



## ANNEX C1: Twinning Fiche

**Project title:** Improving the Effectiveness of the Administrative Judiciary

**Beneficiary administration:** The Republic of Turkey, the Ministry of Justice

**Twining Reference:** TR 14 IPA JH 08 18 R

**Publication notice reference:** EuropeAid/160316/ID/ACT/TR

**EU funded project**

***TWINNING INSTRUMENT***

## Abbreviations

AD	Action Document
ADR	Alternative Dispute Resolution
BC	Beneficiary Country
CFCU	Central Finance and Contracts Unit
CoE	Council of Europe
CoS	Council of State
DG	Directorate General
ECHR	European Convention on Human Rights
EU	European Union
HSK	Council of Judges and Prosecutors
IPA	Instrument for Pre-accession Assistance
IT	Information Technologies
LI	Lead Institution
JP	Joint Programme
MIPD	Multi-Annual Indicative Planning Document
MoJ	Ministry of Justice
NPAA	National Programme of Turkey for the Adoption of EU Acquis
N/A	Not Applicable
PAO	Programme Authorising Officer
PL	Project Leader
RTA	Resident Twinning Advisor
SPO	Senior Programme Officer
SWOT	Strengths, Weaknesses, Opportunities and Threads
TNA	Training Need Analysis
ToT	Training of Trainers
TW	Twinning
UYAP	National Judiciary Informatics System

## **1. Basic Information**

**1.1 Programme:** Judiciary 2014 Programming Year, Twinning- Indirect Management with ex-post control Financing Decision number: IPA/2014/031-874 (EC)- IPA National Programme for Turkey 2014- Objective 1

**1.2 Twinning Sector:** Justice and Home Affairs (Judiciary and Fundamental Rights)

**1.3 EU funded budget:**1.425.000 Euro (IPA Contribution), 1.500.000 Euro (Total Budget)

## **2. Objectives**

### **2.1 Overall Objective(s):**

To further strengthen and make more concrete and visible the independence, impartiality, efficiency and administration of the judiciary

### **2.2 Specific objective:**

To improve effectiveness of the administrative judiciary in terms of legislative and institutional changes

### **2.3 The elements targeted in strategic documents i.e. National Development Plan/Cooperation agreement/Association Agreement/Sector reform strategy and related Action Plans**

Over the past decade, Turkey has evolved significant progress in the fields of the judiciary and fundamental rights that is an ongoing reform process which has been encouraged by the country's EU accession.

With reference to the fundamental documents of the EU and also in parallel with the National Documents, strengthening the rule of law and human rights and creating an effective, independent and impartial judicial system are considered as basic requirements to come closer to the EU for a candidate country.

**2008 Accession Partnership Document for Turkey** sets out significant number of priorities regarding the Chapter 23- Judiciary and Fundamental Rights. Priority No. 23.1 of the Chapter 23 of the National Programme of Turkey for the Adoption of EU Acquis (NPAA) based on the Council Decision of 18 February 2008 on the Accession Partnership with the Republic of Turkey, focuses on "increasing the efficiency, efficacy and functionality of the judiciary" based on schedules for legislative alignment and institution building which would also direct impact on the administrative judiciary.

**The Indicative Strategy Paper for Turkey (2014-2020)**, which has no specific / direct reference to the administrative judiciary, has mainly focused on enhanced efficiency and effectiveness of the judiciary, in general as well as targets of increasing independence of the judiciary; improving impartiality of the judiciary; increasing awareness on human rights among members of the judiciary.

As the judiciary and fundamental rights are complementary areas and are key strategic priorities for pre-accession assistance to Turkey, IPA II assistance which has been formulated within the framework of the Indicative Strategy Paper, has also been designed to be fully consistent and compliant with the main objectives set out in various national strategies, judicial bodies' institutional strategic and action plans, (i.e. **10th National Development Plan, the Judicial Reform Strategy, the Action Plan**etc.), as presented below.

**Turkey's 10th National Development Plan (2014-2018)** identifies the main priorities in the field of judiciary, which target to maintain improved quality of judicial proceedings; to continue to carry out

legal and institutional measures in the context of principal of rule of law; to further improve the judicial system in line with international standards; to ensure the full enjoyment of all fundamental rights and freedoms by all individuals without discrimination etc. The Development Plan also confirms that improvements are still needed on the rule of law and the full enjoyment of fundamental rights and freedoms by all individuals, without discrimination. This has been encouraged by a series of judicial reform packages, which are also acknowledged by Turkey's efforts to significantly make reforms in the judiciary. However, there are further rooms, which need to be improved. For example, the Article 187 highlights a need to accelerate judicial processes and the Article specifies that within the context of the universal principles of law, rule of law and supremacy of law; ensuring fast, fair, efficient, reliable and proper functioning of the trial process is the main goal of the justice system.

**The Judicial Reform Strategy**, as a general sector strategic framework adopted in 2015, includes objectives and goals pertaining to the whole justice system as well as to the administrative judiciary strengthening the independence, impartiality and transparency of the judiciary. Objective 3.8. of the Strategy refers to "reducing the workload arising from public administration" which says, "One of the most important conditions of increasing the quality of judicial services is the reduction of judicial workload. Within this scope, works regarding the designation of suggestions for solutions need to be conducted while designating the implementations of the public institutions that have negative impacts on the judicial workload". Objective 4.4. of the Strategy also addresses a need for "improving the pre-trial procedures regarding the resolution of administrative disputes".

**The MoJ Strategic Plan** for 2015-2019 acknowledges the delay of justice arising from excessive workload of the courts as one of the most important problems. It also sets the issue of Alternative Dispute Resolution (ADR) methods in administrative judiciary, among other fields as a strategic objective (Objective 6.3 in the Plan) to account for an important constituent of justice reform. In this framework, the Strategic Plan underlines the significant developments in the administrative judiciary with a particular reference of the way to appeal.

Under the recent circumstances of the constitutional amendment, Turkey will review the current need to build on its previous track record for reform in the judiciary in general and with a particular emphasis to the administrative judiciary to strengthen relevant institutions as part of an independent, impartial and efficient third power, separate from well-functioning legislative and executive powers which has been mentioned under the **Indicative Strategy Paper**. Despite Turkey's ongoing efforts have been acknowledged by the international community to a certain extent, the objectives and activities relating to judiciary and fundamental rights have not yet been sufficiently materialized and not integrated into improvements in practice.

With reference to the above mentioned policy papers and sectoral highlights, Activity 3.6, under 2014 Action Document (AD - yearly EU programming document) has been formulated with two components along with the two beneficiaries;

- Improving the Effectiveness of the Administrative Judiciary, the Ministry of Justice;
- Strengthening the Institutional Capacity of Council of State, the Council of State.

### 3. Description

#### 3.1 Background and justification:

##### **Challenges in the Institutional Structure and Capacity of the Administrative Judiciary**

Since one of the main and long standing problems of the judiciary is the **workload** of the high courts and the courts of first instance, lengthy trials in administrative judiciary diminish the trust of parties to justice irrespective of result of their cases. For example, every year at an average of 200.000 cases are proceeded before the administrative judiciary in Turkey and this number continuously increases in recent years. In the Council of State (CoS), on the other hand, at an average of 200.000 case files are expected to be resolved.

Articles 10 and 11 of Law on Administrative Procedure, no.2577 prescribe the optional application procedure to the administrative bodies while Article 13 prescribes the compulsory application procedures for the parties that claim the violation of a right before bringing annulment or full remedy actions. According to the mentioned articles, if the administration does not respond within 60 days, the claim is deemed to be declined. In practice, the administration either does not respond or declines the claim without any reasoning, thus the application mechanism fails to provide the anticipated benefit. As stated in the Objective 3.8.of the Judicial Reform Strategy, ensuring the support of the reasons for decline of the administration with sufficient and persuasive reasoning in light of the judicial precedents and legislation by making amendments in the law or creating a new system, is going to provide the benefit expected from the application procedure while rendering the application more functional.

With reference to the Objective 3.8. of the Judicial Reform Strategy, one of the most important conditions of increasing the quality of judicial services is the reduction of judicial workload. As it is emphasised under the same Objective, it is essential that the administrative operations established by the public authorities and institutions should comply with the law. The implementations that are not going to lead to lawsuit processes during the acts and actions of the public administrators need to be improved.

Similarly, the disputes are brought to courts due to the fact that public administrators do not exercise discretion or fail to do so. This situation prolongs the administrative processes as it leads to the waste of time and labor, increasing the workload of the courts.

In order to improve both the capacity and efficiency of the administrative judiciary, there is a need to review/amend the relevant legislation and also develop certain measures to support the institutional structure. One of these measures can be considered as in-service training programme that will be mainly concentrated on subjects enabling the judges as strong actors part of an independent, impartial and efficient third power, separate from well-functioning legislative and executive powers. The administrative clerks', in case they are well trained and operationalized, they would ease tasks of the judges, would be another important target group of the training. The training modules would be different than the topics/modules developed under the project of "Increasing Efficiency of Auxiliary Staff in Judicial Services and Quality of Trainings", but it is aimed to be complementary.

### **Challenges in Dispute Settlement**

The purpose of the judgment is to terminate the disputes appropriately. However, judging is a lengthy and distressing process. In this sense, the ways of resolving disagreements / disputes without going to the judiciary should be sought. Changing the administrative judicial system has been necessary in terms of paradigm shift to the court of appeal as well as strong alternatives to dispute resolution before the trials have to be passed as soon as possible.

Alternative Dispute Resolution (ADR) refers to any means of settling disputes outside of the courtroom. ADR typically includes early neutral evaluation, conciliation, negotiation, mediation, and arbitration. The main advantage of this form of dispute settlement is that it allows the parties themselves to control the process and the solution.

Since ADR methods have been found in the continental European countries and have also been subject to the recommendations of the Committee of Ministers of the European Union, they have been manifested in various appearances in different countries and sometimes distinctive names are used for similar processes, i.e. mediation, conciliation, arbitration etc. ADR gives parties in dispute the opportunity to work through disputed issues with the help of a neutral third party. It is generally faster and less expensive than applying to court.

As in all countries like Turkey, ADR methods, especially those involving mediation and conflict resolution, seem to have been left behind in administrative law while creating major changes in civil law.

However, when the existing legal arrangements are examined in the Turkish administrative law, the concept of ADR methods would be important area as complementary of the reforms introduced and being implemented in the last decade. **Conciliation**, is the recommended alternative remedy for

specified actions in accordance with the Statutory Decree Numbered 659, dated 02/11/2011 (Regarding the Performance of Legal Services in the Public Administrations and Special Budgeted Administrations within the Scope of General Budget). The Article 9 of the Statutory Decree no. 659 primarily prescribes the prevention and amicable resolution of the disputes in order to perform the legal services more efficiently and in compliance with economy of procedure while also prescribing the mandatory invitation made to the other party for settlement by the legal departments of public institutions before bringing a lawsuit or commencing execution proceedings.

In practice, applications are reviewed by the Commissions in the Public Administrations established by a senior director and having minimum three members of Head of Legal Affairs and Head of relevant department of subject legal dispute. In case of acceptance of application, parties sign a conciliation agreement and dispute is resolved without a lawsuit.

Since 2011 the Statutory Decree no. 659 entered into force, it appears that the provisions of the conciliation, which is regulated as an ADR method, have not been effectively and adequately implemented. Main reasons of inefficiency of the system are;

- Some Ministries have neither established commissions nor finalized any disputes by executing this process, although approximately 1.000.000 cases of the civil and administrative judiciary, in which the administrations become parties to, are brought each year.
- Applications have been discretionary or arbitrary
- The Commissions are established separately for each application.
- The Commission members do not take initiative for the resolving the disputes.

It is also considered that the officials who will be employed in these commissions will have sufficient education, experience and expertise on the disputes to be resolved, and the admissibility of the decisions will be high.

To address the above-mentioned challenges, it is also evaluated within the scope of the objective 4.4. of the Judicial Reform Strategy that it would be beneficial to amend dispute amounts prescribed by the Statutory Decree no:659 and re-determine the authority and areas of responsibility for the implementation of the system. It is also targeted drafting new regulations (just as in the related provisions of Tax Procedure Law, Village Law, Petroleum Law, and Expropriation Law, which are still in force) in order to resolve the disputes before bringing them to the court and thus, strengthening the amicable resolution methods are aimed. The mentioned situation is going to help reduce the workload of judiciary, since lack of ADR methods is a significant reason for the heavy workload. ADR methods will also enhance the consensus culture and increase the confidence of the public administration in Turkey.

In the framework of rule of law the case-law uniformity and a functional mechanism for unifying the conflicted judgements are very important. In order to ensure confidence in judiciary, it is important that courts give similar decisions for the similar disputes (*stare decisis*). It also provides predictability in terms of legal security in the country. In case, different decisions are made between different appeal courts on the same issue, it may also negatively affect trust for appeal, as it violates the legal security principle.

It is also targeted to have an uniformity in practice in performing these services and to determine the procedures and principles for the conciliation. It is therefore aimed to re-structure the administrative conciliation commissions within the framework of the administrations in the scope of the Statutory Decree No. 659, i.e. structuring as a unit within the central and provincial offices of the administrations.

The target to make the system prescribed in the Decree numbered 659 more functional, also requires regulations to make the applications to the commissions obligatory before bringing lawsuit; ensure continuous works of the commissions and bring legal security to the commission members.

## **Challenges in the System of the Regional Administrative Courts**

In the administrative judiciary, the way of appeal has been included in our system in 2014 by Law No. 6545. Article 13 of Amending and Adopting the Statutory Decree Law no.2992 on the Organisation and Duties of the MoJ regulates the remit of the Directorate General for Legislation. Accordingly, making amendment in the context of legislation about increasing the effectiveness and competence of administrative judiciary falls into the remit of the Directorate General for Legislation and Directorate General for Civil Affairs.

Within the scope of the Law, No. 6545 the following amendments concerning the administrative judiciary were also made.

In the Law no.2576 on the Regional Administrative Courts governing the procedural rules in administrative judiciary field, the Law on the Establishment and Duties of the Regional Administrative Courts and Tax Courts and amendments in Law no.2577 on the Administrative Procedural Code. With these amendments, appellate remedy as a second instance was introduced.

One of the significant legal amendment in the administrative judicial system and administrative trial procedure, is that the change in the appeal system by an amendment<sup>1</sup> to the Law on Administrative Procedure No. 2577. In parallel to this amendment, appeal to the regional administrative courts was settled as a common remedy. Objection remedy to the regional administrative courts was removed and appeal to the Council of State (CoS) was considered as a remedy to be applied only in limited circumstances. These amendments are expected to have important results on the function of the other remedies and consequences of the court's decisions, structure of regional administrative courts and function of the CoS as a case-law court. Though the Law No. 6545 was published on the official gazette in June 2014, functioning of the regional administrative courts as an intermediate appeal court started on 20 July 2016.

In the Law no.2577, fast trial procedure was introduced for more expeditious conclusion of some cases, which lead to unbearable or impossible results both for administration and the plaintiffs in the event that they are not expeditiously concluded.

With the way of appeal, the administrative judicial system in Turkey has become three levels. Accordingly, while in some cases, the decisions of the administrative and tax courts are finalized in the regional administrative courts, decisions given as appeal authorities in regional administrative courts in some cases listed in the Administrative Procedural Law No. 2577, they are appealed to the CoS, they are finalized here and is definite.

The regional administrative courts are responsible for examination of appeals applicants and to make a decision as well as make final decisions on disputes between administration and tax courts in the judicial environment. Since role of them has been increased and there is a need to avoid differences in the judicial decisions, capacity improvement of the regional administrative courts is an important area of concern within the framework of administrative judiciary.

Moreover, the appeal courts' impacts on the judiciary need to be carefully assessed to improve efficiency.

**Special trial procedures and quick case types in administrative law** are mentioned as another way of decreasing the workload and finalizing the cases in a reasonable time. In collective cases, the group case procedure is a special case of judicial procedure. In this context, preparatory studies for drafting legislation on this procedure are still in progress. Pilot judgement procedure for group cases and accelerated trial procedures, as examples of special trial procedures would also have an impact in efficiency of administrative judiciary.

In addition, since reasoned decision-making is a fundamental rule of administrative law, it is expected from the project to support the development of a decision-making technique along with reasoning for both the first-instance courts and the appeal courts in the administrative judiciary, taking into account

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<sup>1</sup>Law no. 6545 amends the structure and functioning of Council of State and Court of Cassation.

best practice examples of the EU Member States. It is therefore important that decision-making technique needs to be developed with certain standards and they are achieved in all decisions.

In the Turkish administrative judiciary, the purpose of **appeal system** is to provide legal safeguards by realizing the judgments from the beginning, which is also the word meaning, in order that a full legal judgment can be made in accordance with the law. The second issue is ensuring reasonable period for fair trial by allocation of existing work load.

The Regional Administrative Courts have started to function with their new mandate on 20 July 2016 and high number of cases, which were previously under the liability of the CoS as the second instance courts will be concluded in these courts. Therefore, the judgments of the Regional Administrative Courts will offer an important resource for efficient functioning of the administrative judiciary.

With the Law No. 6545, conversion/transformation of some of the regional administrative courts into appeal courts has been enacted. 85.000 case files have been submitted to the regional administrative courts for the appeal investigation. This increasing number of files highlights a significant increase in workload in the Administrative and Tax courts as well as in the Regional Administrative courts. The most important reason for the increase in the number of cases in the administrative and tax courts is the absence of reconciliation mechanisms between the citizens and the administrations.

Therefore, there is a need to discuss any deficiencies in the existing legislative framework, possible problems in practice, and their solutions, which would be expected to be discussed in the scope of the project. For example, there is a need to prevent forfeitures arising from the different resolutions by the Regional Administrative Courts concerning the same legal incidents. Therefore, a more functional inspection mechanism is required against the different resolutions of the Regional Administrative Courts.

Under the above-mentioned challenges of the administrative judiciary, it is targeted by this project to support the reform in the Turkish administrative judiciary in terms of both **legislative and institutional changes**. The objectives set in this project are hence geared towards increasing the efficiency of the realm of the administrative judiciary in conjunction with the other areas of the justice system, by addressing the efficiency and restructuring of the workflows, of the overall processing capacity the reduction of workloads and through the establishment of ADR methods as well as the improvement of the human resources capacity of the related institutional constituents of the administrative judiciary in Turkey.

It is also necessary to consult the following institutions during the implementation of this project to increase efficiency of the administrative judiciary, if coordination and consultation among the institutions are sufficiently managed, different decisions will be avoided and serial cases can be resolved, alternative and complementary cooperation modalities will be discussed.

- Council of State (will be implementing a Direct Grant component of the same project)
- Council of Judges and Prosecutors (HSK)
- Ombudsman Institution in Turkey
- Administrative and Tax Courts, Regional Administrative Courts
- Justice Academy of Turkey
- Ministry of Finance
- Court of Accounts

### **3.2 Ongoing reforms:**

EU Financial Assistance, in general, has positively affected **the reform process in the field of judiciary**, although it has been a very long process to change minds and perceptions of the actors of the judiciary and to enable them to get acquainted with other judicial change requirements. Previous EU funds have focused on more generic and urgent needs of the judiciary, such as court management, criminal justice system and establishment of regional courts of appeal.

In this regard, more specific areas of the judiciary require support by the IPA II where there has been no projects under IPA I. Therefore, **improvement in capacity and effectiveness of administrative**



**judiciary**, that is an important field of action under 2014 AD, would directly affect the on-going reform process in Turkey. This would also be critical to support Turkey's efforts to secure rule of law and increase the level of standards concerning fundamental rights through actions proposed strengthening independence, impartiality and accountability of the judiciary along with improving the professional competence and increasing efficiency and effectiveness of the judiciary.

Increasing efficiency and effectiveness of the administrative judiciary are related to many institutions and the challenging issues under this field require integrated solutions to systemic and legislative shortcomings. Some of these challenging issues would be expected to be addressed by this Project, are presented above.

### **3.3 Linked activities:**

#### **Improving the Court Expert System (TR 2010/0136.13)**

A European Union-funded project with a budget of €1.4 million aimed at reducing the duration and cost of court proceedings, thus enhancing the quality of justice and raising public confidence in the judiciary and concluded in June 2015 (lasted in 30 months).

A comprehensive study on the court expert system to assess the gaps and needs of the current system in criminal, civil and administrative justice has been performed. Intensive awareness raising activities took place in pilot cities (İstanbul, Manisa, Antalya, Erzurum, Şanlıurfa, Samsun) gathering all the stakeholders. The project has facilitated the cooperation and support of the professional organisations providing experts to the courts, which will cooperate in the training and certification of experts as well as their supervision. More than 100 experts have been trained and certified as court experts. A code of conduct for the experts has been drafted. The Justice Academy has started two-day seminars for candidate judges & prosecutors on optimizing the use of court experts. EU support and expertise was provided to the Scientific Committee responsible for drafting a new Law on Court Experts, which is now completed. The Expertise Law numbered 6754 was published in official gazette and came into force in 24.11.2016). This law which foresees an effective and efficient organizational structure for expertise is acknowledged as a reform in expertise system in Turkey.

#### **Support to Establishment of Ombudsman Institution in Turkey (TR 2011/0123.14)**

According to the "National Programme of Turkey for the adoption of the EU acquis" under the title of "political criteria", the Turkish Ombudsman Institution came into effect and started to receive complaints as of 29 March 2013 in order to establish an independent human rights mechanism as well as create an effective mechanism of complaint concerning the functioning of the Administrations in Turkey.

The Law on the Ombudsman numbered 6328 and published at Official Gazette in 29/6/2012 authorizes the Ombudsman Institution **to examine, study, and make proposals concerning acts and actions as well as attitudes and behaviours of the Administration** within the framework of human rights-based justice and in conformity with the principles of fairness.

There has been a very close relation between scope of the administrative judiciary and role of Ombudsman Institution, since its establishment; the Ombudsman Institution has made efforts to strengthen its structure and operational capacity. However, as in other countries with such recently established institutions, the Turkish Ombudsman Institution needs to continue those efforts.

Addressing its operational and administrative needs, Ombudsman Institution is implementing "Support to Establishment of Ombudsman Institution in Turkey Project" which consists of technical assistance and twinning components.

Within the scope of the twinning component, the purpose is defined as support to the establishment of the Ombudsman institution in Turkey at its inception phase of operations to develop into a prominent body in line with EU Standards and the Paris Principles". The project has been implemented along with two results; "organizational structure of the Ombudsman improved in accordance with the best European practices and the human resources capacity of the institution strengthened" and "the

assessment of the existing legislation underlying the Ombudsman in light of the acquis and EU best practices". The Project was implemented between April 2014 – March 2016 in cooperation with the Ombudsman Institutions of France and Spain; training programmes, study visits, workshops and internships have been organized.

On the other hand, activities aiming to increase public awareness about the Institution as well as enhancing cooperation and collaboration of the Ombudsman Institution with other Ombudsman and International Institutions in Europe have been implemented within the scope of Technical Assistance contract.

### **Empowerment of the Role of Ombudsman in Protection and Promotion of Human Rights Project**

In line with the recommendations of the European Commission through Progress Reports, the Turkish Ombudsman Institution attaches great importance to strengthen its human resources capacity and increase the awareness level of the public. In order to continue its efforts, the project titled "Empowerment of the Role of Ombudsman in Protection and Promotion of Human Rights" has been proposed by the Ombudsman Institution, under IPA II for the programming year 2015, which includes two components that are twinning and technical assistance.

### **Strengthening the Institutional Capacity of Council of State ( TR2014/RL/06/A3.6-01)**

The Council of State, as one the beneficiary of this Project stands as the highest judicial institution in the administrative judiciary. This judicial institution has a crucial role in ensuring the rule of law and protecting individuals' rights. To implement the explained roles in parallel with EU Standards and in line with judgments of ECHR, members, judges and advocates generals serving at the Council of State need to be furnished with sufficient knowledge of EU Member States' practices on administrative law.

This project (as the other complementary component of the Project, "Improving the Effectiveness of the Administrative Judiciary") has been programmed under the AD 2014 and will be implemented by a Direct Grant to the Council of Europe. In this project, an effective judicial review of administrative acts will be ensured, the institutional capacity of the Council of State will be enhanced and following the introduction of intermediate appellate system an efficient functioning of the triple degree administrative review system will be maintained. It will cover various types of training activities such as seminars, workshops, and international symposia along with placements in EU Institutions, Council of Europe and ECHR.

It is important to implement a project for the administrative judiciary, along with the two components including the Council of State, Regional Administrative Courts and first degree Administrative and Tax Courts that will raise the awareness of the judges and prosecutors in those courts to improve the capacity of administrative judiciary, to increase efficiency and to strengthen the proper implementation of the rule of law in administrative judiciary.

### **Promoting Alternative Dispute Resolution (ADR) in Turkey**

Since it is important to implement the ADR methods effectively in order to reduce the huge backlog in the Turkish judiciary, a new project is designed in the 2016 AD. The widespread use of ADR will help reducing the cost and time required for settling the disputes and also improving the efficiency of the judicial system. For the criminal justice system, efforts will be put in to increase the utilization of ADR mechanisms in criminal justice by improving the conciliation/plea bargaining systems, improving the efficiency of pre-payment mechanisms. For the civil justice system, the aim will be to increase the implementation of arbitration, mediation and conciliation mechanisms.

Through this project, the number of cases settled by peaceful means will be increased and the Activity will focus on development of ADR mechanisms both in civil and criminal justice. No special reference will be given to administrative judiciary.

## **Increasing Efficiency of Auxiliary Staff in Judicial Services and Quality of Training (TR 2014 IPA JH 07 17)**

In line with 2008 AP priority concerning the follow-up the reforms in public administration and personnel policies with a view to ensuring broader effectiveness, financial liability and transparency, the MoJ, with reference to AD 2014, foresees the need of performance criteria in judiciary in order to ensure the implementation of personnel policies efficiently and effectively. The main stakeholders are DG for Personnel, Training Department, Strategy Development Unit and Internal Audit Unit.

In the first component, it is targeted to establish fair and objective performance criteria for the auxiliary staff with the aim of contributing to the effectiveness of the judiciary through increasing the motivation of the auxiliary staff. It will increase the effectiveness of auxiliary staff. The second component of the Activity aims to increase the efficiency and effectiveness of psychologists, pedagogues and social workers serving at family and juvenile courts. As a third component, the project will focus on establishment of a training system for the auxiliary staff (the personnel other than judges and public prosecutors).

The training modules in the above mentioned project would be different than the topics/modules developed within the project of "Improving the Effectiveness of the Administrative Judiciary ", since the target groups of the latter would be administrative judges; administrative clerks', legal staff, legal advisors and lawyers in the public institutions. The prior topics would be the administrative judiciary.

### **3.4 List of applicable *Union acquis*/standards/norms:**

In the European legal area, the Committee of Ministers of the Council of State officially expressed for the first time, the notion of "*principle of judicial review*" with the *Recommendation (Rec -2004-20)* on "*judicial review of administrative acts*". Therefore, this Recommendation has a special place in the development of Europeanization of judicial review.

In addition, the following two references will be taken into account during the implementation;

- Council of Europe Committee of Ministers, Resolution Res (2002)12 Establishing the European Commission for the Efficiency of Justice (CEPEJ)
- Opinion No 6 (2004) of the Consultative Council of European Judges (CCJE) on fair trial within a reasonable time and judges role in trials

### **3.5 Results per component**

Result 1: Improved Organisational Structure and Strengthened Institutional Capacity in the administrative judiciary

Result 2: Strengthened Alternative Dispute Resolution Methods in the administrative judiciary

Result 3: Improved Capacity and Efficiency of the Regional Administrative Courts including their New Role as Appeal Courts

### **3.6 Means/input from the EU Member State Partner Administration(s)\*:**

The project will be implemented in the form of a Twinning contract between Turkey and a Member State/Member States. The overall duration of the project is envisaged to be **24 months**. The Twinning partner(s) will manage all aspects of the administrative judiciary system described in this project fiche in close cooperation with the MoJ.

The Twinning partner(s) will provide a Project Leader (PL) and a Resident Twinning Advisor (RTA) and also secure a pool of short- term experts, who will be called upon whenever necessary to contribute to the achievement of the mandatory results and especially for the purpose of advisory

services and training according to the work plan that will be prepared as part of the corresponding contract.

Short Term Experts will work together with the staff of the beneficiary institution under the overall direction of the beneficiary institution and the Project Steering Committee. In addition to providing the Twinning partner with adequate staff and other resources to operate effectively, the senior management of the beneficiary institution is expected to be involved in the development and implementation of policies and institutional change required to deliver the project results.

The EU Twinning partner will be a Member State institution directly involved in the administrative judiciary. Member States may also form a consortium which could result in a wide range of qualified senior experts gathered from the public administrations or mandated bodies from up to two Member State, provided that national approaches can be harmonized within this consortium.

### **3.6.1 Profile and tasks of the PL:**

The Project Leader from the EU Member State should be a senior civil servant or equivalent staff who works in the field relevant to this project (Administrative Judiciary) and have been at least three years in a management position within the institution.

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.

#### **Profile:**

##### **Qualification and skills**

- University level education in law or 8 years equivalent professional experience in the related field
- Broad long-term knowledge of all processes in the area of *acquis* that the project is dealing with
- Excellent written and oral command of English
- Experience in working intercultural projects

##### **General professional experience**

- At least 3 years experience in working with Union *acquis* concerning judiciary and fundamental rights
- Experience in project management

##### **Specific professional experience**

- Knowledge of the EU Member States' administrative judiciary system

##### **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.).

### **3.6.2 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.

RTA on administrative judiciary will provide technical and operational assistance to the MoJ in the implementation period. The RTA is expected to co-ordinate all activities of the project. He/she will be located at the MoJ in Ankara, **General Directorate for Legal Affairs**. He/she has to be a person with significant experience as a manager and should have a capacity for managing projects and coordinating large-scale capacity building projects.

The RTA must be highly qualified in public affairs and the field of administrative judiciary covered by the Twinning contract, and must possess good management skills.

## **Profile**

### **Qualification and skills**

- University level education in law or 8 years equivalent professional experience in the related field Excellent written and oral command of English
- Good PC literacy (Word, Excel, PowerPoint)

### **General professional experience**

- At least 3 years experience in working with EU countries concerning administrative judiciary and fundamental rights

### **Specific professional experience**

- Recent experience in a senior position in a state institution\mandated body responsible for administrative judiciary
- Experience in preparation / revision of major strategic documents and policy papers in the area of administrative judiciary and fundamental rights
- Experience in developing, co-ordinating and conducting capacity building activities, preparation / revision of legal documents and training programmes
- Knowledge in ADR, as an asset

### **Duration of RTA secondment: 21+3 months**

### **Tasks**

- To design a work plan for the implementation of the programme;
- To assist in the preparation of all strategic project documents [inception study, sector strategy/policy/plan, quarterly monitoring reports, final project report, training manuals etc.]
- To ensure continuity of implementation, working on a daily basis with the MoJ staff to implement the project;
- To plan and coordinate outputs;
- Together with the Project Leader: to nominate and mobilize the short term experts;
- To supervise the short term experts;
- To ensure proper quality of outputs;
- Co-ordination - together with MoJ for the organization of consultation process;
- Co-ordination - together with MoJ in the design and delivery of a training programme and provision of technical and operational advice;
- Facilitation of EU member states to transfer best practices and high quality potential inputs for their implementation in Turkey.

### **3.6.3 Profile and tasks of Component Leaders:**

Component leaders will ensure the implementation of project components and plan the agreed activities in a timely manner with high quality. They report to the RTA and liaise with the RTA counterpart.

**Qualifications and skills:**

- University level education in law or 8 years equivalent professional experience in the related field Good written and oral command of English;
- Capacity to integrate into a large expert team;
- Willingness to work in a different cultural environment.

**General professional experience:**

- At least 3 years of professional experience in the relevant field.

**3.6.4 Profile and tasks of other short-term experts:**

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

- Conducting consultation process, working group meeting and workshops
- Conducting institutional needs assessment with EU comparison
- Conducting legal assessment with EU comparison
- Conducting training need assessment particular attention to EU experience
- Developing training programmes and materials
- Delivery of training sessions
- Strong law background with an extensive experience on administrative judiciary
- ADR methods
- Institutional capacity building on regional administrative courts
- Institutional capacity building on court of appeals
- Strategy development and policy paper preparation

**General Profile of the Short Term experts****Qualifications and skills:**

- University level education in law or 8 years equivalent professional experience in the related field 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.

**General professional experience:**

- At least 3 years of professional experience in the relevant field, 8 years experience is considered to be an asset

**Tasks**

- To contribute to the project activities with a short term provision of inputs with specialised knowledge in the area of administrative judiciary and ADR;
- To provide inputs for the consultation process, meetings and workshops;
- To prepare training programme and materials and delivery of sessions;
- Advice and backstopping from a national EU Ministry of Justice and other relevant stakeholders.

**4. Budget****Maximum Budget available for the Grant**

<b>Improving the Effectiveness of the Administrative Judiciary</b>	<b>EU Contribution</b>	<b>National Contribution</b>	<b>Total</b>
Twinning	95 % 1.425.000 Euro	5 % 75.000 Euro	1.500.000 Euro

*The co-financing here above will be considered and fulfilled according to the provision of the relevant Financing Agreement.*

## **5. Implementation Arrangements**

### **5.1 Implementing Agency responsible for tendering, contracting and accounting (AO/CFCE/PAO/European Union Delegation/Office):**

#### **Central Finance and Contracts Unit (CFCU)**

Mr. M. Selim Uslu

PAO and CFCU Director

Central Finance and Contracts Unit

Phone: + 90 312 295 49 00

Fax : + 90 312 286 70 72

İnönü Bulvarı No: 36 E Blok 06510

Emek - Ankara / TURKEY

### **5.2 Institutional framework**

The MoJ, the **Directorate General for Civil Affairs** will be the main end beneficiary of the project.

Ministry of Justice Directorate General for Civil Affairs will be the main end beneficiary of the project. During the technical implementation of the project the supervision / coordination will also be conducted by DG for Civil Affairs. DG for Civil Affairs will be responsible for ensuring close cooperation with sub- beneficiaries.

Within the scope of the power granted by the Law on Establishment and Duties of Judicial Organization, the Directorate General for Civil Affairs is responsible for taking all kinds of legal and administrative measures with regard to the issues concerning the functioning of administrative judiciary. Additionally, conducting researches for better functioning of the justice system are some of other important functions of the MoJ DG for Civil Affairs as well.

During the IPA II period, the MoJ, the Directorate General for EU Affairs has overtaken the lead institution role in judiciary sector.

The MoJ is given important responsibilities and powers to ensure well functioning of the justice system. The MoJ is the main responsible executive institution for forming the justice policy and carry out the administrative duties for better serving of the justice system. In this regard, opening and organizing courts which already have been established by law, planning, establishing and improving all levels and types of judicial institutions such as prisons and correctional facilities, enforcement and bankruptcy offices are among the duties of the MoJ. Additionally, drafting and delivering legislation concerning justice services, conducting researches for better functioning of the justice system are some of other important functions.

### **5.3 Counterparts in the Beneficiary administration:**

#### **5.3.1 Contact person:**

Mr. Ekrem Gökçe  
Judge  
Director General for Civil Affairs  
E-mail: [ab101136@adalet.gov.tr](mailto:ab101136@adalet.gov.tr), [higm@adalet.gov.tr](mailto:higm@adalet.gov.tr)  
Tel: +90 312 417 81 62  
Address: Adalet Bakanlığı Ek Bina Milli Müdafaa Caddesi No: 22  
Bakanlıklar Ankara

### **5.3.2 PL counterpart**

Mr. Feyzullah TAŞKIN  
Director General of DG for Civil Affairs  
Address: Adalet Bakanlığı Ek Bina Milli Müdafaa Caddesi No: 22  
Bakanlıklar Ankara

### **5.3.3 RTA counterpart**

Mr. Cengiz Özel  
Judge  
Directorate General for Civil Affairs  
Address: Adalet Bakanlığı Milli Müdafaa Caddesi No: 20  
Bakanlıklar Ankara

## **6. Duration of the project**

21+3 months

## **7. Sustainability**

Since 1999, Turkey has undergone considerable reforms in the field of judiciary including both structural and legislative changes and country has spent significant amount of efforts to internalize EU values, which would be key factors for the future sustainability of the action results.

The Beneficiary and the LI of the sector, the MoJ has an extensive experience in the field of EU financed projects that would be better materialized as inputs from IPA-I period to the IPA-II period. It is also targeted that MoJ will use this experience to assist other judicial institution for ensuring the sustainability of the results of the action.

The project will assist the Turkish Administrative Judiciary to try and adopt new solutions in problems encountered, considering the lessons learned from the European Counterparts, which would lead to more effective judicial services through lower costs and shorter durations, with a particular attention to the ADR methods, administrative regional courts and courts of appeals. This project would impede to disseminate some il-founded implementations throughout the country. The results would be more sustainable and satisfactory with an expected monitoring and dissemination plan.

Strong commitment of the beneficiary and close cooperation with the Project partners will increase the efficiency and effectiveness. All lessons learned from various projects and programmes will be taken into consideration to avoid any repetitions too.

Beneficiary committed % 5 (75.000 Euro) of the overall budget. The MoJ ensures required financial sources after the implementation of the project to strengthen the sustainability.

Where relevant, the training programmes could be included in the training curriculum of the national training institution.

Any manuals, guidelines and written procedures developed in the framework of this twinning project should be simple enough to be regularly updated and changed by the staff of the respective organisations without external support.



## 8. Crosscutting issues (equal opportunity, environment, climate etc...)

The main crosscutting theme of the project is universal; access to justice. The functioning of the administrative judiciary and improved efficiency of the Turkish system are fundamental to ensure that human rights are in accordance with the Copenhagen criteria and the European Convention on Human Rights.

Participation in this project will be open to both males and females involved in the sector.

The principle of equal opportunity will also be integrated into all stages of the project implementation. The Beneficiary respects the rights of equal opportunity of all genders, groups (i.e. disabled persons) and ages for employment. Appropriate professional qualifications and experience will be the main factors of personnel recruitment and evaluation. Both women and men have identical prospects. Nevertheless, all periodical progress review reports and other interim reports will include a specific explanation on measures and policies taken with respect to participation of women and equal opportunity for women and men and will provide measurements of achievement of this goal.

## 9. Conditionality and sequencing

N/A

## 10. Indicators for performance measurement

Levels	Indicators
Overall objective	Effectiveness of the administrative judiciary improved along with positive assessment for the efficiency of the administrative judiciary in the EU Progress Reports and other relevant reviews, similar reports
Project purpose	<ul style="list-style-type: none"><li>- Effectiveness of the administrative judiciary improved along with number of legislative amendment proposals drafted at the end of the project</li><li>- Workload in administrative judiciary decreased (number of pending cases) *</li></ul>
Results	<p><b>“Survey for Developing Baseline and Assessment of Result Level Indicators”</b> will be conducted for the three components at the beginning and at the end of the implementation. While collecting baseline data is under direct responsibility of the MoJ, the Twinning Contractor will assess both the baseline and progress at the level of result indicators at the end of the implementation and the results will be presented in the Final Report.</p> <p><b>Result 1 Indicators</b></p> <ul style="list-style-type: none"><li>- Decrease in the finalizing time of the cases</li><li>- Decrease in the number of appeals</li></ul> <p><b>Result 2 Indicators</b></p> <ul style="list-style-type: none"><li>- Increase in number of cases utilised ADR methods in the administrative judiciary</li></ul> <p><b>Result 3 Indicators:</b></p> <ul style="list-style-type: none"><li>- Decrease in the number of discrepancies or contradictions found between the exact judgments (court decisions) of the regional administrative courts or between the exact judgments (court decisions) of different regional administrative courts</li><li>- Increase in the number of resolutions finalized at the regional administrative courts</li></ul>

\* The indicator, number of pending case (in parallel to the 2014 AD) is presented as below;

<b>Indicator</b>	<b>Baseline (year)</b>	<b>Last (year)</b>	<b>Milestone 2017</b>	<b>Target 2020</b>
<i>Workload in administrative judiciary decreased.(number of pending cases)</i>	<i>(2013) 176.740</i>	<i>(2014) 187.085</i>		<i>120.000</i>

## **11. Facilities available**

The MoJ guarantees effective and efficient working conditions within a mild organisational climate for the entire project team. All required soft and hardware will be available for the RTA and his/her assistants. Additionally, MoJ allows the utilization of any kind of its facilities for the project activities, meetings, seminars etc. within their capacities.

The MoJ commits itself to make available free of any charge for the project:

- Office facilities for the RTA and the RTA assistant(s) for the entire duration of their secondment, with a level of equipment at least comparable to that in use in the Beneficiary administration.
- Adequate conditions for the short-term experts to perform their work while on mission to the Beneficiary.
- Training and conference venues, catering if appropriate and presentation and interpretation equipment.

## **ANNEXES TO PROJECT FICHE**

1. Logical framework matrix in standard format

## LOGICAL FRAMEWORK

ANNEX 1: Logical framework matrix in standard format

Total number of study visits and internships are maximum 5 as indicative.

LOGFRAME PLANNING MATRIX FOR Project Fiche	Programme name and number	
<b>Improving the Effectiveness of the Administrative Judiciary</b>	<b>Contracting period expires</b> <b>21.12.2018</b>	<b>Execution period expires</b> <b>21.12.2021</b>
	Total budget: 1.500.000 Euro	IPA Budget: 1.425.000

<b>Overall objective</b>	<b>Objectively verifiable indicators</b>	<b>Sources of verification</b>	
To further strengthen and make more concrete and visible the independence, impartiality, efficiency and administration of the judiciary	Effectiveness of the administrative judiciary improved along with positive assessment for the efficiency of the administrative judiciary in the EU Progress Reports and other relevant reviews, similar reports	- Statistics of the Ministry of Justice (MoJ) - Statistics of the Council of State	
<b>Project purpose</b>	<b>Objectively verifiable indicators</b>	<b>Sources of verification</b>	<b>Assumptions</b>
To improve effectiveness of the administrative judiciary in terms of legislative and institutional changes	- Effectiveness of the administrative judiciary improved along with a number of legislative amendment proposals drafted at the end of the project - Workload in administrative judiciary decreased (number of pending cases)	- Regular Progress Reports issued by European Union, Programming Documents and Mid-Term Review Reports - Reports/Documents issued by other international institutions and experts groups (Council of Europe, United Nations, Sigma Reportsetc.) - Amendment Proposals in the Legislative Framework  - Statistics of MoJ, Ombudsman Institution, Council of State	- Continued Government and EU commitment towards Turkey's accession - Continued Government commitment to public reform and judicial reform - Continued administrative and political support

		- Turkey's Five Year Development Plans, National Judicial Reform Strategies and Plans	
<b>Results</b>	<b>Objectively verifiable indicators</b>	<b>Sources of verification</b>	<b>Assumptions</b>
<p><b>Result 1:</b> Improved Organisational Structure and Strengthened Institutional Capacity in the Administrative Judiciary</p> <p><b>Result 2:</b> Strengthened Alternative Dispute Resolution Methods</p> <p><b>Result 3:</b> Improved Capacity and Efficiency of the Regional Administrative Courts including their new role as Appeal Courts</p>	<p><b>Result 1 Indicators</b></p> <ul style="list-style-type: none"> <li>- Decrease in the finalizing time of the cases</li> <li>- Decrease in the number of appeals</li> </ul> <p><b>Result 2 Indicators</b></p> <ul style="list-style-type: none"> <li>- Increase in number of cases utilised Alternative Dispute Resolution methods in the administrative judiciary</li> </ul> <p><b>Result 3 Indicators:</b></p> <ul style="list-style-type: none"> <li>- Decrease in the number of discrepancies or contradictions found between the exact judgments (court decisions) of the regional administrative courts or between the exact judgments (court decisions) of different regional administrative courts</li> <li>- Increase in the number of resolutions finalized at the regional administrative courts</li> </ul>	<ul style="list-style-type: none"> <li>- Regular Progress Reports issued by European Union</li> <li>- National Judicial Reform Strategy</li> <li>- MoJ Strategic Plans</li> <li>- Documents to be produced during project implementation (needs analysis report, assessment reports, activity reports, etc.)</li> <li>- Amendment Proposals in the Legislative Framework</li> <li>- Activity Reports, Interim and Final Report to be prepared within the scope of the Twinning Project</li> </ul>	<ul style="list-style-type: none"> <li>- Continued administrative and political support</li> <li>- Established close cooperation with public institutions, engaged in the administrative judiciary</li> <li>- Full commitment of the involved authorities and the staff</li> </ul>
<p><b>Result 1</b></p> <p>1.1. Needs Analysis concerning the Organizational Structure of the Constituent Institutions and Practices of the Administrative Judiciary</p> <p>1.2. Review of Existing Legislation and Development of Proposals for Amendments</p> <p>1.3. Conducting Comparative Legal Assessment on the Main Topics of the Administrative Judiciary</p> <p>1.4. Training Need Analysis, Development and Delivery of Training Programme for the Staff of the</p>		<ul style="list-style-type: none"> <li>- Quarterly Reports and Final Report to be prepared within the scope of the Project</li> <li>- Documents to be produced during project implementation (needs analysis report, assessment reports, activity reports, etc.)</li> <li>- Activity Reports, Interim and Final Report to be prepared within the scope of</li> </ul>	<ul style="list-style-type: none"> <li>- Full commitment and good cooperation of the involved authorities and the staff</li> <li>- Willingness and availability of hosting institutions for study visits</li> <li>- Timely completed formal procedures necessary for the activities</li> <li>- Availability of experienced advisors and consultants</li> <li>- Adequate provision</li> </ul>

<p>Administrative Judiciary 1.5. Organisation of Study Visits</p> <p><b>Result 2</b></p> <p>2.1. Review of Existing Legislation and Practices and Development of Recommendations</p> <p>2.2. Review of Alternative Dispute Resolution Framework in Europe and Development of a Proposed Roadmap for Turkey</p> <p>2.3. Establishment of the Administrative Conciliation Commissions</p> <p>2.4. Organisation of Study Visits</p> <p>2.5. Design and Delivery of Training on the Implementation of Alternative Dispute Resolution Methods</p> <p><b>Result 3</b></p> <p>3.1. Review of Existing Legislation and Development of Recommendations</p> <p>3.2. Organisation of Consultation Meetings of the Regional Administrative Courts</p>		the Twinning Project	from national budget
Activities	Means	Costs	Assumptions
Twinning Contract	RTA Short Term Experts Study Visits Training Programmes Expert Working Groups Workshops Councils	Component 1: 1.425.000 (EU) 75.000 (National)	<ul style="list-style-type: none"> <li>- Full commitment and good cooperation of the involved authorities and the staff</li> <li>- Willingness and availability of hosting institutions for study visits</li> <li>- Timely completed formal procedures necessary for the activities</li> </ul>

			<ul style="list-style-type: none"><li>- Availability of experienced advisors and consultants</li><li>- Adequate provision from national budget</li></ul>
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