



EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE
(CEPEJ)

SCHEME FOR EVALUATING JUDICIAL SYSTEMS 2009

Country: Turkey

National correspondent

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1. Demographic and economic data

1. 1. General information

1. 1. 1. Inhabitants and economic information

1) Number of inhabitants

71517100

2) Total of annual State public expenditure / where appropriate, public expenditure at regional or federal entity level (in €)

	Amount
State level	83547878000
Regional / entity level	

3) Per capita GDP (in €)

7050

4) Average gross annual salary (in €)

0

5) Exchange rate from national currency (non-Euro zone) to € on 1 January 2009

2133

Please indicate the sources for questions 1 to 4 and give comments concerning the interpretation of the figures supplied if appropriate:

Buying Selling

EUR/TRY 1 EURO 2.1332 2.1435

Sources for questions 1 to 4

Turkish Statistics Institution
The Ministry of Finance

1. 2. Budgetary data concerning judicial system

1. 2. 1. Budget (courts, public prosecution, legal aid, fees)

6) Total annual approved budget allocated to all courts (in €)

786503133

7) Please specify

Please note that in Turkey there is not a separate budget allocated to all courts. This amount includes the budget of the public prosecution system.

8) Does the approved budget of the courts include the following items? Please give for each item (or some of them) a specification of the amount concerned or indicate NA (not available) in case that the information cannot be supplied

Please provide comments to explain the data provided under question 8:

Annual public budget allocated to (gross) salaries	<input checked="" type="checkbox"/> Yes	529883710
Annual public budget allocated to computerisation (equipment, investments, maintenance)	<input checked="" type="checkbox"/> Yes	11689140
Annual public budget allocated to justice expenses	<input checked="" type="checkbox"/> Yes	117630542
Annual public budget allocated to court buildings (maintenance, operation costs)	<input checked="" type="checkbox"/> Yes	904977
Annual public budget allocated to investments in new (court) buildings	<input checked="" type="checkbox"/> Yes	126389786
Annual public budget allocated to training and education	<input checked="" type="checkbox"/> Yes	4977
Other (please specify):	<input type="checkbox"/> Yes	

Comment :

9) Has the annual public budget of the courts changed (increased or decreased) over the last five years?

- Yes
 No

If yes, please specify (i.e. provide an indication of the increase or decrease of the budget over the last five years):

COURT BUDGETS

2008 648.419.230,77
2007 523.526.271,49
2006 343.460.633,48
2005 309.158.371,04

10) In general are litigants required to pay a court tax or fee to start a proceeding at a court of general jurisdiction:

- for criminal cases?
 for other than criminal cases?

If yes, are there exceptions? Please specify:

If the litigant is granted legal aid, she/he is not required to pay a court tax or fee to start a proceeding at a court of general jurisdiction. There are several exemptions according to articles of the Law on Charges numbered 492 and the specific laws. For instance, the cases which are brought by public prosecutors before civil courts, the cases which are brought by the Social Security Organization for Artisans and the Self-Employed and the cases which are brought by soldiers, corporals and sergeants are exempt from charges.

11) If yes, please specify the annual income of court fees (or taxes) received by the State (in Euros)

436651583

12) Total annual approved budget allocated to the whole justice system (in €)**Please provide information concerning the budgetary elements that included in the whole justice system budget:**

. Amount 1288654751

Comment :

TOTAL COURT BUDGET: 648.419.230,77

Constitutional Court: 7.738.461,54

Supreme Court of Appeals: 21.472.398,19

Council of State: 18.070.588,24

Court of Accounts: 40.815.542,99

13) Total annual approved public budget allocated to legal aid (in €)**Please provide comments to explain the figure provided under question 13:**

. Amount 49570981

Comment :

14) If possible, please specify (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Annual public budget allocated to legal aid in criminal law cases	Annual public budget allocated to legal aid in non criminal law cases
Amount	40723981	8847000

Comment :

1. In criminal cases, above-mentioned figure consists of only fees of compulsory defense.
2. Numbers of cases requested legal aid are provided below.

Total law cases figure

2004 191.594

2005 479.258

2006 874.592

2007 1.686.421

2008 1.402.818

Total law cases figure requested legal aid

2004- 3.655

2005- 5.942

2006- 13.067

2007- 10.997

2008- 4.888

15) Is the public budget allocated to legal aid included in the court budget ?

Yes

No

16) Total annual approved public budget allocated to the public prosecution system (in €)

Please provide comments to explain the figure provided under question 16:

Amount

Comment :

There is no budget separately allocated to the public prosecution.

17) Is the budget allocated to the public prosecution included in the court budget?

Yes

No

18) Authorities formally responsible for the budget allocated to the courts:

	Preparation of the total court budget	Adoption of the total court budget	Management and allocation of the budget among the individual courts	Evaluation of the use of the budget at a national level
Ministry of Justice	Yes	No	Yes	Yes
Other ministry	No	No	No	No
Parliament	No	Yes	No	Yes
Supreme Court	No	No	No	No
Judicial Council	No	No	No	No
Courts	No	No	No	No
Inspection body	No	No	No	No
Other	No	No	No	Yes

19) If other Ministry and/or inspection body and/or other, please specify (in regards to question 18):

Ministry of Justice, Ministry of Finance and State Planning Organization is responsible for the preparation of the total court budget.

Parliament is responsible for the adoption of the total court budget.

Ministry of Justice is responsible for the allocation of the budget among courts. Public Prosecution Offices are responsible for the management of the budget among courts. Parliament, Ministry of Justice and Turkish Court of Accounts are responsible for the evaluation of the use of budget at a national level.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your budgetary system and the main reforms that have been implemented over the last two years
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process

Please note that the approved total annual budget allocated to all courts is within the budget of the Ministry of Justice. Approved total annual budget allocated to all courts covers the budget of

the first instance courts of general jurisdiction, regional administrative courts, administrative courts and tax courts. As Constitutional Court, Court of Cassation and Council of State have their own budgets, the approved total annual budget allocated to all courts does not cover the budgets of the mentioned courts. This figure also does not cover the amount allocated to the expenditure of the Court of Jurisdictional Disputes and the High Election Board.

Law on Public Finance Administration and Control numbered 5018 entered into force on December 24, 2003. The purpose of this Law is to regulate the structure and functioning of the public financial management, the preparation and implementation of the public budgets, the accounting and reporting of all financial transactions, and financial control in line with the politics and objectives covered in the development plans and programs, in order to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources. The law stipulates that the budgets shall be prepared on the basis of strategic future vision rather than the figures of previous years. New public finance administration concept envisages the implementation of the performance based budgeting and thus transition from the input based budgeting to the output oriented budgeting. By the Law, new budget classification is implemented compatible with IMF's Government Financial Standards. Hence, Turkey has made a transition from the programme budget implementation to an analytic budget implementation.

Please indicate the sources for answering the questions 6, 8, 11, 12, 13, 14 and 16.

Ministry of Justice, Head of the Strategy Development

2. Access to Justice and to all courts

2. 1. Legal aid

2. 1. 1. Principles

20) Does legal aid concerns:

	Criminal cases	Other than criminal cases
Representation in court	Yes	Yes
Legal advice	Yes	Yes
Other	No	Yes

21) If other, please specify (in regards to question 20):

It covers provisional exoneration from all trial fees and costs, fees of witnesses and expert witnesses, ensuring guarantee for trial cost, fee and cost of service of documents, representation fee of attorney, fees and levies for copies and documents to be prepared by notaries.

22) Does legal aid foresee the covering or the exoneration of court fees?

Yes

No

If yes, please specify:

Provisional exoneration of court fees are provided within the scope of Article 466/1 of Civil Procedure Code.

23) Can legal aid be granted for the fees that are related to the execution of judicial decisions?

Yes

No

24) Number of cases granted with legal aid provided by (national, regional, local) public authorities (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
Total	5934915
in criminal cases	3058701
Other than criminal cases	2876214

Comment :

25) In a criminal case, can any individual who does not have sufficient financial means be assisted by a free of charge (or financed by public budget) lawyer?

Yes

No

26) Does your country have an income and asset test for granting legal aid:

	Yes	Amount in €
for criminal cases		
for other than criminal cases?	X	

Comment :

A person who requests legal aid has to take a poverty certificate from local municipalities or village or neighbourhood eldership council in order to prove his poverty (Code of Civil Procedure,468). There is no further income and property test. Also there is no numeral criterion for determining poverty. Whether or not to grant legal aid is subject to the consideration of Courts or Bars.

27) In other than criminal cases, is it possible to refuse legal aid for lack of merit of the case (for example for frivolous action)?

Yes

No

Please provide comments to explain the answer under question 27:

(Civil Procedure Code) Article 465- If persons who are incapable of paying the case costs partially or fully without leading himself and his family in a bad condition can prove accuracy of their allegations and defenses or in application to enforcement and provisional injunction, they can benefit from legal aid.

Reciprocity principle is required for foreign citizens to benefit from legal aid.

28) If yes, is the decision for granting or refusing legal aid taken by:

the court?

an authority external to the court?

a mixed decision-making authority (court and external)?

29) Is there a private system of legal expense insurance enabling individuals to finance court proceedings?

Yes

No

Please specify:

30) Do judicial decisions have an impact on who bears the legal costs which are paid by the parties during the procedure in:

	Yes (the decision has an impact on who bears the legal costs)
criminal cases?	Yes

other than criminal cases?	Yes
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You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your legal aid system and the main reforms that have been implemented over the last two years

A-General Comments

Legal aid in other than criminal cases is regulated under;

1- Civil Procedure Law (No: 1086)

2- Attorneyship Law (No: 1136)

3- Legal Aid Regulation of the Union of Bar Associations of Turkey

In civil cases, legal aid shall be requested in accordance with Articles 465-472 of the Turkish Civil Procedure Code. The person who cannot pay the costs of the proceedings can obtain legal aid. If it becomes clear that the person is lack of financial means to pay the costs of the proceedings and if there is a strong belief that the person is likely to be justified at the end of the case, the request for legal aid can be accepted. Legal aid in civil matters covers attorney fees and all costs of the proceedings.

According to Article 176 of the Attorneyship Law, legal aid means that costs of advocacy are met for those who are not able to pay for costs of the advocacy and proceedings.

Request for legal aid is submitted to the Legal Aid Office consisting of lawyers of the Bar Association or representatives of the legal aid. The applicant should bring forward evidence to make sure that he/she needs legal aid.

Decision on request for legal aid may be appealed to the president of the Bar Association. The Decision of the president of the Bar Association is final. (Article 178)

In criminal matters, if the suspect states that she/he is unable to retain a lawyer, she/he is provided with a lawyer if she/ he requests so. If the suspicious or suspect is deaf or dumb or disabled to defend himself and has no lawyer, then a defense lawyer shall be appointed for her/him without seeking his/her request. The defense lawyer shall be appointed for crimes which have an upper limit not less than five years' imprisonment.

According to the New Turkish Criminal Procedure Code which came into force on June 1st, 2005, at the investigation and prosecution period victim or complainant has right to request a lawyer designated for him by the bar. If the victim or complainant is under eighteen years old or she/he is deaf or dumb or disabled to express himself and has no lawyer, then a lawyer shall be appointed for him without seeking her/his request.

B- Reforms

The issue of legal aid services remains one of the main topics in the EU progress reports and advisory visit reports. Beyond these reports, Turkey intends frankly to enhance the quality of judicial system for users. Therefore, legal aid issue is envisaged as a medium term target in the Judiciary Reform Strategy which was submitted to EU by Turkish Government. In this scope legal aid service will be simplified and made more effective and efficient.

Although Turkey has a legal aid system, the current system is not effective and accountable enough. Not only users, but also lawyers, judges, prosecutors and the Ministry of Justice do not consider the current legal aid system is satisfactory and sustainable.

While legal aid funds are provided by the Ministry of Finance in civil and administrative procedures, in criminal procedures it is provided by the Ministry of Justice. So there have been two procedures for the provision of legal aid service in terms of financing and this raises concerns on the quality of legal aid services.

While in civil and administrative procedure the decision of providing legal aid is at the discretion of judges, in criminal matters it is compulsory, which causes dualism in implementation. In addition to this, there are different regulations about legal aid in Turkish legislation, and non-existence of adequate infrastructure causes various and irregular implementations.

To cover the shortcomings of the existing system, the Ministry of Justice developed an EU project and submitted it to the EU Commission.

The aim of the project is to establish more effective, sustainable and satisfactory legal aid system. To this end, a working group will be established with the participation of MS experts in order to make in-depth analysis of current system and conduct social surveys in pilot courthouses.

Besides, the establishment of an effective and sustainable legal aid system requires legal

amendments. Therefore, within the scope of this project, a report will be submitted to the relevant department of the Ministry of Justice for the necessary legislative amendments.

Please indicate the sources for answering the questions 24 and 26

Turkish Statistical Institute
Ministry of Justice, Department of Information Technologies
Ministry of Justice, General Directorate of Civil Law Affairs

2. 2. Users of the courts and victims

2. 2. 1. Rights of the users and victims

31) Are there official internet sites/portals (e.g. Ministry of Justice, etc.) for the following, which the general public may have free of charge access to:

- | | | |
|---|---|---|
| <input type="checkbox"/> legal texts (e.g. codes, laws, regulations, etc.)? Internet address(es): | <input checked="" type="checkbox"/> Yes | http://digerlb.uyap.gov.tr/Veribankasi/yenitasarim/ and http://www.adalet.gov.tr.UYAP Mevzuat Programı |
| <input type="checkbox"/> case-law of the higher court/s? Internet address(es): | <input checked="" type="checkbox"/> Yes | Internet address(es): http://digerlb.uyap.gov.tr/Veribankasi/yenitasarim/ and http://www.adalet.gov.tr.UYAP Mevzuat Programı |
| <input type="checkbox"/> other documents (for examples forms)? Internet address(es): | <input checked="" type="checkbox"/> Yes | Internet address(es): http://www.adalet.gov.tr/ |

32) Is there an obligation to provide information to the parties concerning the foreseeable timeframe of the proceeding?

- Yes
 No

If yes, please specify:

33) Is there a public and free-of-charge specific information system to inform and to help victims of crimes?

- Yes
 No

If yes, please specify:

Victims of crimes can get information from 157 Help Line established for human trafficking and migrant smuggling.

While there is no such system in 2008, brochures related with the functioning systems of courts have started to be delivered and a website on this issue has started to serve within a European Union Project which has been implemented as a pilot project.

In order to present a set of information on the Turkish Justice System and basic legal rights to the victims as well as all citizens, legal aid web page has been prepared within the official web site of Ministry of Justice. Citizens can also access and examine relevant information about their cases on internet and learn the day fixed for the trial without going to courts by using citizen's portal. If citizens log in to the citizen's portal with their e-signature they can reach the content of all documents; if not, they have to sign in with their citizen ID number and it means that they can only get some basic information about their case files such as hearing dates, name of the parties and the last situation of their file.

34) Are there special favourable arrangements to be applied, during judicial proceedings, to the following categories of vulnerable persons:

	Information mechanism	Hearing modalities	Procedural rights	Other
Victims of rape	Yes	Yes	No	No
Victims of terrorism	Yes	Yes	No	No
Children/Witnesses/Victims	Yes	Yes	Yes	No
Victims of domestic violence	Yes	No	No	No
Ethnic minorities	No	No	No	No
Disabled persons	No	Yes	Yes	No
Juvenile offenders	Yes	Yes	Yes	No
Other	Yes	Yes	Yes	No

Comment :

-Studies for victims of human trafficking are still going on. In this context, 157 Help Line was created in order to detect the victims of human trafficking and ensure them to benefit from help. Under the topic of access of victims to justice, studies on prohibiting human trafficking (Article 80 of Turkish Penal Code), investigation and prosecution of traffickers and rights of victims are still going on.

- According to Article 202 titled "Cases where the presence of an interpreter is required" of the Criminal Procedure Code, if the accused or the victim does not know sufficient Turkish, his statement shall be interpreted by an interpreter.

- In accordance with Article 23 and et seq. of the Criminal Procedure Code, child victims can be listened only once (in order to prevent secondary victimisation).

35) Does your country have a compensation procedure for victims of crimes?

- Yes
 No

36) If yes, does this compensation procedure consist in:

- a public fund?

a court decision?

a private fund?

If yes, which kind of cases does this procedure concern?

Damages of victims of terrorism are compensated in accordance with the Law on Compensation for Damage Arising from Terrorism and Combating Terrorism numbered 5233. This Law came into effect on 27 July 2004. The objective of this law is to lay down the principles and procedures for the compensation of material damages suffered by persons due to terrorist acts or activities undertaken during the fight against terror.

- In accordance with the Law on Monetary Compensation and Pension dated 2330, in the cases where persons, who are commissioned to protect security and safety given, to ban, chase and investigate trafficking, have died or become incapacitated because of injury or illness they faced due to their service either after or during their service, monetary compensation and pension is stipulated.

- According to Articles 12 and 13 of Procedure of Administrative Justice Act numbered 2577, The persons whose rights have been violated directly by an administrative action may bring directly a full remedy action to the administration.

37) Are there studies to evaluate the recovery rate of the compensation awarded by courts to victims?

Yes

No

If yes, please specify:

Recovery is done depending on the inflation rate within the framework of re-evaluation rate under Tax Procedure Code.

38) Is there a specific role for the public prosecutor with respect to the (protection of the position and assistance of) victims?

Yes

No

If yes, please specify:

According to Articles 5, 6 and 7 of Code of Child Protection numbered 5395, preventive and supporting measures may be requested to be taken.

According to Article 1 of the Law on Family Protection, security measures may be taken for the victims of domestic violence.

39) Do victims of crimes have the right to contest to a decision of the public prosecution to discontinue a case?

Yes

No

If yes, please specify:

According to the article 234 of the Turkish Penal Procedure Code victim has the right to plea against decision of non-prosecution given by public prosecutor. Article 173 of the mentioned Code regulates this situation. According to this article titled "Objection to decision of the public prosecutor" the party injured by the crime may lodge an objection against the decision not to prosecute within fifteen days after he was notified of the decision to the president of the assize court nearest in the judicial district to the assize court to which the public prosecutor giving the decision is attached.

2. 2. 2. Confidence of citizens in their justice system

40) Is there a system for compensating users in the following circumstances:

- excessive length of proceedings?
- non execution of court decisions?
- wrongful arrest?
- wrongful condemnation?

If yes, please specify (fund, daily tariff):

According to Article 141 of the Turkish Criminal Procedure Code, at the investigation and prosecution period, a person who has been detained, arrested or whose arrest period has been extended under the conditions incompatible with the law can request the recovery of her/his all pecuniary damages and non-pecuniary damages from the state. Furthermore, according to Article 323 of the Turkish Criminal Procedure Code, a person can request the recovery of her/his all pecuniary and non-pecuniary damages stemming from the completely or partially execution of the wrongful condemnation decision. The amount of the compensation to be determined by the court depends on the individual situation of the plaintiff and circumstances of the case.

According to Article 28 of the Code of Administrative Procedure, in the case of failure to comply with the judgments of the Council of State, regional administrative courts, administrative courts and tax courts, a case may be brought against the administration before the Council of State or the competent administrative court in order to claim compensation for pecuniary and non-pecuniary damages. If a public official intentionally fails to comply with judgments within 30 days, a case may be brought against the administration while a case for compensation may also be brought against the public official who fails to comply with the judgment.

41) Does your country have surveys aimed at users or legal professionals (judges, lawyers, officials, etc.) to measure their trust and/or satisfaction (with the services delivered by the judiciary system)?

- (Satisfaction) surveys aimed at judges
- (Satisfaction) surveys aimed at court staff
- (Satisfaction) surveys aimed at public prosecutors
- (Satisfaction) surveys aimed at lawyers
- (Satisfaction) surveys aimed at citizens (visitors of the court)
- (Satisfaction) surveys aimed at other clients of the courts

If possible, please specify their titles, how to find these surveys, etc:

"Life Satisfaction Research" is conducted every year in order to measure the general satisfaction understanding of individuals, general satisfaction from fundamental life areas and the satisfaction from public service in this area and to follow up the difference in the satisfaction level within time.

Satisfaction from security and judicial services is also measured within the scope of satisfaction from public services.

Satisfaction surveys are planned to be carried out which include all in Turkey by 2010. Survey studies were conducted for once within strategic planning towards some judges, public prosecutors, judicial staff and bars about services carried out by Ministry of Justice in 2008.

Within the scope of the Project for Improvement of Judicial Services, court administration takes the opinions of clients of courts and judicial servants of 5 pilot courts about new exercises every month.

In addition, universities also carry out surveys.

42) If possible, please specify:

	Yes (surveys at a regular interval: for example annual)	Yes (incidental surveys)
Surveys at national level	Yes	Yes
Surveys at court level	Yes	No

43) Is there a national or local procedure for making complaints about the functioning (for example the treatment of a case by a judge or the duration of a proceeding) of the judicial system?

- Yes
 No

44) If yes, please specify:

Please give elements of information concerning the efficiency of this complaint procedure:

	Time limit to respond (Yes)	Time limit for dealing with the complaint (Yes)
Court concerned	No	No
Higher court	No	No
Ministry of Justice	Yes	Yes
High Council of the Judiciary	No	No
Other external organisations (e.g. Ombudsman)	No	No

Comment :

In Turkey there are different ways for a person to make complaints about the functioning of the judicial system. The person can make an objection to a court against the decision of that court. He can complain about the judge concerned as well.

Complaints and reports sent to General Directorate of Criminal Affairs directly or through other

institutions (within 10 days according to internal circular) are subject to pre- examination; and are evaluated whether they satisfy the conditions for taking action under Article 97 of the Law No:2802. If the application does not satisfy the conditions stipulated under the Article, it is not put in process and consequences are notified to the concerned.

If there are found some issues to be examined in the report or complaint, then the examination shall be done by a senior judge or public prosecutor or, depending on the scope and seriousness of the issue, by justice inspectors. Following the end of examination, the file shall, after preparation of summary of proceedings, be sent to the General Directorate of Criminal Affairs and it is re-examined and decided whether or not to get through the investigation phase. If it is considered there is no need to get through this phase, the application is considered as not requiring any action and ended; the applicant is informed of such action. Otherwise, investigation is allowed and the file is sent to the one which has carried out the first examination in order to take the defense of the concerned and to collect evidences. After the investigation has been completed, the file is to be sent to the General Directorate of Criminal Affairs again and following the last examination, the investigation file is decided to be cancelled or submitted to the High Council of Judges and Prosecutors for disciplinary evaluation of the situation of the concerned. Consequences of all these proceedings shall be notified to the applicant.

Such examinations and investigations can take time around 1 year depending on the importance of the allegations in the file. Consequences of the proceedings shall be notified to the applicant as soon as possible.

It is compulsory to handle the complaint in an appropriate time. Otherwise, criminal liability shall occur for the ones who have not taken any action.

In addition, the person can file a complaint to the Turkish Grand National Assembly Commission of Human Rights and Committee for Petitions about the judicial system.

3. Organisation of the court system

3. 1. Functioning

3. 1. 1. Courts

45) Number of courts considered as legal entities (administrative structures) and geographic locations (please, complete the table. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation.

	Total number
First instance courts of general jurisdiction	4141
Specialised first instance Courts (legal entities)	1617
All the Courts (geographic locations) * (this includes Supreme Courts and/or High Courts)	5758

46) Please specify the different areas of specialisation (and, if possible, the number of courts concerned):

Specialized Courts Established Active

Land Registry Court 705 694
 Enforcement Court 206 193
 Labour Court 162 153
 Family Court 176 166
 Commercial Court 63 61
 Consumer Court 26 25
 Intellectual Property Civil Court 12 12
 Intellectual Property Criminal Court 11 11
 Juvenile High Criminal Court 20 12
 Juvenile Court 73 64
 Specialized High Criminal Court 21 20
 Execution Court 141 11
 Maritime Court 1 1

47) Is there a change in the structure in the courts foreseen (for example a reduction of the number of courts (geographic locations) or a change in the powers of courts)?

Yes

No

If yes, please specify:

48) Number of first instance courts competent for a case concerning (if no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation):

	Number
a debt collection for small claims	851
a dismissal	1137

a robbery

1193

Please specify what is meant by small claims in your country (answer only if the definition has been changed since the previous evaluation cycle):

According to Turkish Civil Procedure Code, small claims can be defined as the claims that are less than 2.959 € (5.490 YTL) and dealt at the civil courts of peace.

Please indicate the sources for answering the questions 45 and 48:

Ministry of Justice, General Directorate of Personnel Affairs

3. 1. 2. Judges, courts staff

49) Number of professional judges sitting in courts (please give the information in full time equivalent and for permanent posts; if there is no data please indicate this with NA)

Please provide comments to explain the answer under question 49:

Number



7176

Comment :

Judiciary: 5191

Administrative Judiciary: 887

Cassation: 1082

Constitutional Court: 38

In addition:

Ministry of Justice: 353

50) Number of professional judges sitting in courts on an occasional basis and who are paid as such:

	Number
gross figure	NAP
if possible, in full time equivalent	NAP

51) Please provide comments to explain the answer under question 50:

52) Is there in the legal system non-professional judges (including lay judges and excluding jurees) who are not remunerated but who can possibly receive a simple defrayal of costs? (Please indicate NA if no figures are available).

Please provide comments to explain the answer under question 52:

	Yes	Number
Do you have non-professional judges?	NAP	NAP

Comment :

53) Does your judicial system include trial by jury with the participation of citizens?

- Yes
- No

If yes, for which type of case(s)?

54) If possible, indicate the number of citizens who were involved in such juries for the year of reference?

55) Number of non-judge staff who are working in courts (in full time equivalent and for permanent posts). Please indicate NA if no figures are available.

Please provide comments to explain the answer under question 55:

Number	<input checked="" type="checkbox"/>	26492
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Comment :

Title Number on Duty
 Director 3131
 Clerk of the Court (Permanent Staff) 17588
 Clerk of the Court (Contract Personnel) 2742
 Court Attendant 3031
 Civil Servant (Administrative task) 606
 Technical staff 993

56) If possible, could you distribute this staff according to the 4 following categories. If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

- | | | |
|---|---|-------|
| - non-judge staff (Rechtspfleger or similar bodies), with judicial or quasi-judicial tasks having autonomous competence and whose decisions could be subject to appeal | | NAP |
| - non-judge staff whose task is to assist the judges (case file preparation, assistance during the hearing, keeping the minutes of the meetings, helping to prepare the decisions) such as registrars | <input checked="" type="checkbox"/> Yes | 26492 |
| - staff in charge of different administrative tasks as well as of the management of the courts (human resources management, material and equipment management, including computer systems, financial and budgetary management, training management) | <input checked="" type="checkbox"/> Yes | 606 |
| - technical staff | <input checked="" type="checkbox"/> Yes | 993 |

Comment :

Regarding third column:
 This figure consists of local personnel of General Directorate of Criminal Records and Statistics.

Regarding fourth column:

This figure consists of local personnel of Department of Information Technologies.

57) If there are Rechtspfleger (or similar bodies) in your judicial system, please describe briefly their status and functions:

The core business of courts should be the resolution of disputes and the prosecutor's office stands for conducting investigations and preparing indictments. However, almost all judicial and administrative tasks with any degree of relevance to judicial proceedings are assigned to judges and prosecutors in the Turkish judicial system, without any classification or prioritization. Numerous non-judicial tasks, such as overseeing even the simplest correspondence, signing all documents presented to courts for registration, checking if expert reports and requests from public institutions have arrived, calculating court fees and supervising duly depositions, scheduling and organizing on-site examinations, etc. keep judges and prosecutors busy and prevent them from focusing on actual work. This situation at times causes excessive length of proceedings. The Project Strategy Plan proposed the delegation of non-judicial tasks entrusted to judges and public prosecutors to other judicial officials, such as court clerks and registrars. Therefore, it was considered appropriate to introduce the function of judicial assistant who would assist the judges and prosecutors in preparing cases, indictments, and hearings; make proposals to judges and prosecutors as regards actions to be taken; collect relevant case law, and possibly draft simple verdicts and indictments to be checked, approved (and signed) by judges and prosecutors. This would enable the judges and prosecutors to concentrate on their actual works. Throughout the implementation of the Project, it was observed that the introduction of judicial assistants as a separate judicial profession required further discussion and a significant amount of legislative amendments. During the discussions, it was foreseen that even an amendment to the Constitution would be necessary. Hence, the Ministry of Justice proposed using candidate judges and prosecutors as judicial assistants.

Around 50 judicial assistants were selected and received customized training. Judicial assistants have been assigned to all five pilot courts since August 10th, 2009. The evaluation reports filled in by the judges and prosecutors working with them show that judicial assistants have contributed positively to reducing the workload of the judges and prosecutors.

3. 1. 3. Prosecutors

58) Number of public prosecutors (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Number . 4222

Comment :

Assigned in Judiciary: 4003

Assigned in Court of Cassation: 171

Assigned in Council of State: 48

59) Do any other persons have similar duties as public prosecutors?

Yes

No

If yes, please specify:

60) Number of staff (non prosecutors) attached to the public prosecution service (in full time equivalent and for permanent posts). If there is no data available please indicate it (NA).

Please provide comments to explain the answer under question 60:

Number . 3692

Comment :

Title Number on duty

Director of Management 151

Civil Servant 231

Storekeeper 1

Consignment officer 227

Switchboard Operator 117

Warrant Officer 15

Cashier 85

Driver 324

Nurse 3

Medical Officer 9

Laboratory Worker -

Technician 8

Mechanic 221

Assistant Mechanic 4

Retainer 1694

Cook 34

Furnaceman 298

Warden 270

3. 1. 4. Court budget and new technologies

61) Who is entrusted with the individual court budget?

	Preparation of the budget	Arbitration and allocation	Day to day management of the budget	Evaluation and control of the use of the budget
Management Board	No	No	No	No
Court President	No	No	No	No
Court administrative director	No	No	No	No
Head of the court clerk office	No	No	No	No
Other	Yes	Yes	Yes	Yes

62) You can indicate below:

- any useful comments for interpreting the data mentioned above
- if available an organisation scheme with a description of the competencies of the different authorities responsible for the budget process in the court

DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL AFFAIRS

- Preparation of Budget
- Distribution of allocated allowances

DEPARTEMENT OF STRATEGY DEVELOPMENT

- Approval of condensed allowances

CHIEF PUBLIC PROSECUTOR OFFICES

- Spending allowance

CHAIRMANSHIPS OF REGIONAL ADMINISTRATIVE AND ADMINISTRATIVE COURT
- Spending Allowance

63) For direct assistance to the judge/court clerk, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Word processing	Yes	No	No	No
Electronic data base of jurisprudence	Yes	No	No	No
Electronic files	Yes	No	No	No
E-mail	Yes	No	No	No
Internet connection	Yes	No	No	No

64) For administration and management, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Case registration system	Yes	No	No	No
Court management information system	Yes	No	No	No
Financial information system	Yes	No	No	No

65) For the communication between the court and the parties, what are the computer facilities used within the courts?

	100% of courts	+50% of courts	-50% of courts	-10% of courts
Electronic web forms	Yes	No	No	No
Special Website	No	Yes	No	No
Other electronic communication facilities	Yes	No	No	No

66) Is there a centralised institution which is responsible for collecting statistical data regarding the functioning of the courts and judiciary?

Yes

No

If yes, please specify the name and the address of this institution:

General Directorate of Criminal Records and Statistics

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your judicial system and the main reforms that has been implemented over the last two years

3. 2. Monitoring and evaluation

3. 2. 1. Monitoring and evaluation

67) Are the courts required to prepare an annual activity report?

- Yes
 No

68) Do you have a regular monitoring system of court activities concerning the

- number of incoming cases?
 number of decisions?
 number of postponed cases?
 length of proceedings (timeframes)?
 other?

Please specify:

It is possible to get every kind of information and statistics a few of which are number of files, verdicts, pending cases and the average duration of the cases, through UYAP, an outstanding e-justice system developed in order to ensure fast, reliable, soundly operated and accurate judicial system. As a central network project, it includes all courts, public prosecutors services, prisons, other judicial institutions and other government departments in Turkey, enabling production of every kind of instant or periodical statistics that policy maker may need.

Furthermore, case type, judgment type, offence type, number of accused persons, age groups, nature of the conviction decisions can also be monitored regularly by the General Directorate of Criminal Records and Statistics. (criminal records)

69) Do you have a regular system to evaluate the performance of each court?

- Yes
 No

Please specify:

Ministry of Justice Inspection Board which, in accordance with Article 144 of the 1982 Constitution and article 100 of the Law on Judges and Prosecutors numbered 2802, has the task of monitoring whether the judges and prosecutors carry out their tasks according to law, by-law, regulation and circular (regulations of the administrative character for the judges), as well as the traditional inspections as a result of the inspection carried out in every two years, and performance inspections of the courts.. In this concept, at the timesheet received from the courts, performance of the courts are evaluated from the point of incoming, outgoing, remaining workload, distribution of the remaining works by years, nature of the outgoing works and number of files with dockets dated back and their distribution by years, number of files that were gone through appeal, and backlogs at the courts. (Inspection)

Evaluations regarding the "Recommendation List" prepared as a result of inspections conducted by the Ministry of Justice Inspection Board are also carried out. Every year, performance situations of courts, incoming, outgoing, continuing works are determined as tables, and transformed into a statistical report by the General Directorate of Criminal Record and Statistics. These reports are evaluated by the General Directorate of Personnel, and if there are courts that should be established or abolished according to the workload, it is submitted to the consideration of the Supreme Council of Judges and Prosecutors. Statistics that indicates instant and periodical performance of the courts can be accessed through National Judiciary Informatics System.

70) Concerning court activities, have you defined performance indicators (if no, go to question 72)?

- Yes
 No

71) Please select the 4 main performance and quality indicators that is used for a proper functioning of courts:

- incoming cases
 length of proceedings (timeframes)
 closed cases
 pending cases and backlogs
 productivity of judges and court staff
 percentage of cases that are treated by a single sitting judge
 enforcement of penal decisions
 satisfaction of employees of the courts
 satisfaction of clients (regarding the services delivered by the courts)
 judicial quality and organisational quality of the courts
 costs of the judicial procedures
 other:

Please specify:

72) Are there performance targets defined for individual judges (if no go to question 74) ?

- Yes
 No

73) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
 legislative power
 judicial power (for example a High Judicial Council or a Higher Court)
 other

If other, please specify:

Please note that the Supreme Council of Judges and Prosecutors is responsible for setting the performance targets of the courts and the judges. Performance targets of judges and courts are determined by the resolutions of Supreme Council of Judges and Prosecutors pursuant to the Law on Judges and Prosecutors (numbered 2802). Furthermore, Regulation on Inspection Board stipulates performance targets of judges.

74) Are there performance targets defined at the level of the courts (if no go to question 77)?

- Yes
 No

75) Please specify who is responsible for setting the targets:

- executive power (for example the ministry of Justice)?
 legislative power
 judicial power (for example a High Judicial Council or a Higher Court)
 other

If other, please specify:

76) Please specify the main targets applied

Number of files a judge should handle within a year without causing backlog. These goals provide the judiciary to be effective, productive and accessible.

- workload of judges
- number of decisions which are appealed to the Court of Cassation
- given marks about their decisions which are appealed to the Court of Cassation pursuant to Article 21 of the Code of Judges and Public Prosecutors (No. 2802)

There are not any institutional performance goal determined at the level of courts. However, as explained above, in accordance with Articles 21, 32, 33, 118 of the Law on Judges and Prosecutors numbered 2802, "The Supreme Council of Judges and Prosecutors Resolution regarding normal case numbers to be proceeded by every court in a year as new case according to its type and specialty" dated 24.02.2009 and numbered 74 was determined by the Supreme Council of Judges and Prosecutors. According to this resolution, there are goals determined for High Criminal Courts (400), High Criminal Courts assigned by Article 250 of the Criminal Procedure Code (350), Juvenile Assize Courts (400), Criminal Courts of First Instance (800),

Juvenile Courts (800), Criminal Courts for Intellectual and Industrial Property Rights (800), Criminal Courts of Peace (1000), Commercial Courts (600), Civil Courts of First Instance (800), Enforcement Courts (Criminal) (3000), Enforcement Courts (Civil) (1000), Family Courts (1000), Consumer Courts (1000), Labor Courts (1000), Civil Courts for Intellectual and Industrial Property Rights (600), Civil Courts of Peace (1200), Marine Courts (500), Land Registration Courts (500), Court of Execution (1500), 1st Regional Administrative Courts (600), (for every member except for the Chairman excluding objections to stay of execution) Administrative Courts (500), (For every member except for Chairman) Tax Courts (600), (for every member except for Chairman).

77) Which authority is responsible for the evaluation of the performances of the courts:

- High Council of judiciary
- Ministry of justice
- inspection authority
- Supreme Court
- external audit body
- other

If other, Please specify:

78) Are there quality standards (organisational quality and/or judicial quality policy) formulated for the courts (existence of a quality system for the judiciary)?

- Yes
- No

If yes, please specify:

The organisation, functions and jurisdiction of the courts, their functioning and trial procedures shall be regulated by law (Constitution art.142). The quality standards of courts are stated in laws numbered 5235 and 2576.

The courts stated in the response of question 76 are established by High Council of Judges and Prosecutors according to these standards.

79) Do you have specialised court staff which is entrusted with quality policy and/or quality systems for the judiciary?

- Yes
- No

80) Is there a system which measures the backlogs and which detects the cases not processed within a reasonable timeframe for:

- civil cases?
- criminal cases?
- administrative cases?

81) Do you have a way of analysing waiting time during court procedures?

Yes

No

If yes, please specify:

Please note that within the framework of the project called UYAP, inspectors can access all information in electronic environment.

Inspectors can access to:

- inspection reports
- list of the files hearings of which have not been held on the fixed date
- work schedules
- cash reports
- list of the files justified decisions of which have not been written within the time prescribed by the law.

Thus, backlogs and waiting time during court procedures can be analyzed. Furthermore, waiting time during court procedures is analysed through the inspections of the local courts which are held regularly in every two year. The inspectors appointed among from the judges and public prosecutors and commissioned under the Head of Inspection Board of the Ministry of Justice are entitled to visit and monitor all local courts in every two year. (Once a judge is appointed as an inspector she/he can no longer go on working as a judge.) During this inspection period, they also analyse the queuing time of the court files and examine the reason of their queuing.

As regards the answer of the previous question, it is completely possible to see the pending time of the cases both in nationwide or on regional base. (Bid)

Case process can be monitored within the scope of National Judiciary Informatics System (UYAP) carried out within the body of Department of Information Technologies.

82) Is there a system to evaluate the functioning of courts on the basis of an evaluation plan (timetable for visits) agreed a priori?

Yes

No

Please specify (including an indication of the frequency of the evaluation):

In accordance with Article 28 of the Regulation and Article 7 of the By-Law of the Ministry of Justice Inspection Board, an annual inspection program is prepared according to the principle of inspection in every two years, and inspections are conducted on the dates considered by the Inspection Board after the Minister's approval is taken.

83) Is there a system for monitoring and evaluating the functioning of the prosecution services?

Yes

No

If yes, please specify:

In accordance with Article 144 of the 1982 Constitution and Article 100 of the Law on Judges and Prosecutors numbered 2802, Ministry of Justice Inspection Board monitors the process of service of the prosecution office through its regular inspection carried out in every two years. Some of the deficiencies observed are made up either by the suggestion list submitted or presented orally to the relevant persons. In this concept, number of investigations, misdemeanors, execution and rogatory documents, number of court judgments applied for legal remedy, and rates of approval and reversal of these are examined. Furthermore, in accordance with Article 18 of the Law numbered 5235, as every chief prosecutor has been given the tasks of ensuring productive, coordinative and organized working of the chief prosecutor's offices, doing necessary work division and continuing observation and monitoring authority over Public Prosecutors and affiliated units, prosecution services are monitored closely by every chief public prosecutor. During these inspections, the fulfillment with diligence of these issues by Chief Public Prosecutor is taken into consideration.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your court monitoring and evaluation system**

Monitoring and evaluation of courts are conducted on the procedures and basis stated under the law within the framework of principles of independence of courts and guaranties of judges provided for by the Constitution.

Quality and quantity evaluation are also conducted. By monitoring incoming and outgoing works, whether causing backlog in courts, nature of the outgoing works, number of files of the former years and attention paid to these issues are taken into consideration. By this way, possible problems that may occur in the general process of judiciary are determined and tried to be solved.

4. Fair trial

4. 1. Principles

4. 1. 1. General principles

84) What is the percentage of judgements in first instance criminal cases in which the suspect is not attending in person or not represented by a legal professional (i.e. lawyer) during a court session (in absentia judgements)? If no data is available (NA) or if it does not apply to your system (NAP) please indicate it with the relevant abbreviation).

NA

85) Is there a procedure to effectively challenge a judge if a party considers that the judge is not impartial?

Yes

No

If possible, number of successful challenges (in a year):

NA

86) Please give the following data concerning the number of cases regarding Article 6 of the European Convention of Human Rights (on duration and non-execution), for the year of reference. If there is no data available, please indicate it (NA).

	Cases declared inadmissible by the Court	Friendly settlements	Judgements establishing a violation	Judgements establishing a non violation
Civil proceedings - Article 6§1 (duration)	NA	NA	NA	NA
Civil proceedings - Article 6§1 (non-execution)	NA	NA	NA	NA
Criminal proceedings - Article 6§1 (duration)	NA	NA	NA	NA

4. 2. Timeframes of proceedings

4. 2. 1. General information

87) Are there specific procedures for urgent matters as regards:

civil cases?

criminal cases?

administrative cases?

Please specify:

Civil Cases: Article 501 of Civil Procedure Code stipulates Serial Trial Procedure; Article 507 of Civil Procedure Code stipulates Simple Trial Procedure; Article 473 of Civil Procedure Code stipulates Verbal Trial Procedure as provided for by the legal legislation.

Administrative Cases: Judgments of stay of execution may be given.

88) Are there simplified procedures for:

- civil cases (small claims)?
- criminal cases (petty offences)?
- administrative cases?

Please specify (for example if you have introduced a new law on simplified procedures):

Civil Cases: Article 501 of Civil Procedure Code stipulates Serial Trial Procedure; Article 507 of Civil Procedure Code stipulates Simple Trial Procedure; Article 473 of Civil Procedure Code stipulates Verbal Trial Procedure as provided for by the legal legislation.
Criminal Cases: Cases handled by the Criminal Courts of Peace
Administrative Cases: Judgments given by a single judge

89) Do courts and lawyers have the possibility to conclude agreements on the modalities for processing cases (presentation of files, decisions on timeframes for lawyers to submit their conclusions and on dates of hearings)?

- Yes
- No

If yes, please specify:

4. 2. 2. Penal, civil and administrative law cases

90) Total number of cases in the first instance courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non litigious)*	1052138	3572324	3473868	1150594
1 Civil (and commercial) litigious cases*	NA	1117212	1069043	NA
2 Civil (and commercial) non-litigious cases*	NA	503581	499127	NA
3 Enforcement cases	54749	206256	196992	64013
4 Land registry cases**	81333	58843	58152	82024
5 Business register cases**	NAP	NAP	NAP	NAP
6 Administrative law cases	151513	330738	337528	144723
7 Other	764543	1355694	1313026	807211
Total criminal cases (8+9)	1343818	1716821	1848906	1211733
8 Criminal cases (severe criminal offences)	681817	796920	758610	720127
9 Misdemeanour and / or minor offences cases	662001	919901	1090296	491606

91) Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases - definition of misdemeanour cases, minor offences and severe criminal cases):

The total of civil, commercial and administrative law cases includes all civil, commercial and administrative cases. Criminal cases (severe criminal offences) include cases addressed by High

Criminal Courts, High Criminal Courts assigned by Article 250 of the Criminal Procedure Code and Juvenile Assize Courts. Misdemeanor and/or simple offences cases include cases performed by Criminal Courts of First Instance, Criminal Courts of Peace, Criminal Courts of Enforcement, Juvenile Courts, Traffic Courts and Courts for Intellectual and Industrial Property Rights.

92) Total number of cases in the second instance (appeal) courts (litigious and non-litigious): please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations).

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 91.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and types of criminal law cases and possibly the existence of appeal rates for some case categories):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases (litigious and non-litigious)*				
1 Civil (and commercial) litigious cases*				
2 Civil (and commercial) non-litigious cases*				
3 Enforcement cases				
4 Land registry cases**				
5 Business register cases**				
6 Administrative law cases				
7 Other				
Total criminal cases (8+9)				
8 Criminal cases (Severe criminal offences)				
9 Misdemeanour and/or minor offences cases				

Comment :

The system of court of appeal is adopted but not in force yet.

93) Total number of cases in the highest instance courts (litigious and non-litigious): please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

*** Please indicate (in the comments below) which types of cases are included in the total figures of civil, commercial and administrative law cases.**

**** if applicable**

Please check the consistency of data as mentioned under question 88.

Comments (including an indication of the cases that are included in the total figures of civil, commercial and administrative law case and on possible limitations to the appeal

to the highest instance court):

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Dec. '08
Total of civil, commercial and administrative law cases* (litigious and non-litigious)				
1 Civil (and commercial) litigious cases*	214376	480568	425393	269551
2 Civil (and commercial) non-litigious cases*	NAP	NAP	NAP	NAP
3 Enforcement cases	NAP	NAP	NAP	NAP
4 Land registry cases**	NAP	NAP	NAP	NAP
5 Business register cases**	NAP	NAP	NAP	NAP
6 Administrative law cases	118423	130255	99284	149394
7 Other	NAP	NAP	NAP	NAP
Total criminal cases (8+9)	194318	245604	197375	242547
8 Criminal cases (severe criminal offences)	NAP	NAP	NAP	NAP
9 Misdemeanour cases (minor offences)	NAP	NAP	NAP	NAP

Comment :

94) Number of litigious divorce cases, employment dismissal cases, robbery cases and intentional homicide cases received and treated by first instance courts: please complete the table. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

	Pending cases on 1 Jan. '08	Incoming cases	Resolved cases	Pending cases on 31 Jan. '08
Litigious divorce cases*	NAP	175173	166389	NAP
Employment dismissal cases*	NA	NA	NA	NA
Robbery cases	NAP	168636	181219	NAP
Intentional homicide	NAP	8334	8504	NAP

95) Average length of proceeding (from the date of lodging of court proceedings) in days, number of pending cases more than 3 years and percentage of cases subject to appeal: please complete the tale. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 92:

	% of decisions subject to appeal	% pending cases more than 3 years	1st instance (average length)	2d instance (average length)	Total procedure (average total length)
Litigious divorce cases*	NA	NAP	152 DAYS	NA	NA
Employment dismissal cases*	NA	NA	NA	NA	NA
Robbery cases	NA	15.7%	433 DAYS	NA	NA
Intentional homicide	NA	10.4%	334 DAYS	NA	NA

Comment :

96) Where appropriate, please specify the specific procedure as regards (litigious and non-litigious) divorce:

Divorce cases are handled by family courts. According to Article 7 of the Law on the Establishment, Functions and Trial Procedure of Family Courts, before entering to the merits of the case, the family courts, if appropriate, by benefiting from the specialists, shall encourage the parties to solve the problems peacefully. If the conflict is not solved by this way, then the court is entitled to hear the case. In the same Article, it is also stated that, reserving/without prejudice to the provisions of special laws, the procedural provisions of the Turkish Civil Code related with family law and the provisions of Civil Procedure Code shall be applied in these cases. According to Article 184 of the Turkish Civil Code, the judge is not, as a rule, bound by the declarations of the parties in a divorce case, unless he personally is convinced of the facts; and he is not entitled to offer an oath to the parties either ex officio or upon a request of them. Also, the judge may, upon a request of the parties, decide to hear the case in a closed session.

97) How is the length of proceedings calculated for the four case categories? Please give a description of the calculation method.

The length of proceedings is calculated from the date of bringing a suit into the court of first instance and to the date of the decision of that court.

Trial duration is arranged according to the distribution of the lawsuits finalized in 2008 to the initiation years.

It is calculated as $((\text{Lawsuits initiated in 2007}) + (\text{Lawsuits initiated in 2006} \times 2) + (\text{Lawsuits initiated in 2005} \times 3) + (\text{Lawsuits initiated in 2004 and before} \times 4) / (\text{Finalized lawsuits})) \times 36$.
(For all types of offences)

98) Please describe the role and powers of the prosecutor in the criminal procedure (multiple options are possible):

- to conduct or supervise police investigation
- to conduct investigation
- when necessary, to demand investigation measures from the judge
- to charge
- to present the case in the court
- to propose a sentence to the judge
- to appeal
- to supervise enforcement procedure
- to end the case by dropping it without the need for a judicial decision
- to end the case by imposing or negotiating a penalty without a judicial decision
- other significant powers

Please specify:

Public prosecutor is, himself, entitled to act as a mediator and may also appoint a lawyer or a person graduated from law school as a mediator in order to manage the mediation process.

99) Does the prosecutor also have a role in civil and/or administrative cases?

- Yes
- No

Please specify:

Under the Turkish legal system, there exist certain situations specified in various codes regarding civil matters where the public prosecutor is entitled not only to file a case to a civil court but also to be present during the proceedings. Generally, these types of cases are considered to be the cases where the public interest is paramount, such as parental affiliation cases, cases regarding personal status, annulment of the marriage where there are absolute annulment grounds pursuant to the Turkish Civil Code. As to administrative cases, special public prosecutors are assigned at the Council of State.

100) Functions of the public prosecutor in relation to criminal cases – please complete this table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 100 and indicate in particular if the data given include traffic offences:

	Received by the public prosecutor	Discontinued by the public prosecutor because the offender could not be identified	Discontinued by the public prosecutor due to the lack of an established offence or a specific legal situation	Discontinued by the public prosecutor for reason of opportunity	Concluded by a penalty, imposed or negotiated by the public prosecutor	Charged by the public prosecutor before the courts
Total number of 1st instance criminal cases	1067045	NA	NA	NA	1153	NA

Comment :

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning timeframes of proceedings and the main reforms that have been implemented over the last two years

Please indicate the sources for answering the questions 90 to 95 and 100:

Department of Judicial Records and Statistics

5. Career of judges and prosecutors

5. 1. Appointment and training

5. 1. 1. Recruitment, nomination and promotion

101) How are judges recruited?

- Through a competitive exam (for instance after a law degree)?
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

- Both: Professional experience and examination for the lawyers (Law numbered 2802)

- Both: Academic career and interview for academicians

102) Are judges initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of judges only?
- An authority composed of non-judges only?
- An authority composed of judges and non-judges?

103) Is the same authority competent for the promotion of judges?

- Yes
- No

If no, please specify which authority is competent for the promotion of judges:

In accordance with the subparagraph d of the paragraph 3 of Article 4 of the Law on the Supreme Council of Judges and Prosecutors numbered 2461, proceedings of any kind of promotion and promotion to first class of judges and prosecutors are conducted by the Supreme Council of Judges and Prosecutors.

104) Which procedures and criteria are used for promoting judges? Please specify.

The fundamental principles for promotion of judges, qualification in the profession, seniority and judicial ethics. The profession of judges is composed of four classes. From higher to lower, these classes are, first class, designated as first class, second class and third class. The seniority of judges is designated in accordance with their degrees and grades. Judges get one grade every year and get one degree in two years if they are qualified. There are three types of promotion, namely, distinguished (the best promotion), preferential (the medium promotion) and ordinary (the minimum type of promotion).

The main criteria for promotion of judges are accuracy in the judgments and rapidity in finalizing a case. The evaluation is based on the number of cases reviewed by High Courts (Court of Cassation or Council of State) and the assessment also made by the High Courts.

For all cases reviewed by the High Courts a mark is given by filling a form in respect of Accuracy of the judgment, rapidity in finalizing the case, including not causing unnecessary delays, implementing procedural provisions in full and on time, comprehension ability regarding the subject of the case, success in the reasoned opinion, taking into account precedent cases. The marks given by the High Courts are: very good, good, medium or poor.

Ratio of incoming and finalized cases by a judge is a criterion for promotion. However, the ratios

are at the discretion of the High Council of Judges and Public Prosecutors.

Between the articles 18-31 procedures and merits of rank advancement and level increase, in the article 32 promotion to first class, in the 3 paragraph of the article 15 conditions to become first class are determined in the Law on Judges and Prosecutors numbered 2802 which regulates the qualities of Judicial Judges and Prosecutors, their appointments, rights and duties, salaries and allowances, professional promotions and any personal benefit.

According to this, judges and prosecutors have level increase in every year and rank advancement in every two years.

In order the judges and prosecutors to have level increase; it is necessary that he/she worked for at least one year in the same level and did not have discipline punishment or conviction that hinders the level increase. In order to have rank advancement; it is necessary that he/she worked for 2 years in the same rank, did not have any discipline punishment or court decree that hinders the rank advancement and to carry the conditions stated in the resolutions regarding the merits of rank advancement declared by the Supreme Council of Judges and Prosecutors. As a summary these conditions are; to pass a certain number of works from the Court of Cassation and the Council of State in the promotion period and a certain proportion of the grades they get from these works to be very good and good, to finish a certain proportion of the works they attend and the inspector certificate of conduct prepared as a result of the inspection conducted every two years to be positive. In accordance with the article 29 of the Law numbered 2802, the judges and prosecutors who are deemed worthy of level increase are promoted in three different types as (A) worthy of increase, (B) worthy of preferential increase, and (C) worthy of privileged increase.

In order to be promoted to first class, however; it is necessary to work for 10 years actively in the profession, to advance to first class and to be distinguished among his/her equals according to his/her scientific power and skills and success in service and profession, not to have discipline punishment or conviction that hinders the promotion to first class, and to carry the conditions stated under the resolutions regarding the merits of promotion to first class.

The most important of these conditions is; more than half of the increase inspections they are subjected to through their professional lives to be preferential (B).

To become first class: according to the paragraph 3 of the article 15 of the Law numbered 2802; judges and prosecutors who are promoted to first class, completed their three years in the profession as of the date of promotion, and did not lose the right to be elected for membership of the Court of Cassation and the Council of State become first class.

105) How are prosecutors recruited?

- Through a competitive exam? (for example after a law degree)
- A specific recruitment procedure for legal professionals with long working experience in the legal field (for example lawyers)?
- A combination of both
- Other

Other, please specify:

106) Are prosecutors initially/at the beginning of their carrier recruited and nominated by:

- An authority composed of prosecutors only?
- An authority composed of non-prosecutors only?
- An authority composed of prosecutors and non-prosecutors?

107) Is the same authority formally responsible for the promotion of prosecutors?

- Yes
 No

If no, please specify which authority is competent for promoting prosecutors:

In accordance with the subparagraph (d) of the paragraph 3 of Article 4 of the Law on the Supreme Council of Judges and Prosecutors numbered 2461, any process of promotion and promotion to first class of the judges and prosecutors are carried out by the Supreme Council of Judges and Prosecutors.

108) Which procedures and criteria are used for promoting prosecutors? Please specify:

Between the articles 18-31 procedures and merits of rank advancement and level increase, in the article 32 promotion to first class, in the 3 paragraph of the article 15 conditions to become first class are determined in the Law on Judges and Prosecutors numbered 2802 which regulates the qualities of Judicial Judges and Prosecutors, their appointments, rights and duties, salaries and allowances, professional promotions and any personal benefit.

According to this, judges and prosecutors have level increase in every year and rank advancement in every two years.

In order the judges and prosecutors to have level increase; it is necessary that he/she worked for at least one year in the same level and did not have discipline punishment or conviction that hinders the level increase. In order to have rank advancement; it is necessary that he/she worked for 2 years in the same rank, did not have any discipline punishment or court decree that hinders the rank advancement and to carry the conditions stated in the resolutions regarding the merits of rank advancement declared by the Supreme Council of Judges and Prosecutors. As a summary these conditions are; to pass a certain number of works from the Court of Cassation and the Council of State in the promotion period and a certain proportion of the grades they get from these works to be very good and good, to finish a certain proportion of the works they attend and the inspector certificate of conduct prepared as a result of the inspection conducted every two years to be positive. In accordance with the article 29 of the Law numbered 2802, the judges and prosecutors who are deemed worthy of level increase are promoted in three different types as (A) worthy of increase, (B) worthy of preferential increase, and (C) worthy of privileged increase.

In order to be promoted to first class, however; it is necessary to work for 10 years actively in the profession, to advance to first class and to be distinguished among his/her equals according to his/her scientific power and skills and success in service and profession, not to have discipline punishment or conviction that hinders the promotion to first class, and to carry the conditions stated under the resolutions regarding the merits of promotion to first class.

The most important of these conditions is; more than half of the increase inspections they are subjected to through their professional lives to be preferential (B).

To become first class: according to the paragraph 3 of the article 15 of the Law numbered 2802; judges and prosecutors who are promoted to first class, completed their three years in the profession as of the date of promotion, and did not lose the right to be elected for membership of the Court of Cassation and the Council of State become first class.

109) Is the mandate given for an undetermined period for judges?

- Yes
 No

Are there exceptions? Please specify:

110) Is there a probation period for judges? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for judges	X	2

111) Is the mandate given for an undetermined period for prosecutors?

- Yes
 No

Are there exceptions? Please specify:

112) Is there a probation period for prosecutors? If yes, how long is this period?

	Yes	Duration of the probation period (in years)
Probation period for prosecutors	X	2

113) If the mandate for judges/prosecutors is not for an undetermined period, what is the length of the mandate? Is it renewable?

Please specify the length

- for judges? Yes
for prosecutors? Yes

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of the selection and nomination procedure of judges and prosecutors and the main reforms that have been implemented over the last two years

8 month period of the 2 year candidacy training of judge and prosecutor candidates is given by the Academy of Justice as 4 month preparatory stage and 4 month final stage. The curriculum of this training is reviewed every term and updated. Currently continuing, 10th Judicial Preparatory Term has been planned as 428 lesson hours.

There are 103 trainers, 6 of which are from the Constitutional Court, 36 from the Court of Cassation, 1 from the Military Court of Cassation, 29 from the Ministry of Justice, 12 from the Ankara Courthouse, 4 from the Turkish Justice Academy and 25 from other institutions (Universities, Notary unions, General Directorate of Security, Bars).

After the analysis of the curricula and practices of the 50 law schools in our country and training models of some similar international institutions, a new curriculum is being worked on for creating an ideal profile for judges and prosecutors in the light of the meetings held with our trainers and trainees, questionnaires, observations and other scientific studies and opinions of the some institutions such as the Ministry of Justice, Court of Cassation, and Council of State. In this sense, lessons improving cognitive and sensual characteristics and professional efficacy, formation courses, personal development and social activities are determined. Programs and practices are being implemented in order to ensure methodological realization of professional practices, improvement of intellectual level, formation of the person's professional identity and healthy communication with his environment being aware of his inner world. Within the context of human rights, in addition to the course " Human Rights and Public Freedoms Practices", it has been agreed with the trainers that in every lesson European Human Rights and the European Court of Human Rights will be referred. In this context, a project internalizing human rights practices was carried out with participation of foreign experts and trainers during the Marta

Project which lasted for 3 years . (ACADEMY)

While judge and prosecutor candidates used to be determined after a written exam and interview carried out by OSYM (Central Exam Institution) according to By-Law on Written Exam, Interview and Appointment for Judge and Prosecutor Candidacy in Judicial and Administrative Justice prepared in accordance with article 9 of the law numbered 2802 In accordance with Article 9 of the code numbered 2802, by an amendment made on Article 9 of the law numbered 2802, the last paragraph of the mentioned article on which that By-Law was grounded was annuled and Article 9/A was added to the law. According to the new regulation, written exam is made by OSYM again and interview is conducted by a 7 member-interview committee composing of executive members of Justice Academy and two members from the Court of Cassation and the Council of State.

With this new regulation it is ensured that:

- 1.The content of the written exam has been changed; general knowledge questions shall be evaluated with 20 points whereas occupational knowledge questions with 80 point and general ability and general knowledge questions shall be pointed equally;
- 2.With the condition of getting minimum 70 points out of 100 in the written exam, persons in the number of twice of the number of vacant staff indicated in the exam notice and by begining with the person who gets the maximum point, are invited to the interview;
- 3.After calculation of the total of 70 percent of the written exam point and 30 percent of the interview point, final success list shall be prepared starting from the top score and those who are successful in the list shall be appointed;

Appointments of those judge and prosecutor candidates who are successful in the written exam and interview are made by the Ministry of Justice. At the end of the two year internship period (pre-occupational training), after being accepted for duty by the Supreme Council of Judges and Prosecutors, judges and prosecutors are, by lot, sent to the spots determined by evaluating needs and demands of those places.

5. 1. 2. Training

114) Nature of the training of judges. Is it compulsory?

- Initial training
- General in-service training
- In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)
- In-service training for management functions of the court (e.g. court president)
- In-service training for the use of computer facilities in the court)

115) Frequency of the training of judges

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
In-service training for specialised judicial functions (e.g. judge for economic or administrative issues)	No	No	Yes
In-service training for management functions of the court (e.g. court president)	No	No	Yes

In-service training for the use of computer facilities in the court	No	Yes	No
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116) Nature of the training of prosecutors. Is it compulsory?

- Initial training
- General in-service training
- Specialised in-service training (specialised public prosecutor)
- In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)
- In-service training for the use of computer facilities in the public prosecution service)

117) Frequency of the training of prosecutors

	Annual	Regular	Occasional
Initial training	No	Yes	No
General in-service training	No	Yes	No
Specialised in-service training (specialised public prosecutor)	No	No	Yes
In-service training for management functions of the prosecution services (e.g. head prosecutor and/or managers)	No	No	Yes
In-service training for the use of computer facilities in the public prosecution service)	No	Yes	No

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- comments regarding the attention given in the curricula to the European Convention on Human Rights and the case law of the Court
- the characteristics of your training system for judges and prosecutors and the main reforms that has been implemented over the last two years

Persons graduated from the 4-year-law schools of faculties with bachelor degree and who are successful in the written exam by the Central Exam Institution (OSYM) and passed the interview made by the Ministry of Justice are to attend a two year internship program. Those who successfully complete the candidacy procedure are, by lot, appointed to pre-determined locations as judges and prosecutors.

Judges and prosecutors occasionally receive in-service trainings based on the occurring needs to continue their occupational development, benefit from the improvements in international legal and share knowledge and experience among themselves. Attendance in these trainings is generally optional; and they are called for trainings ex officio depending on the occurring new conditions.(such as enforcement of new Turkish Penal Code numbered 5237, Criminal Procedure Code numbered 5271, Turkish Civil Code numbered 4721)

In addition, after 2001, important amendments have been made on the Constitution in the field of human rights such as thought and expression freedom, prevention of torture, strengthening democratic and civil authority, freedom of assembly and of association, right to a fair trial, immunity of domicile, freedom of information, gender equality; and constitutional guarantees have been improved.

With an amendment dated 7.5.2004 and numbered 5170 in the 90th Article of the Constitution, the provision "In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail." has been added.

Within this context, number of training activities on the human rights issue carried out within Ministry of Justice increased significantly in 2004 and 2005.

Between the dates April 15th –July 11th, 2004, 206 human rights seminars in total where the provisions including the 3rd Article of the Prohibition of Torture and the 14th Article of the Prohibition of Discrimination of the European Convention on Human Rights and the Optional Protocol together with the UN Elimination of Discrimination against Women provisions were prepared for 8647 judges and prosecutors throughout Turkey by the Department.

In 2005, training seminars were prepared for 8500 judges and prosecutors all over Turkey with the aims of introduction and implementation of the new Turkish Penal Code where the articles in line with the international treaties on women and children rights that Turkey is party to exist, adopted on 26.04.2004 and enacted on 01.06.2005.

Judgments of the European Court of Human Rights about Turkey are submitted regularly to the use of judges and prosecutors through the Bulletin on Judicial Legislation pressed and distributed by our Ministry, and the website <http://www.inhak-bb.adalet.gov.tr>.

Except for the training programs mentioned above, following training activities were carried out for the judges and prosecutors in 2007 and 2008:

2007

Within the context of "the Project of Supporting the Application of the Reforms in the Area of Human Rights in Turkey" carried out jointly by Ministry of Justice and the EU Commission and the Council of Europe, 3 separate training seminars on " the Right to a Fair Trial and Judicial Ethics" were organised for 170 chief inspectors and inspectors commissioned in Inspection Board in Ankara in 22 -30 January 2007.

With the participation of 24 judges and prosecutors, the seminar on " Expression Freedom and its Limits" were realized by Bahçeşehir University and TUSIAD in İstanbul in 26 -28 January 2007 within the context of the projects of Human Rights and Democracy European of the European Union Commission.

With the participation of 250 judges and prosecutors and in an organisation of five 50-person-groups, the seminar on " the Application of the Penal Code within the title of the freedom of assembly and of association and the Freedom of Expression in the light of the European Convention on Human Rights" were realized within the context of "the Project of Supporting the Application of the Reforms in the Area of Human Rights in Turkey".

The study visits were made with the participation of 62 participants in total;

first one in 19-15 April 2007 in Italy by the 31 participants
second one in 15 – 21 April 2007 in France by the 31 participants.

Two groups participated in these study visits are the chief inspectors and inspectors commissioned under Inspection These chief inspectors and inspectors participated in the study visits upon an invitation letter of the European Council within the scope of " the Project of Supporting the Application of the Reforms in the Area of Human Rights in Turkey" implemented by our Presidency together with the European Council within the coordination of the Human Rights Presidency of the Prime Ministry.

5. 2. Practice of the profession

5. 2. 1. Salaries

118) Salaries of judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 118:

	Gross annual salary (€)	Net annual salary (€)
First instance professional judge at the beginning of his/her career	18.250,64	15.027,96
Judge of the Supreme Court or the Highest Appellate Court	37.145,70	29.864,25
Public prosecutor at the beginning of his/her career	18.250,64	15.027,96
Public prosecutor of the Supreme Court or the Highest Appellate Instance	37.145,70	29.864,25

Comment :

119) Do judges and public prosecutors have additional benefits?

	Judges	Public prosecutors
Reduced taxation	No	No
Special pension	No	No
Housing	Yes	Yes
Other financial benefit	Yes	Yes

120) If other financial benefit, please specify:

Other Financial Benefits: Bank promotions, and payments of viewing (inspection) in line with code numbered 3717

121) Can judges combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	Yes
Research and publication	Yes	Yes	No
Arbitrator	No	No	Yes
Consultant	No	No	Yes
Cultural function	No	Yes	No
Other function	No	No	No

122) If other function, please specify:

123) Can prosecutors combine their work with any of the following other functions ?

	Yes with remuneration	Yes without remuneration	No
Teaching	No	No	Yes
Research and publication	Yes	Yes	No
Arbitrator	No	No	Yes
Consultant	No	No	Yes
Cultural function	No	Yes	No
Other function	No	No	No

124) If other function, please specify:**125) Do judges receive bonus based on the fulfilment of quantitative objectives relating to the delivering of judgments?** Yes No

If yes, please specify:

Please indicate the source for answering the question 118

Ministry of Justice, Department of Administrative and Financial Affairs

5. 2. 2. Disciplinary procedures**126) Which authority is authorized to initiate disciplinary proceedings against judges and/or prosecutors? Please specify:**

The Constitution provides that investigations of judges or public prosecutors may be possible in the following conditions:

- If they have committed offences in connection with, or in the course of their duties,
- Whether or not their behaviour and attitude are in conformity with their status and duties.

Initiating disciplinary investigation on behaviour and conduct not conforming with profession and initiating criminal investigation on offences in connection with the profession of judges and prosecutors is subject to the permission of the Ministry of Justice. Disciplinary investigation or criminal investigation may be initiated upon a complaint or denunciation. The denunciation or complaint petitions on judges/prosecutors are submitted to the Directorate General for Criminal Affairs. In the DG for Criminal Affairs a judge is appointed to examine the complaint and make an assessment on whether to investigate or not.

On complaints which are processed, a senior judge/prosecutor or judicial inspector conducts a preliminary investigation. According to the report prepared after the preliminary investigation, if the events claimed against the judge/prosecutor cannot be proved, it is decided not to proceed further. If the events are proved, it is decided to give permission for initiating investigation. Upon permission for investigation, a senior judge/prosecutor or judicial inspector leading the investigation, takes the statement of judge/prosecutor and prepares a report. This report is submitted to the DG for Criminal Affairs and examined therein. Upon assessment of this unit, if it is necessary to impose disciplinary sanction, the investigation file is sent to the High Council of Judges and Prosecutors. If it is decided to open a criminal investigation, the investigation file is sent to Prosecution Office concerned.

If the choices mentioned above are not applied, the investigation file is finalized and after this phase Ministry of Justice shall not intervene in investigation. At this phase all transaction relating

to disciplinary or criminal investigation are conducted by a judge discharged in Ministry of Justice. It is possible to object or appeal to Administrative Courts against the transactions conducted during the investigation.

127) Which authority has the disciplinary power on judges and prosecutors? Please specify:

The power to impose disciplinary sanctions against judges and public prosecutors is vested in the High Council of Judges and Public Prosecutors. The report prepared by the Ministry of Justice is examined by the High Council of Judges and Public Prosecutors and a decision is taken on disciplinary matter. The report is not binding for the High Council.

The conditions under which judges may be subjected to disciplinary sanctions are prescribed in Law on Judges and Prosecutors (No 2802) Article 62-69. Accordingly, these disciplinary sanctions may be applied depending on the nature and gravity of disciplinary actions: warning, deduction from salary, condemnation, suspension of grade development, suspension of degree promotion, change of location and dismissal from profession. Judges and public prosecutors can request re-examination of the case from the High Council. Furthermore an objection can be made to the Council of Examination of Objections. But, no objection or appeal may be made to any court against decisions of the Supreme Council.

128) Number of disciplinary proceedings initiated against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 128:

	Judges	Prosecutors
Total number (1+2+3+4)	350	
1. Breach of professional ethics	123	
2. Professional inadequacy		
3. Criminal offence		
4. Other	227	

Comment :

129) Number of sanctions pronounced against judges and prosecutors: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 129

	Judges	Prosecutors
Total number (total 1 to 9)		
1. Reprimand	123	
2. Suspension	35	
3. Withdrawal of cases		
4. Fine	8	
5. Temporary reduction of salary		
6. Degradation of post	2	

7. Transfer to another geographical (court) location	18	
8. Dismissal	9	
9. Other	51	

Comment :

Information concerned is provided by Turkish Ministry of Justice Department of Personnel.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning disciplinary procedures for judges and prosecutors and the main reforms that have been implemented over the last two years**

The numbers mentioned above include the disciplinary proceedings and sanctions against both of judges and prosecutors. The number of suspension sanctions includes the number of dismissal sanctions.

6. Lawyers

6. 1. Statute of the profession

6. 1. 1. Profession

130) Total number of lawyers practising in your country. If there is no data available, please indicate it (NA).

63.487

131) Does this figure include legal advisors (solicitors or in-house counsellor) who cannot represent their clients in court? If no go to question 133.

- Yes
 No
 Not applicable

132) Number of legal advisors. If there is no data available, please indicate it (NA)

NA

133) Do lawyers have a monopoly of representation in (multiple options are possible):

- Civil cases*?
 Criminal cases - Defendant*?
 Criminal cases - Victim*?
 Administrative cases*?

* If appropriate, please specify if it concerns first instance and appeal. And in case there is no monopoly, please specify the organisations or persons which may represent a client before a court (for example a NGO, family member, trade union, etc) and for which types of cases:

According to Article 35 of Attorneyship Law, providing opinion on legal matters; litigating and defending the rights of real persons and legal entities before courts, arbitrators or other bodies invested with jurisdictional powers; following judicial proceeding; and managing all documentation in connection therewith are the sole prerogative of attorneys enrolled at bar associations. The word of "court" comprises both first instance courts and court of appeals. Moreover, it can be said that attorneys have monopoly rights within Article 35 (except the exceptional circumstances mentioned above and at the following paragraph).

However, the last paragraph of Article 35 of the Attorneyship Law stresses that "The provisions of the Codes of Civil and Criminal Procedure and other laws are reserved" Therefore, attorneys in accordance with Provisional Article 13 of Attorneyship Law, case pursuers stated in Provisional Article 17, military officers in accordance with Articles 85 and 86 of the Law numbered 353 on Establishment and Tribunal Procedures of Military Courts, accountants and advisors in accordance with Article 2 of the Independent Accountants, Financial Consultancy and Sworn Councillorship Law numbered 3568, spouses in accordance with Article 193 of the Civil Code, liquidators in accordance with Article 593 of the Civil Code, agencies in accordance with Article 119/2 of the Turkish Trade Law, chairman of trade union in accordance with Article 32/3 of the Trade Union Law, brands and patent representatives in accordance with Article 30 of the Decree Law numbered 544 on the Establishment and Functions of Turkish Patent Institution may carry out the functions mentioned within the monopoly rights of attorneys in terms of the limited cases within the framework of the provisions of the Attorneyship Law. In addition, according to Article 86 of the Law on Establishment and Tribunal Procedures of Military Courts, "if there is nobody competent by law to act as a lawyer or a representative in the place where the military court has been situated, military officers graduated from faculty of law (except for military judges, military prosecutors and their assistants) and if they are also absent other military officers may be compulsorily appointed as defense counsel."

As regards criminal tribunals, Articles 149 and 150 of Criminal Procedure Code regulates selection of defense counsels whereas Article 234 regulates the cases where defense counsels are appointed.

According to Article 2 of Criminal Procedure Code, "Attorney" denotes the lawyer at the criminal proceedings who represent the victim of crime or the party liable for pecuniary compensation.

As explained in details above, defense council or representative must be attorney in criminal tribunals. Furthermore, accused or suspected or victim may, without looking for the request of complainant or the intervening party, appoint a defense counsel or attorney for himself.

134) Is the lawyer profession organised through?

- a national bar?
- a regional bar?
- a local bar?

Please specify:

A local bar association is established in every capital of province where a minimum of thirty attorneys are present. The Union of Bar Associations of Turkey is an organisation formed with the participation of all the bar associations in Turkey. The Union is a professional organisation in the nature of a public agency with legal personality.

Please indicate the source for answering the questions 130 and 132:

The Union of Bar Associations of Turkey

6. 1. 2. Training

135) Is there a specific initial training and/or examination to enter the profession of lawyer?

- Yes
 No

136) Is there a mandatory general system for lawyers requiring continuing professional training?

- Yes
 No

137) Is the specialisation in some legal fields tied with a specific level of training/ qualification/ specific diploma or specific authorisations?

- Yes
 No

If yes, please specify:

6. 1. 3. Fees

138) Can users establish easily what the lawyers' fees will be?

- Yes
 No

Please provide comments to explain the answer under question 138

In principle, the attorneyship fee shall be determined by the parties freely. However, there are restrictions in accordance with the Attorneyship Law. According to Attorneyship Minimum Fee Tariff prepared by Turkish Bar Associations and approved by the Ministry of Justice, parties cannot agree on a fee less than the attorneyship fee determined by the Attorneyship Minimum Fee Tariffs and a fee less than the minimum amount of fee. Second restriction in the Attorneyship Law is arranged under Article 164 which stipulates that in the cases where the attorneyship fee is determined proportionally according to the value of the entity to be litigated or adjudicated or where it includes some part of the money requested through the case, it cannot exceed twenty-five percent of the entity or money to be litigated or adjudicated. Parties may agree on the fee regarding the attorneyship contract freely within the framework of the mentioned provisions.

139) Are lawyers fees

- regulated by law?
 regulated by Bar association?
 freely negotiated?

Please provide comments to explain the answer under question 139:

As stated above, attorneyship fee is determined freely in principle. However, it cannot be agreed on as less than the Attorneyship Minimum Fee Tariff determined by Turkish Bar Association; and also in the cases where the attorneyship fee is determined proportionally according to the value of the entity to be litigated or adjudicated or where it includes some part of the money requested through the case, it cannot exceed twenty-five percent of the entity or money to be litigated or adjudicated.

Attorneyship Minimum Fee Tariff is regulated under article 168 of the Attorneyship Law, titled preparation of attorneyship fee tariff. According to this provision, every year in September, the boards of directors of bar associations prepare a tariff indicating the minimum limits of the attorneyship fees to be charged for actions at the juridical authority and other actions, and forward it to the Union of Bar Associations of Turkey. The tariff to be prepared by the Board of Directors of the Union of Bar Associations of Turkey by taking into consideration the recommendations of the bar associations shall be completed by the end of October in the same year and submitted to the Ministry of Justice. However, the Ministry of Justice may return a tariff, it does not deem appropriate, to the Union of Bar Associations of Turkey for reconsideration together with the reasons for return. A tariff returned is considered as approved if passed unchanged by a two thirds majority vote of the Board of Directors of the Union of Bar Associations of Turkey; otherwise it is considered as not approved. The result shall be communicated to the Ministry of Justice by the Union of Bar Associations of Turkey. The Ministry of Justice, candidate and pertinent bar can apply to administrative judicial authority against the decisions made by Turkish Bar Association upon being returned by Ministry of Justice for reconsideration. The tariff in effect on the date of legal assistance completed or on the date of a decision made at the end of the suit shall be taken as the basis for the adjudication of the attorneyship fee.

Besides the Attorneyship Minimum Fee Tariff prepared by Turkish Bar Association which shall be obeyed for the determination of attorneyship fee, Bars also publish fee tariffs as recommendations prepared on the basis of free market.

6. 2. Evaluation

6. 2. 1. Complaints and sanctions

140) Have quality standards been formulated for lawyers?

- Yes
 No

141) If yes, who is responsible for formulating these quality standards:

- the bar association?
 the legislature?
 other?

Please specify (including a description of the quality criteria used):

According to Article 34 of Attorneyship Law, "Attorneys are under the obligation to carry out the duties they assume with care, accuracy, and integrity in a manner suitable to the sacredness of their profession; to comport in a manner suitable to the respect and trust the profession requires; and to comply with the professional rules set by the Union of Bar Associations of Turkey." In this regard, within the context of "professional rules" published by Turkish Bars Association related with qualifications of attorneys, rules that attorneys are obliged to obey in their professional life are stipulated and professional qualification and discipline are provided both by these professional rules and Article 34 and other articles of the Law. Bars also have the right to carry out arrangement procedures for some issues and they may issue internal guidelines in this context.

142) Is it possible to complain about

- the performance of lawyers?
- the amount of fees?

Please specify:

In accordance with Article 34 of The Attorneyship Law, attorneys are under the obligation to carry out the duties they assume with care, accuracy, and integrity in a manner suitable to the sacredness of their profession; to comport themselves in a manner suitable to the respect and trust the profession requires; and to comply with the professional rules set by the Union of Bar Associations of Turkey. According to this Article, attorneys not conforming the rules can be lodged a complaint against. In fact, according to Article 134, the disciplinary penalties prescribed in the present Law shall be imposed on those whose acts and conduct contradict the honor, order, traditions, and professional rules of attorneyship; and those who neglect their duties in professional practice or fail to exercise the personal integrity required by their duties.

Apart from these discipline provisions, according to Article 62 titled 'abuse of power', "Attorneys who abuse the power conferred upon them either by virtue of their attorneyship or as members in the various organs of the Union of Bar Associations of Turkey or bar associations in accordance with the present Law or other laws shall be punished in accordance with Articles 257 of the Turkish Criminal Code."

Attorneyship fee cannot be agreed on as less than the Attorneyship Minimum Fee Tariff determined by Turkish Bar Association; and also in the cases where the attorneyship fee is determined proportionally according to the value of the entity to be litigated or adjudicated or where it includes some part of the money requested through the case, it cannot exceed twenty-five percent of the entity or money to be litigated or adjudicated. If it exceeds, the attorney can be lodged a complaint against Also, according to Article 164 " Contracts to be made in accordance with the second paragraph may not bear any terms to the effect that part of the non-monetary property and rights under litigation will be owned in kind by the attorney." The attorney can be lodged a complaint against, if he acts contrary to that Article.

143) Which authority is responsible for disciplinary procedures

- the judge?
- the Ministry of justice?
- a professional authority or other?

Please specify:

A disciplinary prosecution shall be initiated with a decision made by the board of directors of the bar association. The board of directors is under the obligation to make a decision on the disciplinary prosecution urgently and at any rate not later than one year from the date of notice, complaint, or request. (Article 141)

Objections may be raised by the complainant or the public prosecutor to the Board of Directors of the Union of Bar Associations of Turkey against the decisions of the boards of directors of bar associations not to initiate disciplinary prosecution, within fifteen days from the date of notification of the decision. (Article 142) If the subject matter of the complaint, notice, or request is found to be worthy for reconsideration as a result of the examination to be conducted on the file by the Board of Directors of the Union of Bar Associations of Turkey, the former decision shall be revoked and the file shall be forwarded to the bar association which has made the former decision for the initiation of disciplinary proceeding. Such decisions of the Board of Directors of the Union of Bar Associations of Turkey are final.

Decisions not to initiate disciplinary proceeding made by the boards of directors of bar associations shall become final if no objections are raised within the statutory period. The decisions not to initiate disciplinary proceeding made by the Union of Bar Associations of Turkey shall become final if no decision is made by the Ministry of Justice within two months as of the date of their receipt by the Ministry of Justice or if the decisions are approved by the Ministry. However, the Ministry of Justice shall return the decisions it does not deem appropriate to the Union of Bar Associations of Turkey for reconsideration together with the reasons for return. The decisions returned shall be considered as approved if passed unchanged by a two thirds majority vote of the Board of Directors of the Union of Bar Associations of Turkey; otherwise they shall be considered as not approved. The result shall be communicated to the Ministry of Justice by the Union of Bar Associations of Turkey. The Ministry of Justice, the candidate, and the bar association concerned against the decisions made by the Union of Bar Associations of Turkey after reconsideration of the decisions found inappropriate and returned by the Ministry of Justice.

Objections may be raised by the public prosecutor or the relevant parties to the Disciplinary Board of the Union of Bar Associations of Turkey against the decisions of the disciplinary board within thirty days from the date of notification of the decision. (Article 157)

The disciplinary board of the Union may approve the decision, or decide to revoke the decision and send the file to the bar association concerned for a more comprehensive prosecution, or, in circumstances where a re-examination is not required, decide on the merits of the case by revoking a decision it does not deem appropriate or approve the decision after they amend it. The decisions made by the Disciplinary Board of the Union of Bar Associations of Turkey in response to objections shall become final if no decision is made by the Ministry of Justice within two months as of the date of their receipt by the Ministry of Justice or if the decisions are approved by the Ministry. However, the Ministry of Justice shall return the decisions it does not deem appropriate to the Union of Bar Associations of Turkey for reconsideration together with the reasons for return. The decisions returned shall be considered as approved if passed unchanged by a two thirds majority vote of the Disciplinary Board of the Union of Bar Associations of Turkey; otherwise they will be considered as not approved. The result shall be communicated to the Ministry of Justice by the Union of Bar Associations of Turkey. The Ministry of Justice, the candidate, and the bar association concerned against the decisions made by the Union of Bar Associations of Turkey after reconsideration of the decisions found inappropriate and returned by the Ministry of Justice.

In both cases, if the application is made to an administrative law authority, trial is carried out by the Administrative Court. As stipulated under Article 7 of the Administrative Procedure Code, term of litigation, if not stated otherwise in special laws, is sixty days at administrative courts. Application for appeal can be lodged against the final judgments of the Administrative Courts to the Council of State within thirty days following the date of notice (Article 46 of the Administrative Procedure Code).

As understood from the abovementioned provisions of the codes, Executive and Disciplinary Boards of Bars, Executive and Disciplinary Boards of the Union of Bar Associations of Turkey, Ministry of Justice and administrative courts are responsible for the disciplinary procedures.

144) Disciplinary proceedings initiated against lawyers: please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 141:

	Breach of professional ethics	Professional inadequacy	Criminal offence	Other
Annual number	NA	NA	NA	NA

Comment :

The total number of the disciplinary proceedings initiated against lawyers was 546 in 2008, and 527 cases were finalized. 199 disciplinary penalties against lawyers were approved, and also 66 disciplinary penalties were approved after they were amended. However, there is not any detailed information beyond this.

145) Sanctions pronounced against lawyers : please complete the table. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Please provide comments to explain the answers to question 145:

	Reprimand	Suspension	Removal	Fine	Other
Annual number	NA	NA	NA	NA	NA

Comment :

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
- the characteristics of your system concerning the organisation of the Bar and the main reforms that have been implemented over the last two years

7. Alternative Dispute Resolution

7. 1. Mediation and other forms of ADR

7. 1. 1. Mediation

146) Does the legal system provide for mediation procedures? If no go to question 151

- Yes
 No

147) If applicable, please specify, by type of cases, the organisation of mediation

	Possibility for private mediation proposed by the judge or court annexed mediation	Private mediator	Public authority (other than the court)	Judge	Prosecutor
Civil and commercial cases	Yes	No	No	No	No
Family law cases (ex. Divorce)	No	No	No	No	No
Administrative cases	Yes	No	No	No	No
Employment dismissals	No	No	Yes	No	No
Criminal cases	Yes	No	No	No	No

148) Is there a possibility to receive legal aid for mediation procedures?

- Yes
 No

If yes, please specify:

Legal Assistance can be taken under Article 253 of Criminal Procedure Law.

149) Number of accredited mediators. If there is no data available, please indicate it (NA)

NA

150) Please Indicate the total number of judicial mediation procedures per case category. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

- civil cases? Yes
family cases? Yes
administrative cases? Yes
employment dismissals? Yes
criminal cases? Yes

Please indicate the source for answering the question 150:

7. 1. 2. Other forms of alternative dispute resolution

151) Can you give information concerning other forms of alternative dispute resolution (e.g. arbitration, conciliation)? Please specify:

- i. Arbitration: It is regulated under Articles 516 – 536 of the Code of Civil Procedure. It is classified in two categories as obligatory and optional. Obligatory arbitration is exceptional and regulated under special acts. In such cases, courts shall not be applied for. Arbitration, except for obligatory arbitration, is optional.
- ii. Encouragement to Settlement under Article 213 of the Code of Civil Procedure
- iii. Arbitration Committee of Consumer Problems. (Article 22 of the Law on Protecting of Consumer Rights.)
- iv. Ensuring settlement regulated under Article 35/A of the The Attorneyship Law.
- v. Settlement regulated under Articles 253 – 255 of the Criminal Procedure Law.

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your system concerning ADR and the main reforms that have been implemented over the last two years**

Settlement has been brought into effect in the Criminal Procedure Law. The Bill about Mediation in civil disputes is on the agenda of the Justice Commission of the Parliament.

Studies conducted during the process of full membership in order to improve the present system regarding criminal trial and carry that system into civil trial are written below;

A-BILATERAL COOPERATION WITH THE UK

Aim:

- Adoption of the alternative dispute resolutions into the Turkish Legal System and improvement of the system,
- Building up the required technical structure in order to bring mediation into effect.

Activities:

- a. Organizing a study visit to the Ministry of Justice of the UK and other relevant institutions with a delegation consisting of 10 persons -5 members of the Justice Commission of the Parliament and 5 high level officials from the Ministry-(October 2008).
- b. Forming a databank on alternative dispute resolutions (still continuing)
- c. Training of 5 officials from the Ministry as trainers in one of the prestigious mediation institutions of the UK.
- d. Organizing 2 seminars for judges and prosecutors, lawyers, notaries and related professional groups.
- e. Organizing a workshop by the Ministry, with the participation of 30 persons, about the studies required to be done regarding the period after the approval of the related law by the General Assembly of the Parliament.

B- ONGOING PROJECTS OF COOPERATION WITH INTERNATIONAL INSTITUTIONS

The Project for the Improvement of the Mediation Practices in Penal System;

Aim:

It is aimed to establish the concept of restorative justice, to improve dispute resolution applications, to give technical support, to contribute to the efficacy of the justice system and to create awareness.

Activities:

- questionnaires (They were sent to the Public Prosecutor Offices, Prosecutors, Criminal Judges, Bars and Universities and their opinions were collected. By analyzing these questionnaires, road maps were created.)
- Group works of situation analysis
- A report has been prepared by emphasizing the handicaps, opportunities and problems on the implementation of the mediation.
- 100 judges and prosecutors were given two-day-training for four times in February 2009.
- A seminar for 30 Justice Inspectors was held.

- A website will be designed. Also, campaigns for giving information and raising awareness will be prepared.
- Common fair and effective restorative justice principles will be identified and 5000 booklets of principles and guidelines will be distributed to all courthouses.

At the end of the Project, it is considered that a mediation institute is to be built up with its all aspects, awareness will be raised on this issue, and the application will be enhanced through informing judges and public prosecutors of the mediation practises by domestic and foreign experts.

8. Enforcement of court decisions

8. 1. Execution of decisions in civil matters

8. 1. 1. Functioning

152) Do you have in your system enforcement agents (judicial officers)? If no go to question 154

- Yes
 No

153) Number of enforcement agents. If there is no data available, please indicate it (NA).

1932

154) Are enforcement agents (multiple options are possible):

- judges?
 bailiff practising as private profession ruled by public authorities?
 bailiff working in a public institution?
 other enforcement agents?

Please specify their status and powers:

155) Is there a specific initial training or examination to enter the profession of enforcement agent?

- Yes
 No
 Not applicable

156) Is the profession of enforcement agent organised by?

- a national body?
 a regional body?
 a local body?
 not applicable

157) Can users establish easily what the fees of the enforcement agents will be?

- Yes
 No
 Not applicable

158) Are enforcement fees:

- regulated by law?
 freely negotiated?
 not applicable

Please indicate the source for answering the question 153:

The General Directorate of Personnel of Ministry of Justice.

8. 1. 2. Supervision**159) Is there a body entrusted with the supervision and the control of the enforcement agents?**

- Yes
 No
 Not applicable

160) Which authority is responsible for the supervision and the control of enforcement agents:

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?

Please specify:

The enforcement agents are regularly monitored and supervised by the relevant public prosecutor and judge as well as by the inspector judges appointed to the Ministry of Justice.

161) Have quality standards been formulated for enforcement agents?

- Yes
 No
 Not applicable

If yes, who is responsible for formulating these quality standards and what are the quality criteria used?

The General Directorate of Personnel of Ministry of Justice is responsible for formulating these quality standards. Enforcement agents are selected from the graduates of faculty of law, high school of justice or justice division of high vocational school.

162) Is there a specific mechanism for executing court decisions rendered against public authorities, including the follow up to this execution?

Yes

No

if yes, please specify

163) Is there a system for monitoring the execution?

Yes

No

If yes, please specify

Inspection is made through the Department of Inspection Board of the Ministry of Justice, Public Prosecutors' Offices and Courts of Enforcement. (through fact-finding reports)

8. 1. 3. Complaints and sanctions

**164) What are the main complaints of users concerning the enforcement procedure?
Please indicate a maximum of 3.**

no execution at all?

non execution of court decisions against public authorities?

lack of information?

excessive length?

unlawful practices?

insufficient supervision?

excessive cost?

other?

Please specify:

Besides excessive length, excessive work load and insufficiency of the number of personnel working at the enforcement agents are the main complaints of users concerning the enforcement.

165) Has your country prepared or has established concrete measures to change the situation concerning the enforcement of court decisions – in particular as regards decisions against public authorities?

Yes

No

If yes, please specify:

- Article 257 of the Turkish Penal Code 257.

- Article 12, 13, 32, et seq. of the Administrative Procedure Act.

166) Is there a system measuring the timeframes of the enforcement of decisions :

for civil cases?

for administrative cases?

167) As regards a decision on debts collection, can you estimate the average timeframe to notify the decision to the parties which live in the city where the court sits:

- between 1 and 5 days
 between 6 and 10 days
 between 11 and 30 days
 more

If more, please specify

168) Number of disciplinary proceedings initiated against enforcement agents. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of disciplinary proceedings	<input checked="" type="checkbox"/> number:	950
for breach of professional ethics	<input checked="" type="checkbox"/> number:	92
for professional inadequacy	<input checked="" type="checkbox"/> yes, number:	14
for criminal offence	<input checked="" type="checkbox"/> number:	50
Other	<input checked="" type="checkbox"/> number:	794

169) Number of sanctions pronounced against enforcement agents. If the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations.

Total number of sanctions	<input checked="" type="checkbox"/> number:	86
Reprimand	<input checked="" type="checkbox"/> number:	24
Suspension	<input checked="" type="checkbox"/> number:	5
Dismissal	<input checked="" type="checkbox"/> number:	5
Fine	<input checked="" type="checkbox"/> number:	9
Other	<input checked="" type="checkbox"/> number:	43

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter
 the characteristics of your enforcement system of decisions in civil matters and the main reforms that has been implemented over the last two years

Please indicate the source for answering the questions 167, 168 and 169:

The General Directorate of Personnel of Ministry of Justice

8. 2. Execution of decisions in criminal matters

8. 2. 1. Functioning

170) Is there a judge who is in charge of the enforcement of judgments?

- Yes

No

If yes, please specify his/her functions and activities (e.g. Initiative or control functions). If no, please specify which authority is entrusted with the enforcement of judgements (e.g. prosecutor):

Basically, the enforcement of judgments is implemented by the public prosecutors. However, in case any complaint or objection is made by any persons concerned, then the enforcement judge handles this complaint or objection and decides whether it is justifiable or not. Thus, these judges have control functions over the enforcement procedures of judgments.

171) As regards fines decided by a criminal court, are there studies to evaluate the effective recovery rate?

Yes

No

If yes, please specify:

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
- the characteristics of your enforcement system of decisions in criminal matters and the main reforms that have been implemented over the last two years**

9. Notaries

9. 1. Statute

9. 1. 1. Functioning

172) Do you have notaries in your country? If no go to question 177

- Yes
 No

173) Is the status of notaries (if the data are not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations):

a private one (without control from public authorities)?	<input type="checkbox"/> number	
a status of private worker ruled by the public authorities?	<input type="checkbox"/> number	
a public one?	<input checked="" type="checkbox"/> number	1578
other?	<input type="checkbox"/> number	

Comment :

174) Do notaries have duties:

- within the framework of civil procedure?
 in the field of legal advice?
 to authenticate legal deeds?
 other?

Please specify:

In accordance with Articles 1 and 72 of the Notary Act numbered 1512, notaries public, on the request of the relevant persons, document procedures for assuring legal safety and preventing disagreements.

According to the 60 Article of the same Act, Notaries are commissioned to:

- Arrange all kinds of legal procedures which are not required to be done legally by any other office, authority or person (are not entitled by law)
- According to the said Law, conduct all kinds of legal procedures which are required to be done formally by legislations, but authorities in charge are not determined.
- Certify signature, seal or any sign or date above the paper that is written outside as stipulated by this law,
- Carry out other duties stipulated by this law and by the other laws.

Please indicate the source for answering the question 173

Union of Turkish Public Notaries

9. 1. 2. Supervision

175) Is there an authority entrusted with the supervision and the control of the notaries?

Yes

No

176) Which authority is responsible for the supervision and the control of the notaries:

- a professional body?
 the judge?
 the Ministry of justice?
 the prosecutor?
 other?
 not applicable

Please specify:

General provisions about Notary procedures and the supervision of the Notaries Union of Turkey are stipulated under:

- Article 100 of the Law numbered 2802 of Judges and Prosecutors.
- Articles 121, 122 and 134 of the Notary Public Law numbered 1512
- The Ministry of Justice, the Regulation of the Department of Inspection Board of the Ministry of Justice
- The Regulation of the Inspection Board of Union of Turkish Public Notaries

The notary publics are subject to an inquiry by;

- Justice inspector,
- Public prosecutor
- Chairmans and members of management boards of the Notary Chamber Board and the Union
- Inspectors of Union of Turkish Public Notaries

You can indicate below:

- any useful comments for interpreting the data mentioned in this chapter**
 the characteristics of your system of notaries and the main reforms that have been implemented over the last two years

Notaries are regulated with Notary Public Law numbered 1512. In the first article of the Notary Public Law, it's stated that Notary Public is a public service and Notary Publics document procedures for assuring legal safety and preventing disagreements and execute other duties given by laws. Notarial service is carried out by Law School graduates who are assigned as notaries.

In accordance with the Articles 1 and 72 of the Notary Public Law, Notary Publics document, on the request of concerned persons, procedures for assuring legal safety and preventing disagreements. Documents regarding procedures prepared by notaries prevent the disputes from transferring to the judicial bodies and also expedite the resolution of the disputes which have been transferred.

Documents prepared by notaries are accepted as full evidence (Code of Civil Procedure Art.295) and are valid until proven fraudulent. As seen above, notaries conduct functions of helping judicial system by contributing to the general prevention of disputes among persons as well as rapid resolution of the disputes occurred.

10. Court interpreters

10. 1. function

10. 1. 1. Statute

177) Is the title of court interpreter protected?

- Yes
 No

178) Is the function of court interpreter regulated?

- Yes
 No

179) Number of certified court interpreters. If the data is not available (NA) or not applicable (NAP) please indicate it in the table with the relevant abbreviations

NAP

180) Are there binding provisions regarding the quality of court interpreting in judicial proceedings?

- Yes
 No

If yes, please specify:

181) Are the courts responsible for the selection of court interpreters?

- Yes
 No

Please provide comments to explain the answers to question 178 (in particular, if no, which authority selects court interpreters?) :

11. Functioning of justice

11. 1. Foreseen reforms

11. 1. 1. Reforms

182) Can you provide information on the current debate in your country regarding the functioning of justice? Are there foreseen reforms? For example changes in legislation, changes in the structure of the judiciary, innovation programmes, etc. Please specify:

With the participation of the Ministry of Justice and other judicial bodies, the Judicial Reform Strategy and Action Plan were prepared in order to produce solutions to the common problems of the Turkish Justice System and to schedule the implementation of these solutions. Controversial areas in this strategy plan can be summarized as:

- The restructuring of the Constitutional Court aiming to function as a pre-solution mechanism for human rights violations.
- The restructuring of the Supreme Board of Judges and Prosecutors in a manner to represent the whole judicial system.
- Making Courts of Appeal functional in civil, criminal and administrative jurisdiction and expedite the proceedings.
- Eliminating the administrative duties on judges and prosecutors and improving a court management system to transfer these duties to a professional administrative staff.
- Media and Judiciary Relations (EU)

Turkey has many reform studies related with the Judicial Reform Strategy prepared and presented in the context of negotiation process for EU membership.

The Judicial Reform Strategy was prepared in a manner which comprises the whole aspects of judicial system. The problematical areas regarding the justice system were identified and afterwards primary aims to solve them were determined. Activities to be conducted to reach these aims were identified and an action plan stipulating institutions responsible for steps to be taken, necessary time and budget were prepared.

The Judicial Reform Strategy and Action Plan was submitted to the EU Commission in September 2009. The Judicial Reform Strategy has been prepared under the following main objectives:

I- STRENGTHENING INDEPENDENCE OF THE JUDICIARY

1. In the light of international instruments, redefining tasks of Constitutional Court and restructuring it accordingly
2. Restructuring High Council of Judges and Prosecutors to provide representation of the judiciary as a whole on the grounds of objectiveness, impartiality and transparency in the light of the international documents and providing an effective objection procedure against decisions of the High Council and providing judicial remedy.
3. In parallel with the restructuring of the HCJP reorganization of secretariat of the High Council and the inspection system
4. Review of promotion system for judges and prosecutors including grading system with the restructuring of HCJP and functioning of Courts of Appeal
5. In the framework of the right to freedom of association, establishment of Union of Judges and Prosecutors without restricting freedom of association
6. Studying on strengthening awareness of judicial professionals and the public on independence and impartiality of judiciary
7. Enabling formation of military courts only with professional military judges
8. Removing the military courts from the military forbidden zones
9. Reconsidering duties and competence of the military courts
10. In the light of the principle of right to a fair trial transforming the High Administrative Military Court proceedings into two-level system

II. PROMOTING IMPARTIALITY OF JUDICIARY

1. Studying in cooperation with high courts and HCJP in order to prescribe the code of ethics for judiciary members

2. Raising awareness of media professionals on impartiality of the judiciary
3. Under the condition of protection of personal data, facilitation of access to High Court decisions
- 4 Under the condition of protection of personal data, providing public access to disciplinary decisions of the HCJP
5. Reviewing disciplinary provisions in Law on Judges and Prosecutors (Law No:2802) to provide objective criteria

III. ENHANCING EFFICIENCY AND EFFECTIVENESS IN THE JUDICIARY

1. Providing operation of Courts of Appeal in civil and criminal judiciary
2. Establishing and making operational of Courts of Appeal in administrative judiciary
3. Carrying out activities in cooperation with the Turkish Bar Association for increasing the efficiency of the defence within the framework of the right to a fair trial and the principle of the equality of arms
4. Paying attention to the principles of availability to judicial control and objectiveness in selecting trainee judges and prosecutors and increasing quantity of judges, public prosecutors and judicial staff to a sufficient level
5. Merging courthouses with the geographically close ones or courthouses with a less workload to the nearest one
6. Continuation of improvement of physical capacity of courthouses in the framework of determined principles
7. Considering international practice and necessities wide spreading the specialized courts
8. Strengthening capacity of the Forensic Medicine Institution
9. Appointment of judicial counsellors to Turkey's certain Embassies
10. Completing UYAP (National Judicial Network Project) and providing effective functioning of the system
11. Spreading the usage of electronic signature in civil, criminal and administrative judiciary
12. Continuation of training to enhance strategic management capacity and drafting MoJ's strategic plan
13. Diminishing the types of cases heard by High Courts as first instance
14. Rearrangement of the "Law on Service"
15. Adoption of the new Civil Procedure Code
16. Enhancing efficiency of civil enforcement and bankruptcy system
17. Reviewing expert witness system
18. Restructuring the positions of counsellors, government and treasury lawyers in order to allow them to provide more effective service.
19. Continuation of activities for improving juvenile justice system in line with international documents.

IV. ENHANCING PROFESSIONALISM IN THE JUDICIARY

- 1 Carrying out activities in cooperation with Ministry of Education, Higher Education Board and law schools for increasing the efficiency of law education
2. Continuation of training for members of judiciary and judicial staff on the subjects of enhancing professional competence and individual development
3. Reconsidering organizational structure of Turkish Justice Academy to enhance its capacity
4. Organizing periodical meetings like seminars, symposiums on training of judicial professionals with participation of the Ministry of Justice, HCJP, TJA, universities and other relevant institutions
5. Continuation of foreign language training for judges, public prosecutors and other judicial staff
6. Continuation of translation of the ECtHR case law and other relevant international documents related to the judiciary to Turkish and enabling access to mentioned documents.

V. IMPROVING MANAGEMENT SYSTEM of the JUDICIAL ORGANIZATION

1. Reducing administrative and financial duties and responsibilities of judges and public prosecutors
2. Prescribing duties and working standards of judicial professionals other than judges and public prosecutors and improving personal rights

3. Rearranging the task definition and criteria for setting up notaries taking into consideration the practices of the EU member states

VI. ENHANCING CONFIDENCE IN THE JUDICIARY

1. Performing studies to prescribe factors positively or negatively effecting confidence in the judiciary in the opinion of public
2. Continuation of delivering training to judicial employees on fight against corruption
3. Developing the relations between the judiciary, media and public in cooperation with related institutions
4. Establishing or improving public relations units in the High Courts and designated courthouses

VII. FACILITATING ACCESS TO JUSTICE

1. Reviewing legal aid system to enable effective access to the system
2. Opening web sites of the courthouses prepared in a standard format and providing their effective usage.
3. Finalizing the preparatory works for filing cases in electronic environment by individuals benefiting from the judicial services
4. Standardizing interpretation services at the judicial institutions

VIII. ENSURING EFFECTIVE IMPLEMENTATION OF MEASURES TO PREVENT DISPUTES AND IMPROVING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

1. Teaching basic legal knowledge starting from the elementary classes at schools
2. Informing the individuals in public institutions by using certain methods about their rights, duties and legal procedures before public institutions,
3. Increasing the efficiency of reconciliation system in the Criminal Procedure
4. Developing mediation and alternative dispute resolution methods for civil disputes
5. Increasing the efficiency of the arbitration system,
6. Taking necessary measures for the administration to take stable judicial decisions into account in its transactions and other activities
7. Developing and effectively implementing pre-judiciary dispute resolution procedures in administrative judiciary
8. Functioning of the Ombudsman Institution

IX. IMPROVING PENITENTIARY SYSTEM

1. Continuation of the work to bring penitentiary institutions in line with the international standards
2. Closing down the small and insufficient penitentiary institutions
3. Strengthening and spreading probation system
4. Efficient and widespread implementation of alternative sanctions instead of short term imprisonment
5. Continuation of spreading and improving of the workshops at the penitentiary institutions
6. Enhancing the capacity of the training centres in penitentiary institutions to provide training for other judicial staff
7. Transferring external security service of penitentiary institutions to the MoJ
8. Establishing efficient public relations units of the penitentiary institutions

X. NEEDS OF OUR COUNTRY AND CONTINUATION OF LEGISLATION WORK FOR EU HARMONIZATION

1. Draft Turkish Commercial Code
2. Draft Law on Amending the Law on Court of Cassation
3. Draft Law on Union of Judges and Prosecutors
4. Draft Law on Obligations
5. Draft Civil Procedure Code
6. Draft Law on Secrets of Trade, Bank and Customers

7. Draft Law on Data Protection
8. Draft Law on State Secrets
9. Draft Law on Amending Law on Administrative Adjudication Procedure
10. Draft Law on DNA Data and National Data Bank
11. Draft Law on Mediation in Civil Disputes
12. Draft Law on External Security Services on Penitentiary Institutions
13. Draft Law on the Enforcement and the Implementation of Commercial Code
14. Draft Law on General Administrative Procedure
15. Draft Law on the Organization of the Ministry of Justice
16. Draft Law on the Assistance to the Victims of Violent of Crime
17. Draft Law Amending the Law on Notaries
18. Draft Law Amending the Civil Code