

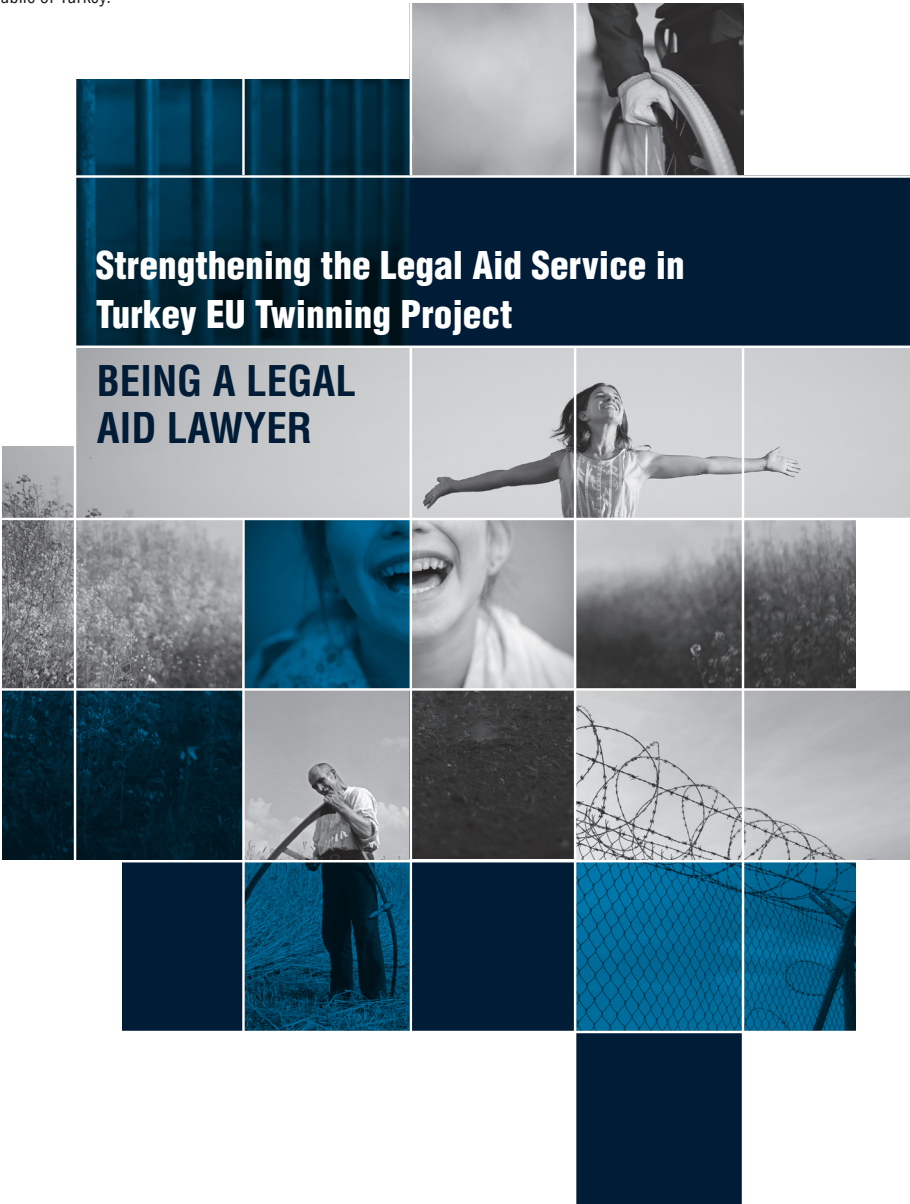


This Project is co-financed by the European Union and Republic of Turkey.



Strengthening the Legal Aid Service in Turkey EU Twinning Project

BEING A LEGAL AID LAWYER





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STRENGTHENING THE LEGAL AID SERVICE IN TURKEY EU TWINNING PROJECT BEING A LEGAL AID LAWYER



INTRODUCTION

Access to justice enables individuals to protect themselves against infringements of their rights, to remedy civil wrongs, to hold executive power accountable and to defend themselves in criminal proceedings. It is an important element of the rule of law and cut across civil, criminal and administrative law. Access to justice is both a process and a goal and is crucial for individuals seeking to benefit from other procedural and substantive rights¹. It is thus an enabling right that helps individuals enforce other rights. Access to justice encompasses a number of core human rights, such as the right to a fair trial under Article 6 of the European Convention of Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights, and the right to an effective remedy under Article 47 of the ECHR and Article 47 of the Charter.

Likewise, access to legal aid is an important part of the right to a fair trial. The right to legal aid ensures effective access to justice for those who have insufficient financial resources to cover the costs of court cases, such as court fees or costs of legal representation. Article 6 (1) of the ECHR and Article 47 of the EU Charter of Fundamental Rights guarantee the right to legal assistance in civil proceedings. The right to legal assistance in criminal proceedings is guaranteed under Article 6 (3)(c) of the ECHR and Article 48 (2) of the EU Charter of Fundamental Rights.

The right of access to a court should be effective for all individuals, regardless of their financial means. This requires states to take

¹ *“Handbook on European law relating to access to justice”* by the European Union Agency for Fundamental Rights (FRA) and the Council of Europe, pg, 16, 2016.

steps to ensure equal access to proceedings, for example, by setting up appropriate legal aid systems².

The legal aid system in any country aims to fulfil one of the key principles of human rights namely access to justice, especially for the most vulnerable people. Ensuring access to legal aid enhances the trust of citizens in the justice system and the legitimacy of the state. Legal aid can also ensure that people have access to information about their rights, entitlements and obligations.

In terms of administrative management, legal aid as any other system administered by the State should follow the principle of sound public management. Firstly, it should generate quality services to beneficiaries and assure transparent, clear, just and simple principles of the provision of legal aid for beneficiaries. Secondly, it should be administered and provided clear and friendly in terms of management, interaction of stakeholders, assigning and remuneration of legal aid providers and adjudication of legal aid costs. Thirdly, it should be efficient and cost-effective in terms of funding and management of funds with transparent, demanding and motivating monitoring, supervision and auditing instruments of the system which allow effective planning, sufficient funding and further development of the system. In sum, the legal aid system has to be easily accessible, comprehensive, fast and functional.

In Turkish law, legal aid is accepted as a fundamental mean for access to justice in the framework of Article 6 of European Convention on Human Rights stating the right to fair trial and in Article 36 of the Constitution of Republic of Turkey.

² Council of Europe, Committee of Ministers (1978), Resolution78 (8) on legal aid and advice, 2 March 1978.

LEGAL AID FRAMEWORK

NATIONAL LEGAL FRAMEWORK

The foundation for legal aid is defined in the **Constitution of the Republic of Turkey, 1982**.

In Art. 2, it is written that the Republic of Turkey is a democratic, secular and social state governed by the rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the preamble. Whereas, in Art. 36, it is defined that everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.

The Council of Ministers' Decree 28928, 1 March 2014 on implementation of the Action Plan on Prevention of ECtHR violations foresees the requirement to increase the efficiency of defences (point 7). Requirements related with legal aid provision are:

7.1- Strengthening Effective Practice of the System of Obligatory Defence Counselling during the Custody Stage. Regarding this point it is explained that since the cases, where the suspect or the accused does not request a defence counsel while his/her statement is being taken, must be determined in a manner that would not cause suspicion, reviewing the practices in this regard and taking the necessary measures in order to eliminate the deficiencies, if any, in accordance with the standards set out in the ECtHR's case-law.

7.5- Reinforcement of the Principle of the Equality of Arms in the Judicial Practices. Regarding this point, it is explained that the de-

termination of the situations which could be contrary to the principle of the equality of arms in the judicial practices in cooperation with the relevant institutions and non-governmental organizations in accordance with the standards set out in the ECtHR's case-law and taking necessary measures to eliminate these situations.

In the Republic of Turkey, the provision of legal aid is regulated in different Laws:

The **Code of Civil Procedure**, Law number 6100 Art. 334 identifies persons who may apply for legal aid in civil cases; Art. 335 define the scope of legal aid; Art 336 describes the requirements for the request for legal aid; Art 338 provides the conditions for cancellation of legal aid provision; Art. 339 explains how the postponed litigation costs are collected; Art.340 defines the conditions for the payment of the fee for the lawyer hired by legal aid decision.

In accordance with the **Procedure of Administrative Justice Act No. 2577**, Art. 27 Paragraph 6, the stay of execution order shall be given after a financial guarantee is deposited. However, deposit of financial guarantee might not be sought, according to the requirements of the situation. The dispute arises between parties about the financial guarantee shall be resolved by the Division, Court or judge that renders the stay of execution order. Financial guarantee shall not be asked from the administration and those to whom free legal aid is granted. (Code of Administrative Procedure, Art. 27 & 52)

In the **Code of Lawyers**, Law number 1136, articles 47 and 51 define the role and work conditions of the representatives of the Legal Aid Commission in the district Bar. (Art.47); the form of application to the Bar (Art.48); who has the right to sign official letters in the name

of the local Bar (Art 49); the appointment of the member of the Bar to administrative tasks (Art. 50); the requirement for book keeping in the local Bars. The scope of legal aid is provided in Art. 176; legal aid rendering by Legal Aid Commissions, in Art. 177; request for legal aid, in Art. 178; administration of legal aid, in Art. 179, legal aid officers' incomes and expenses in Art. 180³ and finally, the requirements for annual report and regulations in Art. 181.

Legal aid is defined in Article 176 of Code of Lawyers as:

“the rendering of the attorneyship services described in the present Code for the benefit of those who do not have the wherewithal to pay attorneyship fees and other adjudicatory expenses.”

The Professional Rules of Lawyers of the Turkish Bar Associations provide general rules regarding lawyer profession; define lawyers' relations with jurisdictional bodies and legal authorities as well as relations with the client; insist on solidarity and define relations among colleagues; and finally, define lawyers' relations with the Bar Associations and the UTBA.

In the **Code of Criminal Procedure**, Law number 5271, the appointment of a defence lawyer is defined in Art 150; the rights of the victim as well as the claimant in Art. 234-(1) and the rights of intervened victims in Art.239. The coverage of court expenses is identified in Art. 324. In Art. 150 (4) it is explained that other details related to the conditions for obligatory defence are regulated by regulations enacted after consultations with the UTBA. The Art. 151 describes actions

3 Code of Levies foresees the finance sources of UTBA and local bar associations to be used in legal aid services. Those sources are the total of tariff 1, 2 and 3.

to be taken in cases when the defence lawyer does not fulfil his/ her obligations and sanctions for a defence lawyer:

- In cases where the lawyer who has been appointed according to Article 150 does not appear at the main trial or steps out of the main trial without considering the proper time or fails to fulfil his/ her duties, then the judge or trial court has to make the necessary interactions to appoint another defence lawyer immediately. In such an event, the court may interrupt or adjourn the main trial to a later date.
- If a new defence lawyer explains that he/ she had not been given enough time to prepare a defence, the main trial is adjourned.

In the **Law on Enforcement and Implementation of Criminal Procedure Code, Law number 5320, Art.13 (1)**, the order defining the payment of the fee to the lawyer requested by the investigation and prosecution authorities in Criminal Proceeding is provided. It is paid from the budget of the MoJ allocated for this purpose. The Expenses for remuneration of lawyers are litigation expenses. The Law defines in the Article 13 (2) that the rules and details regarding the organization of payment is provided in the regulation issued by the MoJ considering the opinion of the UTBA.

Union of Turkish Bar Associations Bylaw on Legal Aid regulates the principles and procedures regarding legal aid in accordance with the Code of Lawyers, Law. No. 1136 which includes the allocation and use of money which is transferred to Union of Turkish Bar Associations' account from Ministry of Finance annually, among bar associations, the establishment, duties and authorities of legal aid offices and the assignment of lawyers as well as the identification of

fees for those assigned lawyers, and finally it identifies the supervision of legal aid. (Art. 11)

The Union of Turkish Bar Associations Minimum Fee Tariff of Lawyers (Published annually) Art. 1(1) defines that in all courts, in all legal support, the provisions of this tariff shall apply in all decisions of the authorities which terminate the dispute between the parties and in the determination and discretion of the lawyer's fee to be imposed on the other party in accordance with the Law No. 1136, Dated 19/3/1969, Code of Lawyers and the provisions of this very tariff.

(2) In the event the statutory lawyer's fee between the parties is not agreed or is deemed invalid, the court does not award a sum under the lawyer's fee calculated in accordance with this tariff over the amount subject to the lawsuit. This tariff has to be taken into consideration only when calculating the minimum value in determining the lawyer fee to be paid based on the fourth paragraph of Article 164 of the Law No. 1136. Other matters are subject to the provisions of Code of Lawyers

(3) The fees of lawyers decided under the provisions of this tariff are accepted as to be arranged in accordance with the provisions of this regulation.

The Regulation on the Procedures and Basis of Payments to Lawyers on Their Assignments in Accordance with the Code of Criminal Procedure Law defines the principles of the appointment of a lawyer (Art 6) and the conditions for termination of work of the assigned lawyer (Art 7).

The Ministry of Justice Tariff Regarding Payments to the Defence Counsels and Lawyers Appointed According to the Code of

Criminal Procedure (Published annually) identifies the fees of lawyers who based on Criminal Procedure Law are assigned with the demand of inspection and prosecution offices.

Other Regulations on Legal Aid in the Legislation

I. Law No. 4589, Law on the Adoption of the Legislative Decree on the Resolution of Legal Disputes Originating from the Disaster and Facilitation of Certain Procedures in Natural Disaster Regions,

In the **Law on the Adoption of the Legislative Decree on the Resolution of Legal Disputes Originating from the Disaster and Facilitation of Certain Procedures in Natural Disaster Regions**, Law number 4589, Article 3, it is foreseen legal aid provision to the victims of natural disaster to any kind of law suits and procedures concerning resolution of legal disputes derived from disaster. Not required to submit evidence and make testimony regarding admissibility to legal aid provision.

II. Law on Foreigners and International Protection, Law Number 6458,

In the **Law on Foreigners and International Protection**, Law Number 6458, (Art. 81 – Legal Services and Counselling) it is defined that applicants and international protection beneficiaries may be represented by a lawyer whose fee is covered by them. Legal aid is provided pursuant to the provisions on legal aid stipulated in the Code of Lawyers numbered 1136. In addition to that, they can use counselling services provided by non-governmental organizations and other State's benefits for the people under temporary protection.

Besides that, the problem of having a power of attorney for the ones who are under the international protection procedure and also in different stages of the procedure without legal documents like passport, identification card, has reached to a significant solution.

In accordance with the official publication dated 19.09.2014 and No. 93 by Union of Turkish Public Notaries, it is stated that those below listed documents will be effective in use to get power of attorney together with the ID of relevant person -in legal period of the effective use of ID- without having the requirement to have any translation service:

1. Certificate of Residence which are obtained in the period of former law or period of “Law No. 6458, Law on Foreigners and International Protection”
2. IDs of Stateless Persons
3. Registration Certificate of Application to International Protection
4. ID of the applicant to International Protection
5. ID of person who has International Protection status

Also, Syrian refugees who are under the temporary protection regime, can proceed with their issues at notaries together with their “Foreigner Identification Card” or “Temporary Protection ID” given by Province Immigration Centre. This issue is in force with the official publication of Union of Turkish Notaries dated 08.01.2016 and Numbered 4.

Anti- Terror Law; Law to fight Terrorism, Law number 3713, Article 15 amended by Code number 5532 in 29th June 2006

In accordance with the Article 15 of Law No. 3713, Anti-Terror Law, Fees of not more than three attorneys, determined as attorney in course of investigation and criminal proceedings, undertaken due to crimes claimed that they had resulted from fulfilment of functions of officials from intelligence and law enforcement services and other personnel in charge of anti-terror struggle shall be paid, and payments to be made regardless of attorney's fees tariff to such personnel shall be met from allowance to be included in the budget of related organizations. (Additional Sentence 23/6/2016-6722/15 Art.) However, the payment of the lawyer which is selected by the personnel who is the plaintiff, is subjected to the approval of the Minister. Conditions and procedures regarding payment of attorney's fees shall be arranged through a regulation to be issued jointly by the Ministries of National Defence and Interior.

INTERNATIONAL REGULATIONS ON LEGAL AID

There are numerous international treaties to ensure that those who do not have adequate financial means are represented by a lawyer during legal procedures, especially related to the criminal procedures.

a. Treaties

- i. Universal Declaration of Human Rights, Article 10, 11.1
- ii. International Covenant on Civil and Political Rights, Article 14.3
- iii. Convention on the Rights of the Child, Article 12, 37, 40

- iv. International Convention on the Elimination of all forms of Racial Discrimination, Article 5
- v. Convention Against Torture Article 4, 7
- vi. Framework Convention for Minority Rights, Article 4
- vii. Convention Relating to the Status of Refugees, Article 16
- viii. Convention Relating to the Status of Stateless Persons, Article 16
- ix. European Convention on Human Rights, Article 6.3
- x. European Convention on the Exercise of Children's Rights, Article 14
- xi. European Agreement on the Transmission of Applications for Legal Aid
- xii. Additional Protocol to the European Agreement on the Transmission of Applications for Legal Aid
- xiii. Charter of Fundamental Rights of the European Union, Article 47
- xiv. Convention on International Access to Justice, Article 1-13

b. Regulations set by International Organizations

1. UN Resolutions and Recommendations

- i. UN Resolution adopted by the General Assembly [67/187] United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

- ii. Basic Principles on the Role of Lawyers (Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba), Article 3, 6

2. Council of Europe Resolutions and Recommendations

- i. Resolution (76) 5 on legal aid in civil, commercial and administrative matters
- ii. Resolution (78) 8 on legal aid and advice
- iii. Recommendation No. R (93) 1 on effective access to the law and to justice for the very poor
- iv. Recommendation No. R (99) 6 on the improvement of the practical application of the European Agreement on the Transmission of Applications for Legal Aid
- v. Recommendation No. R (2000)21 on the Freedom of exercise of the profession of lawyer
- vi. Recommendation R (2005)12 containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid and its Additional Protocol

3. EU Directives and Decisions

- i. Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes
- ii. Directive 2012/13/EU of The European Parliament and of The Council of 22 May 2012 on The Right to Information in Criminal Proceedings, Article 1.a, Annex I, Par. A, Annex II, Par. B

- iii. Directive 2013/48/EU of The European Parliament and of The Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty
- iv. Commission Decision of 30 April 2003 establishing a form for the transmission of legal aid applications
- v. Commission Decision No 2004/844/EC of 9 November 2004 establishing a form for legal aid applications under Council Directive 2003/8/EC to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such dispute
- vi. 2005/630/EC: Commission Decision of 26 August 2005 establishing a form for the transmission of legal aid applications under Council Directive 2003/8/EC
- vii. Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons
- viii. Resolution of The Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (Text with EEA relevance) (2009/C 295/01) Annex A, Measure C
- ix. Green Paper from the Commission - Legal aid in civil matters: the problems confronting the cross - border litigant
- x. Conclusions of the Tampere European Council (point 30)

4. CCBE Code of Conduct for European Lawyers, Article 3.7.2

5. CCBE Legal Aid Recommendations (2010)

SCOPE OF THE LEGAL AID

Legal aid in Turkey has been regulated in three different main codes to arrange three different dimensions of legal aid:

- *To appoint a lawyer in civil and administrative cases, in accordance with the Code of Lawyers Law No. 1136 (“adliyardım”)*
- *For exemption from court fees and assignment of lawyer in accordance with the Code of Civil Procedure, Law No. 6100 (“adli müzaheret”),*
- *To appoint a lawyer in criminal cases, in accordance with the Code of Criminal Procedure (“CMK avukatlığı”).*

CIVIL AND ADMINISTRATIVE CASES

The scope of the legal aid in civil matters is essentially regulated in the Code of Civil Procedure (No.6100), The Code of Lawyers (No 1136) and the Union of Turkish Bar Associations Bylaw of Legal Aid.

In accordance with the Code of Lawyers (Art. 176), The Regulation on the Procedures and Basis of Payments to Lawyers on Their Assignments in Accordance with the Code of Criminal Procedure Law and Law on Travel Expenses **the scope of legal aid nominated by the Bar** includes:

- a. Remuneration of appointed lawyers;
- b. Coverage of mandatory travel expenses of the lawyer

The expenses of issuance of power of attorney are not covered. If the beneficiary needs to get legal aid for covering of other type of litigation expenses he/she requires to apply to the court requesting the legal aid provision. The Legal Aid Commission of the Bar makes decisions on only exemption from the lawyer's fee. Pre-litigation advice services are not covered by the legal aid.

In the case of the Code of Civil Procedure, Pursuant Article 335 (1), **a scope of legal aid nominated by the court** includes:

- a. Temporary exemption for all litigation and enforcement costs⁴ which will be made.

⁴ According to Article 323 of Code of Civil Procedure litigation expenses are:

- a) court fees;
- b) notification and postal expenses due to the lawsuit;
- c) file and other paper expenses;
- d) expenses of provisional legal protection measures and expenses related to the protest, notification, warning and regulation of the power of attorney;
- e) costs of collecting evidence;
- f) expenses and payments for witness and experts;
- g) duties, taxes, fees and other expenses paid for documents received from State offices;
- h) the amount that the judge think is suitable for per diem, travel and accommodation costs of the days in which the parties are present in the hearing not followed by the lawyer or required to be present in the court;
- i) proxy charges;
- j) other costs incurred during the litigation proceeding

- b. Exemption for posting guarantee for litigation and enforcement costs.
- c. Payment of all necessary costs needed to be made during litigation or enforcement proceeding by the State as an advance payment.
- d. Hiring a lawyer on the condition that his fee shall be paid later, if the case needed to be followed by a lawyer. The fee of the lawyer who is assigned upon the request of court is covered by Treasury deemed as a litigation cost.

Then again, in accordance with the Code of Civil Procedure, Art. 335; it could be decided for the beneficiary to enjoy some of those above stated rights. In addition to this, legal aid continues till the judgment of the court becomes final.

Finally, it should be pointed out that pre-litigation advice is not covered by the legal aid budget. (Article 337 (3) of the Code of Civil Procedure). In addition to that, costs incurred before issuance of a decision on legal aid provision are not covered by the legal aid budget.

Exemption from all costs in civil legal aid decisions given by the judge are temporary as the expenses covered within the scope of legal aid may be collected from the legal aid beneficiary at the end of the case, in case he/she loses the case. If it is explicitly understood by the court that the collection of litigation costs would aggrieve the legal aid beneficiary, the court may decide on total or partial exemption from the payment. If the legal aid beneficiary loses the case the Court might decide to split the payment into instalments up to one year.

The legal aid can be terminated if it comes forth that the applicant has submitted wrong information about his financial status as a result of intentional conduct or gross negligence or if it is determined that financial status of the applicant has adequately improved later on (Art. 338 (1) of Code of Civil Procedure).

In addition to that the Bar may terminate the decision to appoint the lawyer when it appears that legal aid beneficiary cannot afford payment for Power of Attorney or cover litigation costs in case the court refuses to provide legal aid for coverage of litigation expenses.

CRIMINAL CASES

In criminal cases **the scope of legal aid consists of appointment of a defence counsel for the suspect and the accused as well as appointment of an attorney for the victim and the and coverage of costs of proceeding.**

Pursuant to Article 149 (1) of Code of Criminal Procedure the suspect⁵ or accused⁶ may benefit from advice of one or more defence counsels at any stage during the investigation or prosecution.

Code of Criminal Procedure Article 149 (3) clarifies that the right of the lawyer to consult with the suspect or the accused, to be present during the interview or interrogation, and to provide legal assistance

5 Suspect: The individual, who is under suspicion of having committed a crime, at the investigation phase(Art.2 (a) of CCP)

6 Accused: The individual, who is under suspicion of having committed a crime, after the prosecution phase has started, and until the final judgment (Art.2 (b) of CCP)

cannot be prevented or restricted at any stage of the investigation and prosecution phase.

However, Code of Criminal Procedure, Article 156 (1) points out that the defence counsel is appointed by the Bar Association will be performed in the investigation phase⁷ upon the request of the authority that conducts the interview or the judge who conducts the interrogation and during the prosecution phase⁸, upon the request of the court.

In addition to that, in cases related to the appointment of stationary mental examination, where the suspect or the accused has no defence counsel, a defence counsel shall be appointed for him by the Bar Association upon the request of the judge or court (Art. 74 (2) of CCP).

Regarding articles related to the appellate stage it is written that the suspect, accused and party who according to this Code has acquired the position of intervening party, as well as parties whose motion of intervening was not decided, was denied, or parties who were aggravated by the crime in that manner that the position of the intervening party would be possible may file a motion of legal remedies against the decisions of the judges and of the court (Art. 260 (1) of CCP). Instead of suspect, accused or intervening party his/her lawyer may file motions of legal remedies (Art. 261 (1) of CCP).

7 Investigation: The phase that comprises transactions, starting with gaining knowledge of suspicion of a committed crime by competent authorities as indicated by the Code, and continuing until the indictment has been approved (Art. 2 (e) of CrimCP)

8 Prosecution: The phase beginning with the decision on the admissibility of the indictment and ending with the final judgment

The written appeal on law filed by the accused has to be signed by the accused or by his defence counsel (Art. 295 (2) of CrimCP). If the accused does not have a defence counsel, he may declare his grounds for appeal on law to the registration clerk, which shall be taken into record; and this record must be approved by the judge (Art. 295 (3) of CrimCP).

According to the Article 156 (3) of CCP in cases where the suspect or accused subsequently chooses a defence counsel, the duty of the lawyer, who was formerly appointed by the Bar Association, shall be terminated.

Coverage of litigation costs

The Code of Criminal Procedure defines that the legal aid in criminal cases postpone till the end of proceeding levies, lawyers' fees and "all kinds of expenses [...] in order to run the trial in the investigation and prosecution phases" (Atr.324 (1) of Code of Criminal Procedure). The costs of translation and interpreters are covered by the State Treasury irrespective whether legal aid is provided or not (Atr.324 (4) of Code of Criminal Procedure). The power of attorney is not required in the criminal proceeding; therefore, it is not included into the list of costs of the proceeding.

Therefore, the State Treasury pays all the expenses in criminal procedure on the investigation and prosecution phases and during the trial.

CRITERIA FOR GETTING LEGAL AID

Criteria for getting Legal Aid in Turkey are different in civil and criminal procedures. In civil matters, the criteria of eligibility for legal aid are:

- to be financially disadvantaged, and
- to justify the request by presenting evidence.

The criteria to grant legal aid in civil cases depend mainly on the subjective evaluation by the different competent authorities. Even the documents required to submit for the requesting the legal aid vary from one institution to another, and data in these documents are analysed subjectively. For instance, a Bar Association may nominate the legal aid, while the Court, afterwards, may reject his request for coverage of litigation expenses.

MEANS AND MERIT TEST APPLIED BY THE BAR ASSOCIATIONS

According to the Article 1 of UTBA Bylaw on Legal Aid, the goal of legal aid is availing the individuals who are incapable of affording attorney fees and litigation costs of lawyer's services in order to overcome the obstacles before the individuals' right to legal remedies and to enable equality regarding the exercises of the right to legal remedies.

In addition to the Code of Lawyers and UTBA Bylaw on Legal Aid, other laws foresee the requirements for the legal aid provision. For example, legal assistance for refugees and applicants for interna-

tional protection is provided if they cannot afford the litigation costs. (Law on Foreigners and International Protection, Code of lawyers)

As for the means tests, pursuant article 5 of the Union of Turkish Bar Associations Bylaw on Legal aid, documents to prove the financial situation of the applicant are requested. However, the Bylaw does not list what type of documents have to be submitted together with the application to prove the applicant's financial situation. The Legal Aid Offices of bar associations may request that the applicant provide the following documentation related to their case and financial status:

- Residence registration from the Moktar
- Declaration of poverty by the Moktar
- Copy of the ID card (refugee registration cards are now considered to be acceptable)
- Title deed registry asset declaration
- Income document / salary statement, if the person is employed or social security document if not employed
- If the court case is ongoing, a copy of the court case file
- If the applicant has rented a house, a copy of the rent contract or payment receipt. If they don't pay rent, a copy of the land title registry of the property where they reside.

In addition to the means test the **merits test** is applied by Bars as well.

Pursuant to Article 178 of the Code of Lawyers, the requestor must prove the rightfulness of the request by presenting evidence. In addition to that, the article 5 of the Bylaw on Legal Aid of the Union of UTBA, defines that the Legal Aid Commissions have to conduct an investigation <...> regarding the legitimacy of the request and make a decision when necessary.

However, neither the Code of Lawyers explains what it is the rightfulness of the request, neither the Bylaw on Legal Aid explains what it is the legitimacy of the request.

A decision denying Legal aid can be appealed.

“Request of legal aid is delivered to legal aid office or representatives. The requester needs to prove that s/he is rightful in her/his request. If the Bar Association decides to refuse to provide legal aid, the person may appeal to the Bar President. The decision of the Bar President is final.” (Law No. 1136, Code of Lawyers, Art. 178) However, in the case the Bar Association will refuse to take positive decision, the applicant can request a Court to take decision regarding the legal aid provision.

In addition to that, both courts and the Bars provide legal aid to a number of people to whom legal aid is provided **irrespective his/her financial situation**:

- Heirs of death soldiers - to the law suits related to in the prosecution and trial on the occasion of death of a soldier in troops, headquarters and institutions or on duty or in duty stations (Art. 2 of the Code of the Internal Services)
- Conscripts called to arms- to any kind of law suits (Art. 61 of the Military Law)

- Mobilized Soldiers – to any kind of law suits in civil proceedings and execution proceedings (Art. 1 of the Law on Procedures to be Conducted Throughout Civil Cases and Debt Enforcement Proceedings of People Subjected Military Law During States of Mobilization or Emergency)
- Victims of natural disaster - to any kind of law suits and procedures concerning resolution of legal disputes derived from disaster (Art. 3 of the Law on the Adoption of the Legislative Decree on the Resolution of Legal Disputes Originating from the Disaster and Facilitation of Certain Procedures in Natural Disaster Regions)
- Applicants of international protection- just lawyer’s assistance can be provided in civil and administrative cases, because a legal aid can be provided based on the Code of Lawyers (Art. 81 (3) of Law on Foreigners and International Protection seekers)

MEANS AND MERIT TEST APPLIED BY THE COURT

Pursuant to the Article 334 (1) of the Code of Civil Procedure, the aim of Legal Aid in civil and administrative matters is to warrant access to justice to persons, who have no ability to partially or totally afford necessary litigation or enforcement costs without putting livelihood of himself or his family in a significantly difficult position, may apply for legal aid in his claims and pleas, demand of temporary protection and enforcement proceeding on the condition that his claims explicitly have no legal ground.

Whereas the Article 334 (2) of the Code of Civil Procedure defines that Public benefit associations and foundations may apply for legal aid in case their claims and pleas have a justifiable reason and have no ability to partially or completely afford necessary costs without putting itself in a financially difficult position.

Accordingly, the **means test** for the provision of legal aid in civil cases is as follows:

The person can get legal aid when he/she have no ability to partially or totally afford necessary litigation or enforcement costs without putting livelihood of himself or his family in a significantly difficult position.

Public benefit associations and foundations may apply for legal aid in case they have no ability to partially or completely afford necessary costs without putting itself in a financially difficult position.

However, the Code or other legal regulations are not bound to objective criteria for “putting livelihood of her/himself and the family in a significantly difficult position”.

Whereas the **merit test** for the provision in civil cases is as follows:

- The legal aid will not be provided to the person in cases where claim explicitly have no legal ground.
- Public benefit associations and foundations may apply for legal aid in case their claims and pleas have a justifiable reason.

In all cases enumerated in article 334 CCP the request for legal aid submitted by the applicants has to be accompanied by the documents proving their claim and his/her financial situation. Article 336

of the Code of Civil Procedure states that applicant has to submit the proofs of his claim and relevant documents showing his financial status that he cannot afford litigation costs with the summary of his claim to the court.

Despite the requirement to submit relevant documents showing applicant's financial situation, the Court analyses data via UYAP. Together with the integration of UYAP system which has been developed by Ministry of Justice and is in use across the country by all judicial bodies, with other institutions informational technologies, courts currently can access to detailed identification information, social security registries, vehicle and immovable registries of the applicant via information system.

Together with the Code of Civil Procedure amendments went into force in the year 2013, there is the right to appeal the court's decision on denying legal aid. If the Court decides to refuse to provide legal aid, the decision may be appealed to another Court but not higher court (Art. 337 CCP) and this subsequent decision is final.

LEGAL AID IN CRIMINAL MATTERS

According to the Article 156 of CCP the defence counsel is appointed for the suspect or the accused by the Bar Association where the investigation or prosecution is pending in following procedures:

- During the investigation phase, upon the request of the authority that conducts the interview or the judge who conducts the interrogation;
- During the prosecution phase, upon the request of the court.

Pursuant to Article 150 (1) of Criminal Procedure Code the suspect or the accused have to be asked to choose a defence counsel on his behalf. In cases where the suspect or accused declares that he/she is not able to choose a defence counsel, the defence counsel is appointed on his/her behalf, if he/she requests such.

The defence counsel is assigned without the request of the suspect or accused who does not have a defence counsel Article 150 (2)(3) of Criminal Procedure Code:

- to a child;
- to an individual, who is disabled to that extent that he cannot make his own defence;
- to an individual, who is deaf or mute;
- to an individual, who is accused with crimes that carry a punishment of imprisonment no less than 5 years;

Accordingly, the same rights are given to the victim, claimant and to the intervening party. Article 234 and Article 239 of the CCP order the appointment of a defence counsel by the Bar Association upon request in cases of sexual assault, and in crimes that carry imprisonment of five years or less. The right to request the legal aid lawyer have to be explained to the victims of the crime as well as to the complainant and this issue is recorded in the files (Art. 234 (3) of CCP).

If the victim or the individual who suffered damages from the crime is a child, is deaf or mute, or an individual who is mentally ill to the extent that he cannot make his own defence, then a request is not needed in order to appoint a lawyer.

In addition to that, the Bar Association has to appoint a defence counsel upon the request of court or judge:

- The accused shall be excluded from the courtroom, if his behaviour causes a danger of hampering the proper conducting of the main hearing. If the court deems the presence of the accused unnecessary after considering the situation of the file in respect to defence rights, then it shall continue to conduct the main hearing and conclude the case in the absence of the accused. However, if the accused has no defence counsel, the court shall ask the Bar Association to appoint a defence counsel on his behalf. When it has been decided to let the accused into the courtroom again, the proceedings conducted in his absence shall be explained to him. (Art.204 (1) of CCP).
- The accused, whose whereabouts are not known, or who is outside of the country and cannot be brought in, or it is not appropriate to bring him before the competent court, shall be considered a defaulter. There shall be no main hearing opened against a defaulter; the court shall conduct necessary interactions with the aim of obtaining or protecting evidence. These interactions may also be conducted by the surrogate judge or by the rogatory court. During these interactions, the defence counsel of the accused or his legal representative or his spouse may be present. Should the occasion arise, the court shall ask the Bar Association to appoint a defence counsel. (Art. 244 of CCP).
- An individual who hides himself within the country in order to invalidate a pending prosecution against him or is in a foreign country and for this reason the court cannot reach him, shall be

called fugitive. In cases where the main hearing is conducted, if the fugitive accused has no defence counsel, the court shall ask the Bar Association to appoint a lawyer on his behalf. (Art. 247 of CCP).

- If strong indications of suspicion are present, which tend to show that the suspect or the accused committed the criminal conduct; then in order to clarify whether the suspect or the accused is mentally ill, and if so, the duration of the illness, and whether this affected his actions, the Justice of the Peace in Criminal Matters during the investigation phase, and the trial court during the prosecution phase, may order the suspect or the accused to be stationed in a public medical centre upon the proposal of the expert, after hearing both the public prosecutor and the defence counsel. In cases, where the suspect or the accused has no defence counsel, a defence counsel shall be appointed for him by the Bar Association upon the request of the judge or court. (Art. 74 of CCP).

LEGAL AID IN CIVIL AND ADMINISTRATIVE CASES

According to the Code of Lawyers each Bar Association establishes a legal aid office to render legal aid services with the power to decide on who is eligible and to appoint lawyers. These offices might have representatives to serve as a branch of the office, for instance Istanbul Bar Association Legal Aid Office has eight branches. A request for legal aid may be submitted either to the Legal Aid Office or its representatives. In some Bars, the officer who accepts the application has a delegated authority to make a decision on eligibility. In other Bars, the officer will receive the details of the case and refer

the application to a panel within the body of the bar for a decision on eligibility.

If the request for legal aid is rejected, the applicant may apply to the president of the Bar Association verbally or in writing. The decision of the president of the Bar Association will be final. If the request is accepted, a lawyer from the legal aid list of the Bar Association will be appointed. The list in question is developed by the Legal Aid office and registration on this list is upon request of a qualified lawyer.

Once it has been decided that someone is entitled to legal aid, a lawyer is appointed for him/her, meaning that it is not possible for a client to choose their own lawyer. Most Bar Associations use a points system based on either legal aid cases allocated or the amount of money each lawyer is paid for his/her service on legal aid cases allocated. When a lawyer is paid under legal aid service his/her points increase. According to the system, the Bar appoints a lawyer who has lowest points at the moment, which means he/she is the one who has paid less in legal aid scheme. This point-based system helps to ensure that the financial benefit of legal aid funding is broadly spread across the pool of lawyers registered on the legal aid roster.

The legal aid office notifies both the lawyer and beneficiary about the appointment. The beneficiary must visit the lawyer in his office and bring a notarised power of attorney document. The beneficiary is responsible for the payment of notary and court fees⁹

9 According to Article 6 of the Union of Bar Associations in Turkey Regulation for Legal Aid in exceptional situations these expenses might be covered from legal aid budget of the Bar Association.

HOW TO BECOME A LEGAL AID LAWYER

Under Article 35 of the Code of Lawyers, only lawyers registered with a local Bar Association are entitled to “render legal opinions, appear before courts, arbitrators and other judiciary bodies, pursuant matters before courts and to prepare all documents in relation thereto.” Under Turkish law, Bar Associations have an exclusive jurisdiction over the provision of legal services which by Law are entrusted in them.

In order to enter the profession, a candidate must:

- a. Be a citizen of the Turkish Republic
- b. Be a graduate of a Faculty of Law in Turkey, or a graduate of a foreign law faculty who has successful passed exams in any missing subjects (4 years)
- c. Hold a certificate confirming the completion of 1 year 's internship
- d. Be resident in the region of the Bar Association he or she wishes to register with;
- e. Have no criminal record which would disbar him or her.

Every lawyer can be a legal aid provider. There are no any special requirements for legal aid providers. If a lawyer wants to provide legal aid, he/she has to submit an application to the Bar in which he/she wants to be a legal aid lawyer.

ASSIGNMENT OF A LEGAL AID LAWYER

LEGAL AID IN CIVIL AND ADMINISTRATIVE CASES

According to the Code of Lawyers each Bar Association establishes a legal aid office to render legal aid services with the power to decide on who is eligible and to appoint lawyers. These offices might have representatives to serve as a branch of the office, for instance Istanbul Bar Association Legal Aid Office has eight branches. A request for legal aid may be submitted either to the Legal Aid Office or its representatives. In some Bars, the officer who accepts the application has a delegated authority to make a decision on eligibility. In other Bars, the officer will receive the details of the case and refer the application to a panel within the body of the bar for a decision on eligibility.

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The legal aid office notifies both the lawyer and beneficiary about the appointment. The beneficiary must visit the lawyer in his office and bring a notarised power of attorney document. The beneficiary is responsible for the payment of notary and court fees¹⁰.

LEGAL AID IN CRIMINAL CASES

Bar associations use automation systems to appoint lawyers. These systems are provided by the Union of Turkish Bar Associations, or private firms namely OCAS and SDD systems.

Once the Gendarme or the National Police get the notice of any fact that could be prescribed in the set of criminal Laws, particularly in the Criminal Code, their officers communicate it to the Prosecutor office that in its turn proceeds to request to the one of the 79 Turkish Bar Associations the appointment of a Lawyer, in case the suspect does not announce to have a private one. This first link between the Prosecutor or Court and the Bar Association gets channelled through the CMK Centre funded and managed by the Bar Association that is located in the main Court premises for an easy access as a contact point. With the request of appointment, the administrative service of the Bar Association starts the proceedings by operating the system CMK to assign the case to a Lawyer that belongs, by

¹⁰ According to Article 6 of the Union of Bar Associations in Turkey Regulation for Legal Aid in exceptional situations these expenses might be covered from legal aid budget of the Bar Association.

own decision, to the legal aid scheme. The outcome of the random electronic assignment is communicated to the selected Lawyer, who via telephone may accept or refuse the nomination by pressing the required number, and after acceptance of case, the Lawyer receives full information on it. From that moment on, the legal aid lawyer is entitled to implement his/her professional activity and to exercise all the defence mechanisms that the Turkish Law provides.

DUTIES

Legal aid is not formally restricted to representation in the court but encompasses all attorneyship services. In order to understand clearly the scope of attorneyship services, it is necessary to consider Articles 35 and 35/A of the Code which states that lawyers have a professional monopoly on: providing opinion in legal matters; litigating and defending the rights of real persons and legal entities before courts, arbitrators, and other bodies invested with jurisdictional powers; and managing all documentation associated. Lawyers' duties include but are not limited to these services, as according to the Turkish Code of Lawyers, they are also entitled to conduct all types of action with public offices and to seek out of court settlements.

In accordance with the Law No. 1136 Code of Lawyers, attorneyship is a public service and a professional occupation. It is a requirement to conduct this public service in the framework of duty of care in the context of a private client-lawyer relation, especially when the concern is legal aid.

The Professional Rules of Lawyers of the Turkish Bar Associations provide general rules regarding lawyer profession; define lawyers'

relations with jurisdictional bodies and legal authorities as well as relations with the client; insist on solidarity and define relations among colleagues; and finally, define lawyers' relations with the Bar Associations and the UTBA.

The main principles of work of lawyers are as follows:

1. Has to act according to the Laws.
2. Has to be independent of any impacts or external influences which may arise from personal interests.
3. Has to identify conflicts of interest.
4. Has to maintain professional secrecy and confidentiality.
5. Has a general duty of care, duty to act closely and to cause no damages to their client.
6. Has to defend the interest of the client and represent them on his behalf.
7. Has to act with respect to their client, court staff and other parties of the process.
8. Whenever there is a possibility, the lawyer should advice the client to attempt a peaceful settlement or to indicate an alternative dispute resolution (as Mediation).
9. The lawyer has to inform client if his claim has no legal perspective and explain possible consequences and litigation costs.
10. The lawyer should not immediately ensure the outcome of the case, but he has the right to assess the success of the case.

11. The lawyer should not start working on a case if he knows and understands that he will not be able to represent client's interests in order to properly and timely perform the necessary procedural steps.
12. When the court issues the decision to reject the claim the lawyer must consult the client about the possibilities to appeal.

REMUNERATION

In criminal procedure, the tariff for the payments to defence attorneys and lawyers assigned in the context of Code of Criminal Procedure is published by Ministry of Justice and Ministry of Finance by taking the opinions of Union of Turkish Bar Associations whereas in civil procedures, Minimum Fee Tariff of Lawyers are prepared annually by Union of Turkish Bar Associations via taking the opinion of Ministry of Justice.

REMUNERATION OF LAWYERS IN CRIMINAL PROCEEDINGS

The fees of lawyers who are assigned on the demand of investigation and prosecution offices in the context of Criminal Procedure Law are defined in the regulation "Tariff of Payments to Assigned Lawyers Who are Assigned in the Context of Criminal Procedure Law" enacted by the MoJ. The remuneration is foreseen as a flat-rate fixed fee depending on the phase of the procedure and the type of Court (Articles 4 and 5).

Article 10 of the said Regulation defines that the lawyer assigned in accordance with the Code of Criminal Procedure can get the fee valid at the date on which the lawyer is entitled to get the payment for the stages of investigation and prosecution separately. At the investigation stage, when different lawyers are assigned for the interrogation or questioning before the Public Prosecutor or the Court, one single fee is paid. And this fee is divided among the lawyers proportionally to the contribution. The same lawyer cannot get more than one fee for the same investigation or prosecution phase. However, for the lawyer assigned to more than one suspected, accused or injured party, who does not have a conflict of interest, the fee foreseen in the tariffs is multiplied by the number of clients.

In case the lawyer quits his/her profession or abandons the action because of some statutory barriers, the new lawyer assigned by the Bar is paid the same fee. However, the former lawyer is not required to return the fee he got when stated performing his duty as a legal aid provider.

In case the lawyer's service ends with a foreign plea or because of the transfer of the case, the fee defined in the tariff is paid without taking into account the work actually done by the lawyer. It does not matter whether the lawyer actually participated in one action in the proceeding or in several.

The types of expenses which can be covered by the State are foreseen in Art. 324 of Criminal Procedure Code. The Code defines that litigation expenses consist of "all kinds of expenses [...] which required running the trial in the investigation and prosecution phases". Payments to be made to the Lawyers in accordance with the Code of

Criminal Procedure are regulated in the subparagraph (d) of the article 4 of the related Regulation. This payment covers the following:

- a. The amount to be paid to the lawyer assigned by the Bar Association in accordance with the Code of Criminal Procedure,
- b. Necessary travel expenses occurred by the public transport (except taxis) (Travel Expenses Law dated 10.02.1954 and numbered 6245),
- c. Necessary travel expenses occurred by other transportation means upon the approval of the Office of the Public Chief Prosecutor in emergencies and compulsory cases,
- d. Fees for appeal at second and third instance and objection paid by the lawyer.

The remuneration for lawyers providing legal aid in criminal cases is covered from the MoJ budget. The money is paid at the beginning of the procedure or later, based on the lawyer's invoice. The lawyer has to submit to the Bar Association his/ her invoice with the certificate that he/ she was appointed to provide legal aid. In addition to that, the lawyer has to submit (Regulation, Art. 11):

- a. the certified copy of the minutes of the interrogation or prosecution stage that he/she attended or only the first and last pages of the related document if its volume is too big;
- b. the document showing his/her travel expenses if any;
- c. note of expenses;
- d. his/her appropriately written statement;

- e. self-employment voucher or self-employment voucher of the lawyer that he/she is working under (if the lawyer is an employee with an insurance) or self-employment voucher of the office or the corporation (if he/she is employed by a law office or a corporation);
- f. the document showing that the fees of the first/second instance appeal and objection are paid if he/she did the payment herself/himself.

Procedure:

The documents delivered to the Bar Association by the lawyer are examined by the related unit of bar and afterwards those documents are delivered to the Prosecution Office by the Bar. These documents are reviewed in accordance with the procedure. In case the documents are complete and rightful, the prosecution office enters the information to the system for the payment of lawyer. That information is seen by Ministry of Justice and delivered to the Ministry of Finance for payment order.

REMUNERATION OF LAWYERS IN CIVIL AND ADMINISTRATIVE PROCEEDINGS

Under the scheme when the lawyer is appointed by the Bar under requested of the Court, the judge decides about the fees to be paid to a lawyer according to article 340 of Civil Procedure Code, and the lawyer addresses the Treasury for remuneration. However, under the scheme when the lawyer is appointed by the Bar under the request of the legal aid beneficiary, the Bar decides about the fees to be paid

to a lawyer according to Code of Lawyers, and the lawyer addresses the Bar for remuneration. Both types of decisions are based on the Minimum Tariffs of the Lawyers published annually for the lawyers' services (Bylaw on Code of Lawyers, Art. 7).

The Court or the Bar decides regarding the fee of lawyer applying the Tariff on the date on which the legal aid is completed, or the judgment is made at the end of the proceedings (Art. 21). While issuing the decision, the judge or the Bar can also take into consideration other factors such as the lawyer's discretion, the effort, the nature of the work, and the duration of the case.

MONITORING, SUPERVISION AND AUDITING

SUPERVISION OF LEGAL AID COMMISSIONS

Legal aid service in civil and administrative cases is rendered by the Legal Aid Commission established at the headquarters of a Bar by the Board of Directors of the Bar (Code of Lawyers, Art. 177). The Board of Directors of the Bar may also designate a lawyer as the representative of the Legal Aid Commission in jurisdictional areas outside the location of the Bar where more than five lawyers are available. The Legal Aid Commission and the representatives operate under the supervision of the Board of Directors of the Bar.

The supervision of the Legal Aid Commissions is regulated by granting competences to the administration of the Board to audit at all times the activities of the Legal Aid Commission and submit draft of monthly reports to the Board of Directors of the Bar. The Board of Directors of the Bar may always inspect the operations of the

Legal Aid Commission and the representatives. (Bylaw on Code of Lawyers, Art. 11)

The Legal Aid Commission has an obligation to submit the report on its work to the Board of Directors of the Bar at the end of every year (Code of Lawyers, Art. 181). The Bar is required to forward a copy of the report to the UTBA. The Law defines that matters such as the establishment of the Legal Aid Commission, the designation of the lawyers to be assigned and the determination of their fees, the operation of the commission and its supervision are addressed in the regulations published by the UTBA. (The Union of Turkish Bar Association Bylaw of Legal Aid, in compliance with Articles 176-181 of Code of Lawyers, Law 1136).

The administrative inspection and financial auditing of Bar Associations and the UTBA are performed by the inspectors and auditors of the Ministry of Justice. The Administrative Inspection Review reports how Bar Associations and the UTBA perform their duties in accordance with statutory provisions. It is conducted by examining all records, actions, books, and documents (Bylaw on Code of Lawyers, Art.73). The financial auditing covers the following points related to the organization of legal aid provision and remuneration of lawyers providing legal aid:

- a. examination of the revenues and expenditures of Bar Associations and the UTBA;
- b. whether the expenditures have been made for the intended purpose;
- c. whether the revenues are from legal sources, and have been recorded in full and in a timely manner; and

- d. whether there are any irregularities in the accounts of Bar Associations.

Bars and the UTBA have an obligation to assist to the inspectors and auditors.

The next inspection or audit will include a check on whether the recommendations have been implemented. The documents, including the record of auditing, to be drawn up at the conclusion of auditing on the irregularities and improper procedures of the entities noted in administrative and financial affairs during the inspections and audits is forwarded to the Ministry of Justice Board of Inspection.

SUPERVISION OF LEGAL AID PROVIDERS

According to Art.66 of Code of Lawyers, a lawyer registered in a particular Bar Association is authorized to practice the lawyer profession in any part of Turkey in case the practice is not permanent. In case the practice is permanent outside the jurisdictional area of the Bar Association, the lawyer can be punished by a disciplinary penalty.

If the assigned lawyer who wishes to abstain from performing the service for a rightful excuse, he/she may retire from the assignment by paying to the Bar Association the fee indicated for that job in the Tariff within fifteen days as of the date he/she received notice of the assignment. However, a lawyer who fails to complete the legal aid services for an assignment without a rightful excuse will be under the obligation to pay twice the amount of the fee he/she has received by the Bar Association (UTBA Bylaw on Legal Aid Art. 6d).

Upon the completion of his/her services, the lawyer submits a report on the legal aid service performed and the documents attesting the completion of services to the Legal Aid Commission or the representatives.

The Legal Aid Commission monitors the progress of the work being done by the lawyer assigned (Code of Lawyers, Art.177; UTBA Bylaw on Legal Aid Art.6f). The lawyer is obligated to provide information and documents regarding the progress of legal aid provision upon the request of Legal Aid Commission.

Regarding the malpractices in a particular legal aid case, the legal aid beneficiary can submit a complaint to the Bar regarding the malfunction and malpractice of the lawyer. However, the complaint will be analysed only after beneficiary pays the admittance fee.

A disciplinary prosecution is initiated with a decision made by the Board of Directors of the Bar Association. The decisions made by the Board of Directors not to initiate prosecution on the act or conduct mentioned in the notice, complaint or request is communicated to the parties concerned and the public prosecutor (Code of Lawyers, Art. 141). The objections may be raised by the complainant or the public prosecutor with the Board of Directors of the UTBA against the decision of the Board of Directors of the Bar Association not to initiate disciplinary prosecution within 15 days from the date of the notification of the decision (Code of Lawyers, Art. 142). The former decision could be revoked by the Board of Directors of the UTBA and the file forwarded to the Bar Association for the initiation of disciplinary prosecution. Such decision of the Board of Directors of the Union of Turkish Bar Associations is final.

If the Board of Directors of the Bar initiates a disciplinary proceeding, the complaint will be transferred to the Disciplinary Board of the Bar. The duty of the disciplinary board is to make disciplinary decisions and impose disciplinary penalties by conducting disciplinary prosecution on the lawyer upon the decision of the Board of Directors of the Bar Association to initiate a disciplinary prosecution and to exercise the other powers conferred upon it by statutes (Code of Lawyers, Art. 107). The trial is kept in private. The Disciplinary Board is under the obligation to finalize the examination urgently but no later than 1 year from the date of the receipt of the decision.

The Disciplinary Board of the Bar is composed of 3 members in a Bar with up to two hundred and fifty lawyers and five members in a Bar with more than two hundred and fifty lawyers. Three alternate members are also elected to the Disciplinary Board in every Bar Association (Code of Lawyers, Art. 103). The members of the Board are elected from among the lawyers with a minimum of five years in the profession. The condition of five years in the profession will not be sought in a Bar Associations with fewer than one hundred members. The members of the Board are elected by the secret vote. Members of the Disciplinary Board are elected for two years (Art.105).

In the Code of Lawyers Art.134, it is defined that the Disciplinary Board of the Bar can impose disciplinary penalties on those whose acts and conduct contradict the honour, order, traditions, and professional rules of lawyers; and those who neglect their duties in professional practice or fail to exercise the personal integrity required by their duties. Disciplinary penalties are the following (Code of lawyers, Art. 135):

- a. Warning: informing the lawyer of the necessity of exercising greater care in practicing his/her profession.
- b. Censure: informing the lawyer that he/she is considered to be at fault in his/her practice and conduct.
- c. Fine from 10 000 to 150 000 Turkish Liras.
- d. Dismissal: prohibition for a lawyer from professional practice for not less than 3 months till 3 years.
- e. Disbarment: withdrawal of a lawyer's license.

Objections may be raised by the public prosecutor or the parties concerned with the Disciplinary Board of the UTBA against the decisions of the Disciplinary Board of the Bar within 15 days from the date of notification of the decision.

The Disciplinary Board of the UTBA is composed of seven members elected by the general assembly of the UTBA from among its members by secret vote. Seven alternate members are also selected (Code of Lawyers, Art. 129). Members of the disciplinary board of the UTBA are elected for four years (Code of Lawyers, Art. 130).

The Disciplinary Board of the UTBA will review disciplinary cases from the file. However, a trial may be decided of its own motion or upon the request of the lawyer concerned in the course of the review of decisions of punishment with dismissal or disbarment or with prohibition from practice. (Code of Lawyers, Art. 157)

The Disciplinary Board of the Union may uphold the decision under the review or decide to revoke the decision and send the file to the Bar Association concerned for a more comprehensive prosecution or, in circumstances where a re-examination is not required, decide

on the merits of the case by revoking a decision it does not deem appropriate. (Code of Lawyers, Art. 157)

The decision made by the Disciplinary Board of the UTBA becomes final if no decision is made by the MoJ within 2 months as of the date of their receipt by the MoJ or if the decision related with dismissal and disbarment is approved by the Ministry. However, the MoJ returns the decisions it does not deem appropriate to the UTBA for reconsideration together with the reasons for return. The decisions thus returned are considered as approved if passed unchanged by a 2/3 majority vote of the Disciplinary Board of the UTBA; otherwise it is considered as not approved. UTBA communicates to the MoJ the results. However, the decisions of warning, censure and fine are final and not subject to the approval of the Ministry. (Code of Lawyers, Art. 157)

The decision of the Disciplinary Board of the UTBA can be appealed to the Administrative Court. The decision of the Administrative Court can be appealed to the Regional Administrative Court and the decision of the Regional Administrative Court can be appealed to the Council of State.

LEGAL AID RENDERED BY COURT IN CIVIL PROCEEDING

The rejection decision of the court on legal aid could be objected. The decision after the examination of rejection is final.

If legal aid is provided inappropriately, the legal aid beneficiary can submit a complaint to the Bar regarding the malfunction and malpractice of the lawyer as it is foreseen for the private clients.

LEGAL AID RENDERED UPON THE REQUEST OF PROSECUTOR OR COURT IN CRIMINAL PROCEEDINGS

In all type of criminal cases upon the request of a suspect or accused person or without it (if the suspect or accused belongs to a vulnerable group of people) the lawyer is appointed to the suspect or accused.

The general practice standards of legal aid lawyers should set out principles and procedures to assist lawyers in the effective, efficient and economic delivery of high quality legal aid services. For many lawyers the practice standards will reflect the way they currently practise.

SKILLS AND TRAINING

The legal aid service needs to be effective, comprehensive, sustainable and reliable. In line with this, one of the most important factors that contribute to increase the quality of the legal aid service is the training of the relevant stakeholders. The Council of Europe recommendation Rec (2000)21 of 25 October 2000 on the freedom of exercise of the profession of lawyer stresses that *“Legal education, including programmes of continuing education, should seek to strengthen legal skills, increase awareness of ethical and human rights issues, and train lawyers to respect, protect and promote the rights and interests of their clients and support the proper administration of justice.”* (Principle II paragraph 3). Thus, it is of capital importance that lawyers providing legal aid services receive continuous training in their expected core competences and abilities which can be described as follows:

A. Substantial and practical knowledge

- Knowledge of the principles and values of the legal system, in particular of Legal Aid scheme
- Knowledge of the national legal system, the constitutional framework and fundamental rights
- Knowledge of Procedural Law and alternative dispute resolution (as Mediation)
- Ability to remain competent and updated in knowledge and skills of the area of law to which they preferentially work
- Knowledge on procedural documents drafting technique
- Ability in research of relevant doctrinal and jurisprudential criteria in relation to a legal case
- Ability to apply knowledge of the Law to the facts of a new case, making a critical assessment of its merits
- Analytical capacity: Ability to coherently address complex problems from various perspectives and aspects
- Knowledge of complementary practical fields, inter alia, accountancy law, tax law, social law, and insurance law
- Knowledge on how to develop skills that allow the lawyers to improve the efficiency of their work
- Ability to set up a working time schedule and a rank of priorities for personal tasks and professional network interaction
- Ability to communicate in other foreign languages
- Ability to manage IT Tools

B. Legal aid beneficiary-oriented skills

- Ability to assess the beneficiary needs, circumstances and interests, along with the opposing party claims, taking into account all relevant factors
- Empathy with the beneficiary. Flexibility in understanding beneficiary's needs and expectations
- Skills to actively listen to the beneficiary's request and to analyse main issues
- Ability to form an independent opinion in the interest of the beneficiary and to provide objective advice
- Ability to provide clear and sound advice for the choice between alternative solutions
- Ability to draw up a strategy for the defence of the beneficiary's interests
- Skills to appreciate the long-term consequences of decisions
- Ability to work with vulnerable groups

C. Communication skills

- Ability to master the necessary means of communication with the beneficiary
- Skills to conduct interviews and to chair meetings
- Ability to communicate knowledge to and on behalf of beneficiaries in a structured and understandable way

- Skills to communicate effectively both verbally and in writing, presenting coherent arguments
- Ability to plead before Courts
- Knowledge of negotiation techniques
- Knowledge of mediation techniques

D. Behavioural skills: Deontology and professional status

- Fulfilling of professional and ethical rules in Legal Aid scheme, including independence, professional secrecy, confidentiality and representation of beneficiaries' interests.
- Implementing social function and role of the legal profession, along with the rights and duties of legal aid service.
- Compliance with the behavioural rules and professional duties in the Lawyer's relation with beneficiaries, colleagues, opposing or third parties, Courts, other public authorities, and specifically with Bar Associations.
- Knowledge on how to identify conflicts of interest and to apply the legal resources for their resolution.
- Skills to develop and maintain personal relationships with beneficiaries, colleagues and third parties.
- Ability to work efficiently either alone or as a member of a team.

- Compliance with rights and duties in the mission of assistance and representation before Courts, jointly with handling of beneficiaries' funds.
- Knowledge of standards applicable to Legal Aid lawyers' fees.
- Knowledge of the organization and the Legal Aid services provided by Bar Associations.
- Knowledge of the disciplinary framework and professional liability regulation.
- Ability to assess one's own competency regarding the request of a beneficiary for advice or representation.
- Ability to behave professionally and with integrity.

To this purpose, the framework of trainings to be delivered to lawyers has to be designed by the Union of Turkish Bar Associations and trainings have to be regularly given to lawyers rendering legal aid services in civil, criminal and administrative procedures as in-service training by bar associations. In addition to this, separate training programs have to be designed for lawyers rendering legal aid services by considering the frequently working fields and professional experiences as well as the special needs of vulnerable groups.

Specifically, in the case of lawyers appointed for the defence of women victims of gender-based violence, lawyers should use non-legal skills, which goes beyond the legal training and that are also necessary to successfully achieve the right defence. The defence of the victims of sexist violence, due to the special situation of vulnerability in which they are found and the important psychological damages

that this type of violence causes, requires, among the professionals involved, certain abilities and listening and communication skills:

- Active listening
- No secondary revictimization
- Not issuing judgments of value to her
- Importance of the victim being a participant in the decisions that are made
- Comprehensive Guidance
- Information on the resolutions of the guardianship and care of minors

MAIN AREAS OF PROFESSIONAL PRACTICE

SPECIFIC LISTS

In accordance with the Code of Lawyers, there is a prohibition over specialization in the practice of attorneyship. Together with that there are needs to assign legal aid lawyers in line with their professional experiences and frequently working fields.

The CCBE Recommendations on legal aid states that “*In criminal matters, specific attention should be accorded in order to assist suspects and for certain trials (serious charges, judgments by jury, accelerated procedures etc.) Likewise, specific treatment – including preliminary advice – must be granted, by proper legislation, to the most vulnerable groups, such as victims of gender-based violence, minors, older persons, migrants and people with disabilities*”(Recommendation 3).

The legal aid system has to be easier for people with disabilities, elderly people, women victims of violence, poor people convicts, asylum seekers, refugees and people living in rural areas.

APPENDIX

The present Catalogue has been elaborated considering the existing legal framework at the time of its preparation. However, the Strategic and Action Plan approved in the context of the EU Twinning Project “Strengthening the legal aid service in Turkey” includes goals to be achieved in the period 2018-2021 which, once implemented, will have a deep impact in different fields of the legal aid system. These foreseen changes can be summarized as follows:

AREA	CURRENT SITUATION	ENVISAGED REFORMS
Scope of legal aid	Mediation and pre-litigation services are not included	Inclusion of pre-litigation consultancy service and of mediation service
	The power of attorney is a compulsory requisite to be paid by the applicant	Annulment of requirement to have power of attorney between legal aid beneficiary and lawyer
	Granting a legal aid lawyer by the Bar Association does not cover the exemption from litigation costs	Coverage of exemption from litigation costs with the legal aid decision of bar association's legal aid office
Criteria for granting legal aid	The means test for the civil legal aid is performed on a case-by-case basis. No uniform criteria applied	To use objective financial criteria in the financial status analysis of legal aid applicants
	Legal aid offices do not have access to online information about the economic status of the applicant	To integrate the legal aid offices of bar associations to UYAP in order to accelerate the procedures and to ease the financial situation analysis
Requisites to become a legal aid lawyer	No uniform criteria country-wide. On a general basis, no further requisites are requested than being a rightful lawyer	To establish a compulsory pre-service training to become a legal aid lawyer

AREA	CURRENT SITUATION	ENVISAGED REFORMS
Assignment of a legal aid lawyer	No uniform procedures and practices	To design one uniform application form and to render legal aid service with means of online services
	No special lists according to the working experience of the lawyers	Adoption of principles regarding the assignment of legal aid lawyers in line with their professional experience and frequently working fields
Supervision and monitoring of the system	No central organizational structures to monitor and supervise the legal aid service	<p>To establish a central organization of the Ministry to carry out legal aid related duties and responsibilities of the Ministry of Justice.</p> <p>To create the UTBA legal aid supreme board covering the legal aid and CMK commissions in order to monitor legal aid services with a holistic perspective, to detect problems and to find solutions</p>
Vulnerable groups	No specific rules country-wide applied. No uniform criteria	To provide easier and faster legal aid services for vulnerable groups and to homogenize practices by UTBA

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