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**“Emerging issues of access to justice for vulnerable
groups, in particular:**

- migrants and asylum seekers;
- children, including children perpetrators of crime”

**Report presented by the Minister of Justice
of Turkey**

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ACCESS TO JUSTICE

- **Legal Aid**

One of the most fundamental foundations that is worth mentioning is the institution of legal aid as far as access to justice is concerned. In accordance with article 2 of the Constitution of the Republic of Turkey (ROT), Turkish Republic is a democratic, secular and social state governed by the rule of law. Article 10 of the Turkish Constitution provides that all individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. According to Article 36; Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures. Under the light of the afore mentioned articles, it is obvious to note that the state has a mission to establish an effective mechanism including free legal aid in order to provide access to justice of the individuals.

In Turkish law, right for a free attorney in civil law (including execution stage and preliminary injunctions), criminal law and administrative law suits stems from the Attorney Code of 1969, no 1136. Legal aid received from Legal Aid Bureaus, established within the Bars, is only available for civil and administrative law cases, and only for victims, complainants and interveners in criminal law cases. Under the former Criminal Procedural Code (CPC) a separate legal aid assistance provided by the CPC Enforcement Centers for accused and suspects used to exist. This system is conserved entirely in the new Criminal Procedural Code.

In Turkish law, it is not mandatory for parties to represent themselves by an attorney. However, in accordance with the Attorney Code, it is mandatory for the Bar-Registered attorneys to provide free legal aid in case of a request by the Bar Association. Every Bar Association has its own Legal Aid Bureau in order to provide assistance in criminal, civil and administrative law cases. Financing of these Legal Aid Bureaus is provided by the Department of Finance.

Article 176 of the Attorney Code describes the scope of legal aid as; "Providing assistance of an attorney specified in this Code to persons who are not able to cover attorney fees and other judicial expenses." Legal aid not only covers representation of a party before courts including the appeal stage but also providing legal advice. Likewise, it may cover procedures outside the court such as settlement of an elderly or a child to some institutions. In summary, the scope of legal aid is expanded to comprise not only assistance of attorneys before courts but also undisputed dealings such as consultancy outside adjudication, reconciliation, etc., and the entirety of the adjudication procedures.

The second major code comprising regulations on legal aid is the Civil Procedural Code (CivPC). Article 465 of the CivPC regulates legal aid in civil law cases. The following conditions should be satisfied for the acceptance of legal aid;

- The applicant must be in poverty.
- The applicant should be right in his position (besides exceptions)
- If the applicant is a foreign national, reciprocity clause needs to be fulfilled.

In this context the legal aid covers the following items:

- Temporary exemption from every type of judicial fees and expenses,
- The advance of expert and witness expenses by the State,
- Exemption from judicatum solvi as regards judicial expenses,
- Exemption from notification expenses,
- Assignment of an attorney on the condition of back payment of representation fees,
- The advance of entire fees and expenses charged at the bailiff's office by the State,
- Temporary exemption from all stamp duties,
- Temporary exemption from notary charges.

In the European Union Accession Partnership Document, Turkey's commitment is determined as; "The enhancement of the legal aid system and enabling access to justice by every citizens." Within the frame of the *acquis communautaire*, under the title of access to justice and legal aid in the Turkish National Program, obligations, such as issuance of regulations on awareness campaigns, publication of instruction manuals, establishment of an information system and judicial network relating to legal matters, performance of working programmes on the minimum standards of legal aid, determination of uniform rules to be applied in certain cases, are adopted.

In order to strengthen the rule of law and to guarantee access to justice by every citizen under the EU standards, "Better Access to Justice in Turkey" Project is currently being conducted under the coordination of the Directorate General of the European Union in the Ministry of Justice. The project proposes four major action areas:

- Improvement of legal aid in Turkey,
- Promotion of effectiveness of alternative dispute resolutions (ADR) in the Turkish legal system,
- Construction of audible and visual recording systems in the 225 Felony Courts,
- Strengthening the technical infrastructure of the the Ministry of Justice.

Among the actions of the project there are;

- Establishment of a Legal Aid Committee by the participation of the representatives from the Bar Associations in various provinces, academicians and an EU expert,
 - Making the demand analysis of the existing legal aid system and determining the breakdowns of the system by the Committee,
 - Initiation of a public awareness campaign on legal aid,
 - Purchase of some technical equipment in order to strengthen the technical infrastructure of the Directorate General of Judicial Record and Statistics in the Ministry of Justice
 - Training of Attorneys,
 - Production and distribution of 30.000 units of CDs to attorneys, and judges and prosecutors including alternative dispute resolutions,
 - Construction of audible and visual recording systems in the 225 Felony Courts.
- **Access to Justice of Foreign Nationals, Migrants and Refugees**

In the Turkish Judicial System there is not any discrimination based on the nationality of individuals. Foreign Nationals have the same judicial guarantees and rights as the Turkish citizens. This is expressed as "Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures" in Article 36 of the Turkish Constitution.

After the amendment made in the Attorney Code in the year 2001, everyone either a citizen or a foreign national has right for a free legal aid as long as the necessary conditions are met.

Also in the Civ.PC, which is the second major act comprising regulations on legal aid, nationality is not a precondition in granting legal aid on the condition of satisfaction of reciprocity. In addition, Turkey is a party to the 1954 Hague Convention on Civil Procedure and has bilateral agreements with many countries on granting legal aid reciprocally.

In the area of criminal law, free legal representation of the suspect and accused is available for everyone regardless of their nationality. The only criteria to benefit from the services provided by the CPC Enforcement Centers is the restriction of the freedom or being under a criminal allegation, and request for the designation of an attorney.

In the article 125 of our constitution, it is stated that "Recourse to judicial review shall be available against all actions and acts of administration." and the right for filing a suit against administrative processes that are conducted by the authorized administrations in their request for asylum and sanctuary is accepted effectual for every foreigner without considering whether they hold migrant or refugee status.

With the regulations of the objection methods of refugees-emigrants in "Action Plan on Asylum and Migration" that took effect on March 25, 2005; in order for the objection procedure to be available and open for every applicant, and to enable the ones whose applications are rejected to resort to appeal or adjudication, constitution and implementation of a good administrative appeal or judicial appeal procedure, and the inspection of files both in terms of procedure and principal cause, and the securing of this in two phases have been regulated.

Currently, individuals whose asylum inquiries are rejected have the right to appeal to the administrative adjudication and to request the revocation of this administrative procedure. The applicant may present every kind of information and documentation that are supportive of their allegation, if they are included in their appeal. The applicants may present their appeal themselves by receiving help from a defender or legal consultant, or they may execute appeal procedures directly by the intermediary of their defenders. About the revocation cases filed in the Administrative and District Administrative Courts against the reached decision on the applicant, especially to make the accelerated procedure operate, the measures hereunder, which enable courts to reach an accelerated verdict, have been evaluated.

- To turn the revocation cases on asylum into urgent cases and to bring a time limitation on application procedure as well as on bringing a verdict, and for this purpose to do the necessary legal arrangements,
 - To do requisite arrangements in order to enable the pertinent Courts to reach information on the country of origin,
 - To organize a judge group to evaluate appeals on asylum situations and to receive training on asylum laws by these people, and to receive aid for this training from the UN Emigration Agency and other civil society organizations, and to grant allowance for these, if necessary.
- **Access to Justice by Children and Juvenile Criminals**

In most of the international documents it is stated that laws, procedures and authorities that are specific for children need to be constituted, based on the fact that judgement and punishment of juveniles with the same processes with adults, can not protect these children from crime and similar risks, but they make these children become even more vulnerable to crime. The necessity to constitute a child friendly judicial system has become an obligation for the entirety of the cosigning states of the "UN Convention on Rights of the Child" (40/3).

The new Turkish Criminal Justice System has reconstructed the juvenile justice system based on the efforts to develop a child-friendly justice system. The new Criminal Law, Law on the Execution of Criminal and Security Measurements, and Child Protection Act have come into force. In Turkish law the basic provisions concerning the status of children before criminal law are envisaged in the Criminal Code. However, the security and protection measures applicable to children are provided in the Child Protection Act

The Child Protection Act envisages; types of protection measures regarding children in need of protection, the institutions and organizations that are to apply these measures, the courts that have jurisdiction, qualifications and appointment of judges, prosecutors and social workers who are to function in these courts, enforcement of the decisions regarding these measures, and supervision of these protection orders given by the Courts. In addition, in this law the institutions of the "suspension of pleading the criminal case" and the "suspension of the verdict announcement" which are not possible in adult adjudication, are provided. Also the scope of the "conciliation" is envisaged to be applied in a broader manner in this law.

In addition to the afore mentioned laws, provisions on the special status of children as regards the execution and procedural law are provided in Misdemeanour Law, Criminal Procedural Law and Law on the Execution of Criminal and Security Measurements.

Based on the child friendly justice system, the prosecution of juveniles is conducted by the Public Prosecutors personally who are appointed at the Juvenile Prosecution Offices. (CPA 15) The Juvenile Prosecution Offices are not separately organized from the general prosecution offices but they are settled within the structure of general prosecution offices.

Special rules and apprehension and arresting procedures that are to be conducted about children and provisions on the classification of general rules are included in the article 19 of the "Regulation on Apprehension, Arrest and Examination." Accordingly;

"Authorization of apprehension and examination under oath are limited as stated below:

- a) The ones who have not completed their twelfth birthday on the time of the act, and the deafs and mutes who have not completed their fifteenth birthday;
 - 1) Can not be apprehended under an accusation of a crime and cannot be used for the ascertainment of any crime.
 - 2) Can be apprehended for determination of identification and crime.

They are released right after the determination of their identity. The Office of the Prosecutor is immediately informed about the identity particulars and the crime in order to enable the court to make a decision for temporary injunction.

- b) The ones who have completed their twelfth birthday but not their eighteenth birthday may be apprehended for a criminal allegation. These children may be sent to the Prosecutor's Office immediately following the notification of their next of kin and defenders; investigation on these is conducted by the Chief Prosecutor or an assigned Public Prosecutor personally, and it is conducted in accordance with the provisions hereunder:
 - 1) Parents or guardian of the child are notified about the apprehension of the child.
 - 2) Even if he/she does not request for an attorney, an attorney is appointed, and parents or guardian of the child may appoint an attorney.
 - 3) The juvenile suspect may be examined under oath with the condition of the presence of the attorney.
 - 4) If it is determined that there is not any legal restriction or anything against his/her benefit, parents or guardians may be present during examination.
 - 5) Juveniles are detained and kept separately from adults.
 - 6) If the crimes, which are outlined in the Law on Juvenile Court Constitution, Assignment and Judicial Procedures numbered 2253, are committed along with adults, documentation on children are separated during the investigation stage, and examinations are conducted separately.
 - 7) Identification and acts of children are kept confidential.
 - 8) If the victim of the crime is a child, in flagrante delicto cases against these children, there is no contingency sought for the apprehension of the suspect and performance of an examination in the acts that depend on the complaints of the victim who are affected by the crime.
 - 9) Procedures about children are conducted by personnel in civil attires as much as possible.
 - 10) Children cannot be handcuffed or similar devices cannot be attached on them. However, in forced situations, in order to prevent the escape of the child, to prevent dangers to the life or body integrity of their own or others, requisite, measurements are taken by the law-enforcement officers."

According to article 12 of the UN Convention on the Rights of the Child, a child who has the ability to express his/herself freely has the right to express themselves freely on every matter related to their own selves. In order to enable the usage of this right, opportunity for the listening of the child either directly or by a representative or an appropriate authority is to be especially provided in any judicial or administrative investigation that affects the child. In conformity with this principle, in article 13 of the Child Protection Law it is stated that; "Temporary injunction can be imposed about children who are forced into crime, who do not have criminal liability, and who are in need of protection. Before the

imposition of temporary injunction, recourse to the opinion of the child who has majority is necessary. The opinion of the relevant authorities may be listened and the preparation of social analysis report on child may be requested.”

Children who are forced into crime are tried by juvenile courts. There are 19 juvenile courts established within the country.

In accordance with the article 22 of CPA;

- “(1) The Child, his/her guardian, his/her balius, social worker assigned by the court, family members responsible for the care of the child, and representative of the institution if the child is taken under the care of an institution, may be present at the court hearings.
- (2) Court or judge may allow the presence of a social worker near the child during the examination or other procedures regarding the child.
- (3) The child, who is present in the court room, may be taken out of the court room if it is considered necessary for the best interest of the child or if there is no reason for the child to be present in the court room.”

In accordance with article 185 of the CPC, court hearings regarding children are confidential and the verdict is announced in a closed session.

It is not possible to examine children without the presence of an attorney both in the investigation and prosecution stage. In accordance with the article 150/2 of CPC, an attorney is to be assigned regardless of the request of the the child. In every stage of the investigation and prosecution, the right of the attorney to meet with the suspect or accused child, to be present during examination and interrogation stages and to give legal help can not be prevented or limited.

In accordance with articles 28 and 29 of CPA, it is suggested that the judges and prosecutors are selected from the judges and prosecutors who are specialized in juvenile justice and who have training in child psychology and social services.

In the case of verdicts for the supervision of children who are driven to crime, tasks of the supervision officer in charge, such as guidance on education, job, support offering institutions, his/her rights, use of these rights, services to take advantage of, are provided in article 38 of CPA.

In accordance with article 27 of “Regulation on Centers of Protection, Care and Rehabilitation, and Social Rehabilitation Centers” dated August 06, 2007, there is going to be a collaboration with law schools and Bar Associations in order to provide “Legal Consultance” services within the Center structure for the enlightenment of children and their families on their rights and responsibilities, and on the results of their behaviour conducted against the law.

In addition, the way to be followed concerning crimes committed against children, including refugee children, who receive aid from social service units, is explained with circulars issued by the Social Services and Child Protection Board and published throughout the provincial units.

In vocational activities realized by social service units which provide bedded services, topics such as recognition of social rules and recognition of their own rights by children outlined in the UN Convention on the Rights of the Child are handled.

Migrants, asylum seekers and refugees take advantage of services of Public Centers and Family Consultancy Centers, which provide protective services of Social Services and Child Protection Board upon their request. Necessary guidance and consultancy services are provided to the afore mentioned individuals who file applications this way, and they are allowed to take advantage of women’s guest houses when they are in need and if their cases fit.

In this context, guidance and orientation services are provided to these individuals in exercising their legal rights and providing their access to justice through collaboration with Bar Associations.

- **Ongoing Projects**

An effective implementation of laws, regulations, guidelines and other legislations, which aim to improve and protect the rights and well-being of children and vulnerable groups, prohibiting maltreatment and exploitation, prohibiting the usage of children in criminal conduct, prohibiting usage of every kind of weapon and drugs and their marketing by these children, and suggesting various proposals on this matter, depend on the operation of judicial units according to the principles of justice, fairness, reliability, transparency and trial in a reasonable time frame, and enabling children and vulnerable groups to take advantage of judicial services at the highest level.

Ministry of Justice of Turkey has developed and executed a National Judicial Network Project (NJNP) by using every modern technology necessary to accomplish inner automation of the entirety of the judiciary and judicial support units as hardware and software, and similarly, to accomplish external unit integration with public bodies and organizations who have founded their information automation systems.

As a result of the contributions of NJNP to the judicial system, juveniles may be tried in a reasonable time period, accurate policies may be developed by receiving crime reports of juveniles, it is easier to prevent impunity for those who commit crimes against children, and to stop crimes against children by an effective, transparent, fair and speedy performance of judiciary. Legislations relating to children are accessible any time with their up to date status. Studies are being conducted swiftly by the judicial authorities for the establishment of precautions that aim to improve, protect and support the rights and well-beings of children and vulnerable groups.

In addition, "Towards Good Governance, Protection and Justice for Children in Turkey" Project is being executed currently under the coordination of the Gendarmerie General Headquarters. The general aim of the project, in the context of EU candidacy, is to improve protective climate for children who are in contact with laws, and to strengthen the system which envisages preventing children from becoming in contact with the law, as indicated in the UN Convention on Rights of the Child. Within the context of the project, many educational activities have been accomplished by the Ministry of Justice and many activities are on their way.

