide for individuals and CSOs who experience rights violations to obtain an effective result using their right to petition in a democratic society. These suggestions are in line with the findings of the study and the initial report prepared before this study. In order for the suggestions brought forward in the Workshop and all other suggestions listed for the more active use of the right to petition to be

realised, it is necessary to reveal the impact of the applications filed with the eight institutions that are authorised to receive applications in Turkey under legislative provisions and to share them with the public.

CIMER'S AND THE KDK'S SUGGESTIONS FOR THE ACTIVE USE OF APPLICATIONS

Alongside the general suggestions listed above, which apply to all institutions authorised to receive petitions in Turkey, CİMER and the KDK provide various suggestions in their institutional documents for getting effective results from the right to petition. When the scope of this study and the findings of CSOs are assessed together, it can be said that realisation of the suggestions made by both institutions will contribute to the active use of the right to petition in Turkey in line with international human rights standards.

CİMER has identified the following headings as problems related to the services it provides under the right to petition and information in its 2020-2024 Strategic Plan:⁷⁷

1. The high number and concentration of the applications filed with CİMER.
2. Inactivity of the system for monitoring and auditing of the applications filed by citizens.
3. Inability of institutions to address the requests of citizens related to public services in time.
4. Despite the concentration of the applications filed with CİMER, the slow process of reporting these applications to decision makers.

To this end, articles on the steps that should be taken by CİMER are also stated in the same Strategic Plan as follows:

1. Increasing the number of trained personnel to respond to citizens' applications quickly and effectively.

⁷⁷ Directorate of Communications of the Presidency of the Republic of Turkey 2020-2024 Strategic Plan, p. 73 https://www.iletisim.gov.tr/images/uploads/dosyalar/%C4%B0leti%C5%9Fim_Ba%C5%9Fkanl%C4%B1%C4%9F%C4%B1_2020-2024_Stratejik_Plan%C4%B1.pdf

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2. Rendering the auditing and control mechanism more active so the CİMER system can operate actively and efficiently.

3. Developing the personnel capacity of the relevant units and improving the physical-technical infrastructure so as to quickly respond to applications and convey them to relevant institutions.

4. Creating the monitoring and assessment system in a structure that will offer information at different levels (to citizens, administrators and decision makers).

5. Designing the reporting system in a manner that will enable conveying the requests, expectations and needs of citizens clearly and tangibly to decision makers.

6. Filtering the data obtained from CİMER and sharing them with relevant public institutions and organisations during the public policy creating process.

CİMER's 2020-2024 Strategic Plan also includes findings and suggestions on how institutions can respond more quickly and efficiently to petitions and information requests.

The Plan is shaped around the goals of “pioneering the implementation of a citizen-oriented understanding of public service”, “providing faster, quality and reliable public services to citizens” and “realising a transformation that allows citizens and social elements to take part in decision-making processes”. In line with these goals, it is stated that it is necessary to “gradually increase the number of reports, studies and publications that serve as resources for decision makers (two in 2019) to 24 in 2024” and “improve the physical and technical infrastructure of CİMER”.⁷⁸

Similar to CİMER's suggestions for the effective use of the right to petition, the KDK's activity reports also include arrangements necessary for more active use of the right to petition within the institution. These sugges-

tions, listed below, are in line with the findings and suggestions of this study:

1. Article 19 of the Venice Principles recommends that if the regulation in question in an application filed with the ombudsman institution is not in line with the constitution of said country, the ombudsman should have the power to apply to competent courts. Similarly, according to Article 16 of Venice Principles and the Paris Principles, the ombudsman should be authorised to conduct ex officio investigations.

Although approximately 80 per cent of the ombudsman institutions around the world have the power to conduct ex officio investigations, in Turkey, the KDK is not authorised to apply to the Constitutional Court and conduct ex officio investigations. Aside from preparing special reports on certain topics, for the KDK to take action on an issue as an institution necessitates an application by an individual or legal entity.

The 2020 Activity Report states that the KDK should be authorised to conduct ex officio investigations as a human rights institution. It is stated that upon granted this power, the KDK will be able to attain sufficient capacity to provide significant contributions to establishing a culture of human rights in Turkey and finding solutions to the problems of aggrieved segments of society such as persons with disabilities, children and women.⁷⁹

2. Considering that the ombudsman institutions in many countries have the authority to intervene in court cases and file lawsuits at the Constitutional Court as part of their duties as national preventive mechanisms, it is argued that providing the KDK with the same authorisations listed in the Venice Principles, the Paris Principles and UN Progress Reports would be appropriate.⁸⁰

⁷⁸ Ibid., p. 73.

⁷⁹ Ombudsman Institution, 2020 Activity Report, p. 76. https://www.ombudsman.gov.tr/document/raporlar/yillik_rapor/2020_yili_yillik_rapor/mobile/index.html

⁸⁰ Ibid., p. 576.

3. The document provided to Sivil Sayfalar by the KDK states that it is possible for CSOs operating in the field of children's and women's rights in particular to apply to the institution more actively and that the number of applications filed by CSOs should increase.⁸¹

The KDK emphasises that it will be beneficial for civil society actors to include in the applications they file with the KDK, which does not have the power to conduct ex-officio investigations, the problems they encountered in the field, the discrepancies they encountered witnessed and the problems originating from legal regulations and by them doing so, the KDK will be able to take more tangible steps both in the protection and development of the rights of children and women.⁸²

In order to increase the number of applications filed with the KDK and for these applications to be more effective in elimination rights violations, the 2020 Activity Report identifies "the need for improvements in promoting the rights-seeking culture" and lists the activities planned by the institution as follows:

1. Increasing the number of qualifying applications by increasing the recognition of the institution; providing more amicable solutions and recommendations with the increase in the number of qualifying applications.⁸³
2. Resolving KDK applications in a shorter period than the 6-month examination period stipulated by law; training personnel for achieving this goal.
3. Transforming the First Examination, Distribution and Information Bureau, which receives the applications, into a call centre in 2021 so that it can operate more effectively and citizens can benefit from the service more actively.

4. Improving the Complaints Management System, which was introduced in 2019, so that applicants can have easier access to the institution and their complaints can be followed-up more easily.⁸⁴

SUGGESTIONS FOR CIVIL SOCIETY TO MORE EFFECTIVELY USE THE RIGHT TO PETITION

Within the framework of the findings obtained in the study and the suggestions listed by CİMER and the KDK for the more efficient use of the right to petition, the suggestions we offer for CSOs to more actively use the right to petition are as follows:

1. Civil society actors should more closely monitor the work of public institutions, know the legislation well and file applications based on concrete data and facts.
2. CSOs should insistently file detailed and qualifying applications with CİMER and the KDK, negative and positive responses given to applications should be reported and shared with the public.
3. More applications should be filed to obtain results from applications, relevant public institutions (other than CİMER and the KDK) subject to the request should be contacted and the applications should be followed-up through various methods.
4. Cooperation and dialogue channels between civil society and public bodies should be increased for the right to petition to be more actively utilised by CSOs under the Presidential System of Government.
5. CSOs should develop cooperation among themselves and faculties of law and/or relevant academics at univer-

⁸¹ Response given by the KDK to our information request, June 2021.

⁸² Response given by the KDK to our information request, June 2021.

⁸³ Ombudsman Institution, 2020 Activity Report, p. 578.

⁸⁴ Ombudsman Institution, 2020 Activity Report, p. 578.

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- sities to overcome the deficiencies in legal literacy, political participation and advocacy.
6. Not only the CSOs conducting rights-based studies but also other civil society actors should acquire information and skills at a level sufficient to effectively use the right to petition, diversify and continue their advocacy activities based on whether their petitions are accepted or rejected.
 7. As a human rights institution, the KDK should become an institution that receives more applications from CSOs in redressing of rights violations and the institution should receive more qualifying applications on a wider range of topics.
 8. CSOs should establish active cooperation with the KDK for the institution to redress rights violations in fields such as human rights, the rights of children, women and persons with disabilities and contribute with studies such as reports and policy documents to an extent that will influence its recommendations.
 9. Instead of the Turkish language requirement in applications, the applicants should be allowed to file petitions in their own language.
 10. Applications filed with CİMER and the KDK and their results should be published on the websites and social media accounts of CSOs.
 11. CİMER and KDK databases should disaggregate by applicant type, i.e. individual and legal entity applicants (institutions and CSOs), in addition to criteria such as disability, sex, age, the human right subject to the application.
 12. Redressing rights violations by obtaining effective results from application through encouraging the use of the right to petition by individuals and legal entities and CSOs as a result of the implementation of all these suggestions.

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ANNEXES

ANNEX-1: LIST OF CSOS WHOSE OPINIONS WERE RECEIVED

Civil Society in the Penal System Association (CİSST)

Animal Rights Watch Committee (HAKİM)

Women for Women's Rights - New Ways (KİH-YÇ)

Mor Çatı Women's Shelter Foundation (Mor Çatı)

Saadet Öğretmen Association for Struggle with Child Abuse (UCİM)

Turkish Association of Social Workers (SHU-
DER)

Social Rights and Research Association
(TOHAD)

ANNEX-2: QUESTIONS POSED AT CSOS

1. Did you file an application with CİMER and the Ombudsman Institution (KDK) under of the constitutional right to petition?

2. Between January 1st 2015 - June 30th 2018 / July 1st 2018-December 31st 2020 (so as to be able to compare the periods before and after the transition to the Presidential System of Government), did you file an application with CİMER (BİMER before 2018) and the KDK under the right to petition?

3. If you filed an application with CİMER and the KDK between these dates, did you get

a response? Was the request/complaint in your application resolved?

4. Did you file an application with BİMER before the transition to the Presidential System of Government?

5. Do you think there is a difference between the Presidential System of Government and the Parliamentary System in terms of conducting advocacy activities and using the means of filing political applications (right to petition) with political decision making authorities?

6. After the transition to the Presidential System of Government, did you witness any examples of other CSOs filing petitions with the KDK or CİMER and receiving responses/ their requests being resolved positively? Did you witness any examples where the applications filed by other CSOs with the KDK or CİMER as part of the right to petition did not get a response or their requests were not met?

7. Do you think, civil society actors in general actively use the right to petition recognised in the Constitution?

8. If you previously never filed a petition institutionally on behalf of a CSO, would you consider engaging in advocacy activities by applying to CİMER and the KDK with a petition?

9. Would you consider applying to the KDK and CİMER as part of the right to petition and developing an advocacy strategy by using your constitutional right to petition (right to political participation)?

If you previously did not apply to CİMER and the KDK; can you share with us the reason for preferring not to use the right to petition

as a means of political application? Could you list them?

11. Do you think CSOs should file more applications with the KDK or CİMER using the right to petition?

12. Do you think that CSOs use the right to petition effectively?

13. What do you think should be done for CSOs to file applications with CİMER and the KDK and utilise the right to petition more effectively and to get results under the right to petition as an advocacy tool? Do you have any suggestions?

14. Regarding the use of the right to petition by civil society as part of the right to political applications through the KDK and CİMER, do you have any additional points you want to add?

ANNEX-3: RESPONSE OF CİMER TO THE PETITION REGARDING INFORMATION REQUEST

(The response provided by CİMER on 14.04.2021 regarding the application 2101281403 filed on 17.03.2021)

“Your application to the Directorate of Communications of the Presidency of the Republic of Turkey has been reviewed.

According to the provision in Article 7 titled “the quality of the information or document to be requested” of Law 4982 on the Right to Information, which states “institutions and organisations may reject applications requesting a type of information or document that can be created using a separate or private study, research, examination or analysis’, your request [for information] could not be fulfilled. We submit to your information that any applicant whose request for information is rejected can seek recourse to court or before seeking recourse to court can object to the Right to Information Assessment Board with a written application within 15 days starting from the notification of the decision.”

