

STANDARD TWINNING PROJECT FICHE

1. Basic Information

- 1.1 Publication notice reference: EuropeAid/ 137-056/IH/ACT/TR
- 1.2 Programme: 2013 Programming (Indirect Management mode)
- 1.3 Twinning Number: TR 13 IB JH 03
- 1.4 Title: **Strengthening the Legal Aid Service in Turkey**
- 1.5 Sector: Judiciary and Fundamental Rights / Justice and Home Affairs
- 1.6 Beneficiary country: Republic of Turkey

2. Objectives

2.1 Overall Objective(s):

To ensure that the judicial services are delivered completely and fairly to all the segments of the society by strengthening the legal aid system in compliance with the Article 6 of the European Convention on Human Rights.

2.2 Project purpose:

To establish a more effective, sustainable and satisfactory legal aid system in order to strengthen the right to a fair trial and access to justice.

2.3 Contribution to National Development Plan/Cooperation agreement/Association Agreement/Action Plan

Accession Partnership

On 18 February 2008, the Council adopted Decision on the principles, priorities and conditions contained in the Accession Partnership with Turkey and repealing Decision 2006/35/EC and the Annex Turkey 2007 Accession Partnership, which in the section named 'Priorities', under the Political Criteria (Human rights and protection of minorities) contains following key priority: Ensure Access to justice: Strengthen efforts to ensure adequate legal aid and qualified interpretation services".

Instrument for Pre-Accession Assistance Multi-annual Indicative Planning Document 2011-2013 (MIPD)

In this document Justice, Home Affairs and Fundamental Rights Sector was selected for EU support for 2011-2013 and one of the sector objectives for the next three years was to achieve measurable progress towards the full enjoyment of all fundamental rights and freedoms by all individuals without discrimination. Indicators which were established in order to measure the developments for this objective are as follows: Better access to justice through completed review of legal aid, expertise and interpretation services to enable better access to justice.

Indicative Strategy Paper for Turkey (2014-2020)

This Indicative Strategy Paper for Turkey (the Strategy Paper) sets out the priorities for EU financial assistance for the period 2014-20 to support Turkey on its path to accession. One of the objectives defined under sub-sector: Judiciary and fundamental rights is "Improving access to justice and alternative dispute resolution in both criminal and civil cases".

National Programme of Turkey for the Adoption of EU Acquis

Under the Political Criteria title 5 "Access to Justice", it is stipulated that "Works on facilitating access to justice, including making legal aid effective, will continue."

10th Development Plan of (2014-2018)

According to the 10th Development Plan under “Main Goals and Principles of the Plan” section article 12 stipulates that “It is aimed to establish a social and administrative structure where human rights and individual freedom are guaranteed by a fair and fast legal system, equal opportunity is offered through effective, predictable and institutionalized public policies and, accessible and high quality public services exists. Additionally “improving the accessibility of justice in order to enhance the right of defence and judicial assistance” is identified as one of the targets under article 189 of the Development Plan.

Turkey’s Action Plan for EU Accession Phase II (June 2015-June 2019) under “Judiciary and Fundamental Rights” Section, it is regulated that Law on Legal Aid to the Victims of Crime which aims to eliminate material damages to the victims of violence; lending psycho-social support to other victims of crime or rendering counselling service will be adopted on the half of 2017.

The Judicial Reform Strategy and Action Plan prepared by the Ministry of Justice were aimed to provide more effective and high-quality judicial services set forth a priority for the review of the legal aid system with a view to increase its effectiveness.

The Strategic Plan 2010-2014 of the Ministry of Justice developed as per the Public Financial Management and Control Law no 5018 provides for activities to increase the effectiveness of the procedure of legal aid in civil proceedings.

Turkey 2014 Progress Report:

Turkey 2014 Progress Report from 8th October 2014 contains the following:

“Implementation of the fourth judicial reform package led to an improvement on access to justice, in that the package loosened the conditions for granting legal aid and introduced the possibility of holding hearings to decide on the granting of such aid. The Ministry of Justice, Bar Associations and civil society organisations provided information on legal matters and on relevant procedures. The amount allocated in 2013 for legal aid services and compulsory advocate fees were increased (approximately € 93 million). There was no adoption of an overall strategy on legal aid or further revision of the current system. Measures still need to be taken to increase and monitor the scope and quality of legal aid. Legal aid fees continued to be unattractively low for experienced lawyers. Public awareness of legal aid in rural areas and among disadvantaged groups remained limited. Low literacy rates aggravated the problem. This — combined with a low level of gender equality, awareness among law enforcement officials, members of the judiciary and public officials — increased the obstacles that women faced in accessing justice and legal services.

3. Description

3.1 Background and justification:

An effective legal aid service is one of the essentials for protection of human rights in terms of right to fair trial and access to justice. Article 6 of the European Convention on Human Rights, judgements of the European Court of Human Rights, recommendations of the Council of Europe (Resolution no 76 (5) on legal aid in civil, commercial and administrative matters; Resolution no 78 (8) on legal aid and advice 78 (8); Recommendation no 93 (1) on effective access to the law and to justice for the very poor), European Agreement on the Transmission of Applications for Legal Aid (STCE No 092) promote enhancing the legal aid system which directly contributes to the confidence for judiciary.

Turkey has taken considerable steps in its legal system in the harmonisation process. However, free legal aid system remained problematic due to the complex structure and the quality of the services, and lack of access to legal aid. Therefore, Turkey is often criticized in EU progress reports, EU peer mission reports and CEPEJ reports.

In recent years, further improvements on access to justice have been made and the conditions for granting legal aid have been loosened, for instance particularly through the fourth judicial reform package; in order to decide on granting of such aid, in case of demand the facility of holding hearings has been introduced. The Union of Turkish Bar Associations has established two commissions to identify the challenges regarding legal aid system in civil and criminal law procedures. However, despite the efforts of improving the legal aid practices in Turkey by both the Ministry of Justice and the Union of Turkish Bar Associations, current legal aid system remains insufficient to meet to expectations of the citizens as well as the practitioners. In the current system, there is no separate legislation which regulates all free legal aid practices. Legal aid in civil cases is regulated by Civil Procedure Code and Law on Attorneys. According to Civil Procedure Code, those who are partly or wholly incapable to afford court expenses in order to benefit from legal aid shall submit enough evidence to the court. The court has got discretion of accepting legal aid and its decision is final. According to Law on Attorneys, legal aid service is rendered by a legal aid office established at the headquarters of bar associations by the board of directors of the bar association with staffing drawn from among its attorneys. Legal aid in criminal cases is regulated by Code of Criminal Procedure. A defence attorney is appointed for the suspect or accused if he declares that he wants to benefit from the services of a defence attorney but is not in a position to appoint one. A defence attorney is directly commissioned in cases where there are no attorneys present and the suspect or accused has not yet completed the age of eighteen or he is deaf or mute or disabled to such an extent to prevent self-defence. The provision of defence attorney is compulsory to investigations and prosecutions carried out about offences calling for imprisonment of at least five years as an upper limit. Besides victim and the complainant may request the bar association to appoint an attorney if he does not have one. An attorney is commissioned without consent in cases where there are no attorneys present and the victim has not yet completed the age of eighteen or he is deaf or mute or disabled to such an extent that he cannot express himself.

Furthermore there is no conformity in courts' and Bar Associations' implementations and it differs from each other without any grounds. The practices of the courts, prosecution offices and Bar Associations differ from each other. In civil and administrative cases, both claimant and defendant can claim legal aid by applying to the court concerned or directly to the relevant bar association. In criminal cases; prosecution offices or criminal courts can ask bar association to appoint a defence lawyer upon the request of suspect or without any request when there is a need for a compulsory defence lawyer according to the Criminal Procedural Law. Thus legal aid systems in criminal and civil cases differ in terms of procedure, budget and competent bodies for implementation which makes system ineffective and vague.

Moreover, problems in payments to lawyers such as low level of fees, delays in payments pose extra impediments for recourse of citizens to the system. Lack of public awareness of legal aid in rural areas and limited access to justice among disadvantaged groups are another matter of concern.

Therefore, there is a need for development of an overall strategy on legal aid and further revision of the current system so as to increase and monitor the scope and quality of legal aid. There is a need for transparent and objective economic criterion for applying to legal aid services throughout Turkey. Separated budgets for legal aid in civil litigations and for compulsory defence lawyers pose some difficulties in following and managing the system and create problems in payments.

With this project, the EU best practices will be analysed on legal aid. A comprehensive strategy plan will be developed with the aim of restructuring the legal aid system to provide more effective, accountable and transparent service to people who are entitled to use legal aid services in line with fundamental rights. Mechanisms will be established for determining the legal aid policy, for monitoring the delivery of legal aid services, for ensuring provision of consistency in practices of legal aid services currently provided by the courts and bar associations all throughout Turkey and for improving the quality of services. The strategy will take into consideration the different needs of different target groups. Especially the needs of disadvantaged groups (disabled, women, juveniles, convicted etc.) will be evaluated in a sensitive manner. Criteria for determining eligibility for free legal aid such as poverty and merits of the cases will be reconsidered in line with EU Member States practices. Legislative amendment needs will also be identified not only limited to the plans of merging all provisions under one single legal aid law which are creating confusion and duplication but also to establishment of effective and sustainable legal aid mechanisms.

Implementation of legal aid services in Turkey is also highly limited because of lack of awareness among potential users, judges, prosecutors, law enforcement officers. Therefore trainings will be delivered to judicial actors and awareness raising campaigns will be conducted for the potential users. To monitor the impact of the project, surveys will be conducted at the beginning of the project and after the end of the duration.

3.2 Linked activities (other international and national initiatives):

2005 Better Access to Justice Project: The EU project has started in 2007 with a duration of 15 months. The lead beneficiary was the Turkish Ministry of Justice; co-beneficiaries were Turkish Bar Associations and Ankara Bar Association. The project focused on providing training on Alternative Dispute Resolution (ADR) for Lawyers and current legal aid system on civil cases. The Legal Aid component aims at improving access to justice by increasing the utilization of the Legal Aid system with trainings of lawyers, promotion of service itself and checking the service qualities. Within the scope of the project, a report about legal aid was prepared but the recommendations of project were more focused on strengthening the current legal aid system.

2006 & 2008 Court Management System in Turkey Projects: The two EU projects implemented jointly by the Council of Europe and the Turkish Ministry of Justice aimed at assisting Turkey in re-designing the court management system and in implementing the new system in 25 pilot court houses. Among other novelties, Guidance and Information desks were set-up at the pilot court houses. Brochures and guidebooks for better information and orientation of the public were prepared and distributed. One of the brochures was on legal aid which was also disseminated at the pilot courthouses. In addition, legal aid web page both in English and Turkish version has been published in the Ministry of Justice official web site. Under the project at hand, the Guidance and Information Desks will be considered to be used to provide information on legal aid services to the citizens.

Support to the Improvement of legal aid practices for access to justice for all in Turkey Project: The project will be funded by SIDA and implemented by the Union of Turkish Bar Associations and the UNDP. The Ministry of Justice is also the partner of the project. The project is planned to start in the last quarter of 2015. The expected outcomes of the project are improved automation system for appointment of Code of Criminal Procedure Attorneys; enhanced capacity of the Attorneys practising legal aid for disadvantaged groups; improved performance system for legal aid services in the Bar's point of view; enhanced coordination and cooperation among the Attorneys practising legal aid; legal aid needs underpinned and services improved in the southern border provinces of Turkey such as Gaziantep, Hatay, Kilis, Şanlıurfa

and Kahramanmaraş especially the needs of the population escaping from the conflict from Syria. The results of the Project are expected to contribute and complement the work of this project at hand which aims to address the structural and legislative needs for an efficient functioning legal aid system in Turkey. Close coordination and cooperation between two projects will be ensured with support of Ministry of Justice and the Union of Turkish Bar Associations which are natural partners of both projects.

Activity on Strengthening the Victim Rights in Criminal Justice System (Under IPA II 2014 Programming): The activity aims to develop services provided to the victims. The implementation will only start late 2016/early 2017. The results of the project at hand will be considered in designing the implementation details of this activity.

3.3 Results:

- Review of the legal aid system completed, an overall strategy adopted;
- Capacity of all relevant stakeholders working within the free legal aid system enhanced;
- Access to justice and legal services increased for all.

3.4 Activities:

The activities listed hereafter represent the minimum activities to be implemented in the course of the Twinning project. Member State(s) may propose additional activities in line with the methodology elaborated in its proposal.

3.4.1 Analysis of the existing legal framework and implementation:

Working groups will be established for review of the present system, identification of shortcomings and deficits. To this end, 5 pilot courthouses will be selected. The working groups will consist of the representatives of the Ministry of Justice, the Union of Turkish Bar Associations, the 5 pilots local Bar Associations, academicians, NGOs, law enforcement agencies. Together with the EU twinning partner(s), the working group(s) will:

- conduct analysis to examine the shortcomings of the current system of free legal aid,
- conduct analysis of the needs of different target groups,
- conduct analysis of financial impacts of implementation of free legal aid act in practice,
- organise workshops with the participation of the representatives from the Ministry of Justice, Ministry of Finance, EU experts, representatives of the higher judicial bodies, judges and public prosecutors, representatives of bar associations and universities-Law Faculties with a purpose of exchanging experiences in implementation of free legal aid and discussion on how to improve cooperation of all parties involved,
- organise meetings between the Ministry of Justice, Ministry of Finance and Union of Turkish Bar Associations to create a sustainable system to ensure that the legal aid task is attractive to experienced lawyers by regulating the fees of the lawyers and increases in these fees.
- define data flow between relevant stakeholders (Tax Administration, Land registry and Ministry of Justice), especially related to checking the eligibility of the applicants.

3.4.2 Comparative Analysis of the EU Best Practices:

- A comparative analysis of the best legal aid systems in the Member States of European Union will be conducted. Relevant legislation will be translated into Turkish.
- Study visits to five model countries that are found to have the best legal aid systems will be organised.

- An international workshop will be organised by the participation of international experts to have better understanding of free legal aid systems in the EU in terms of legislation and structure.

3.4.3 Preparation of a Strategy Plan in the light of the analysis studies conducted:

At the end of the analysis studies conducted, a comprehensive Strategy Paper/Plan will be developed with the aim of restructuring the legal aid system to provide more effective, accountable and transparent service to people who are entitled to use legal aid services in line with fundamental rights. Mechanisms will be established for determining the legal aid policy, for monitoring the delivery of legal aid services, for ensuring provision of consistency in practices of legal aid services currently provided by the courts and bar associations all throughout Turkey and for improving the quality of services. The strategy will take into consideration the different needs of different target groups. Especially the needs of disadvantaged groups (disabled, women, juveniles, convicted etc.) will be evaluated in a sensitive manner. Criteria for determining eligibility for free legal aid such as poverty and merits of the cases will be reconsidered in line with EU Member States' practices. The Strategy Plan will also provide recommendations on how to eradicate delays in payments to the lawyers through a sustainable system, on how the Bar Associations would ensure the quality of the services given by their members with possible sanctions.

3.4.4 Drafting of necessary legal amendments and guidelines:

In the light of the Strategy Plan, the legislative amendments necessary for the establishment of an effective and sustainable legal aid system will be identified and drafted.

Guidelines for the functioning of the legal aid services ensuring that the legal aid system is effective, accountable and transparent are prepared and widely disseminated by the Ministry of Justice and Union of Bar Associations. The guidelines will also refer to the definition of a transparent and objective economic criterion for applying to legal aid services throughout Turkey.

3.4.5 Trainings:

Training needs analysis will be conducted for actors engaged in work within Free Legal Aid system (members of Bar Associations, judges, prosecutors, staff at the courthouses etc.).

Training programmes and training materials will be developed for different target groups including candidate judges and prosecutors who are trained at the Justice Academy.

Trainings will be organised for the target groups (lawyers, judges and public prosecutors, candidate judges and prosecutors etc) on the functioning of the legal aid services.

3.4.6 Public Awareness:

Guidebooks and brochures will be prepared in order to raise the public awareness in collaboration with the representatives from the Ministry of Justice, bar associations, project experts, members of the judiciary and academics and especially NGOs active in the field that have access to vulnerable groups, women, disabled, juveniles, illiterate etc.

Public satisfaction surveys will be conducted on the functioning of the legal aid services with individuals who have ongoing cases in the areas where the project is implemented.

The content of the Legal Aid link at the Legal Support section of the web page of the Ministry of Justice will be simplified in order to enable people to use it more effectively and improving that link in a way to respond to their needs.

Public awareness materials will be distributed via schools, courts, law enforcement offices.

3.5 Means/ Input from the MS Partner Administration:

3.5.1 Profile and tasks of the Project Leader

The PL should be a high ranking official with broad knowledge of legal aid systems who will continue to work at his/her Member State (MS) administration but devote some of his/her time to conceive, supervise and co-ordinate the overall thrust of the Twinning project.

The PL will allocate a minimum of 3 days per month including one visit every 3 months (more for complex projects) to Turkey as long the project lasts.

The Project Leader will be responsible for achievement of project results, ensuring the activities for the co-operation and information exchange between EU Member States side and Beneficiary side and ensuring that all the required support of the management and staff of the EU side are available. S/he will coordinate the Project Steering Committee meetings on the EU Member State side.

Qualifications:

Broad long-term knowledge of all processes in the area of acquis that the project is dealing with;

High-ranking official, commensurate with an operational dialogue at vice-ministerial level;

Overall appreciation of the problems and solutions in the sector;

Capable of unblocking any problems at highest level;

Good leadership skills.

Tasks:

Overall project co-ordination;

Co-chairing, with the Turkish PL, the regular project implementation steering committee meetings;

Mobilizing short term experts;

Executing administrative issues (i.e. signing reports, administrative order etc.)

3.5.2 Profile and tasks of the RTA

The RTA will be in charge of the day-to-day implementation of the Twinning project in the Republic of Turkey. S/he will coordinate the implementation of activities according to a predetermined work plan and liaise with the RTA counterpart in the Republic of Turkey.

The RTA will bring in a significant professional input, especially at the beginning of the Twinning project.

Qualification and skills:

At least 5 years of experience in working with EU legislation concerning judiciary and

fundamental rights,

Recent experience and knowledge in a state institution\mandated body responsible for legal aid,

Strong initiative, analytical and team working skills,

Knowledge of the EU acquis and relevant documents of Council of Europe concerning legal aid,

Preferably a comparative knowledge of other EU Member States' implementations regarding the legal aid,

Experience in developing, co-ordinating and conducting training programmes,

Experience in project management,

Strong written, oral and inter-personal communication skills in English;

Duration of RTA secondment: 21 months

3.5.3 Profile and tasks of the short-term experts

A pool of short term experts is required to implement the project activities covering the following indicative subjects:

- Court Management
- Comparative legal aid practices
- Institutional Development
- Strategic Planning
- legal drafting
- sampling methodology and guidelines
- Information Technology (IT) and databases.
- training and curriculum development

Indicative General Profile of the Short Term experts

Qualifications and skills:

Minimum of 3 years professional experience in their respective field,

University degree in a relevant subject;

They should be professionally qualified and have the appropriate experience in the area and subjects that they are selected for.

Previous experience of working in other cultures and countries will be an advantage.

Good written and oral command of English;

Proven contractual relation to public administration or mandated body;

Capacity to integrate into a large expert team;

Willingness to work in a different cultural environment.

4. Institutional Framework

Beneficiary institutions of the project are the Ministry of Justice and the Turkish Union of Bar Associations. The local pilot courthouses and local bars will also be co-beneficiaries of the project. The Strategy Development Department of the Ministry of Justice will hold the leading role in terms of coordination. Responsibility for technical aspects related to preparation, implementation and control will rest with this Department.

Project Steering Committee (PSC)

A Steering Committee will be established by the representatives from the Ministry of Justice, UTBA, Secretariat General for EU Affairs, Central Finance and Contracting Unit and representatives from NGO’s. Representatives from the European Commission Delegation will participate in the steering committee meetings as observers. The Steering Committee will elaborate the strategic options of the programme and address the major problems that the programme might face. The Steering Committee shall be called to meet at the beginning of the programme and quarterly or when a serious problem arises. The responsibilities of the Steering Committee are the following:

- To make an assessment of emerging needs for a sound project implementation
- To adopt the overall work programme and the annual work plans
- Recommend strategies in the light of national sectoral priorities and Accession Partnership
- To conduct a final review of the implementation
- To ensure that any measure is taken to ensure the widest possible dissemination of the project results (e.g. to organise additional training activities to be conducted by the trainers who benefited from the programme courses)
- To recommend strategies for future sustainability
- To discuss the progress of the project
- To verify the achievement of the outputs and mandatory results
- To discuss actions to be undertaken in the following quarter

The Project Steering Committee will also discuss the draft of the quarterly report submitted to it beforehand, recommend corrections. A final report will be prepared by the end of the project period. The final report should follow the inception report format and include an in-depth assessment of project implementation results and the level of achievement of the objectives.

5. Budget

<i>Title: Strengthening the Legal Aid Service in Turkey</i>	<i>IPA Community Contribution</i>	<i>National Co-financing</i>	TOTAL
<i>Twinning Contract</i>	95% 1,306,250 €	5% 68,750 €	1.375.000 €

The co-financing requirement foreseen under IPA will be considered fulfilled according to the provision of the relevant Financing Agreement.

6. Implementation Arrangements

6.1 Implementing Agency responsible for tendering, contracting and accounting

Ms. Emine Döğür

Acting Director of CFCU
Central Finance and Contracts Unit
Tel: +90 312 295 49 00
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Address: Eskisehir Yolu 4.Km.2.Street Halkbankasi Kampusu No: 63 C-Blok
06580 Sogutozu/Ankara

6.2 Main counterpart in the BC

The Project leader counterpart and the Senior Programme Officer SPO is

Mr.Basri Bağcı
Deputy Undersecretary of Ministry of Justice
Adress: Adalet Bakanlığı Vekaletler Caddesi
No:6 Kızılay Ankara Türkiye

RTA counterpart

Mr. Tahir Hırslı
Deputy Head of Strategy Development Department of the Ministry of Justice
Adress: Adalet Bakanlığı Milli Müdafaa Caddesi No: 20
Kat: 3-4 Bakanlıklar Ankara

Co-beneficiary: Union of Turkish Bar Associations

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6.3 Contracts

It is envisaged that the Project will be implemented through one Twinning Project, with an indicative amount of 1.375.000 EUR.

7.1 Launching of the call for proposals (2 Q 2015)

7.2 Start of project activities (4 Q 2015)

7.3 Project completion (4Q 2017)

7.4 Duration of the execution period (24 months)

8. Sustainability

Trainings aimed at improving skills of actors within the legal aid system together with the recommendations for overcoming current shortcomings and deficiencies in the system will improve the implementation of free legal aid in practice. Documents produced through this twinning project will serve as a basis for future activities. Training needs analysis conducted and training programmes developed will serve basis for future education and trainings of the personnel dealing with free legal aid and therefore ensure sustainability of the system.

An improved preparation for the proceedings and a competent representation of parties will enable a more effective performance of courts and other bodies which decide on the citizens'

rights and obligations. Moreover, rendering information and legal counselling in the preproceedings stage in a timely manner will reduce the number of cases initiated due to parties' ignorance of its rights, obligations and unawareness of the probability of success in a specific legal case.

9. Crosscutting issues

Based on the fundamental principles of promoting equality and combating discrimination, participation in the project will be guaranteed on the basis of equal access regardless of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

10. Conditionality and sequencing

N/A