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"ACCESS TO JUSTICE" IN TURKEY:
INDICATORS AND RECOMMENDATIONS

SEDA KALEM BERK

“Access to Justice” in Turkey:

Indicators and Recommendations

Seda Kalem Berk

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Indicators and Recommendations

Türkiye Ekonomik ve
Sosyal Etüdler Vakfı
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Foreword

Turgut Tarhanlı, *Dean of the Faculty of Law and*
Director of Human Rights Law Research Centre at Istanbul Bilgi University

The concept of “access to justice” started to become popular in the literature of law in Turkey during the 2000s. One can argue that this might be due to different legal and political reasons and coincides with the acceptance of Turkey’s candidacy for full membership to the European Union. In this context, the justice policies that could be developed from the perspective of “access to justice” will carry importance in the purpose of ensuring that everyone in the society is able to effectively benefit from the justice services.

The other front of the matter concerns more directly the legal field. The main themes in this field are defined by the constitutions under headings, such as the protection of fundamental rights and freedom and the right to legal remedy, etc. Traditionally, these headings are included under the study area of the discipline of “procedural law” in modern law systems.

However, from a traditional viewpoint of law, even if the abovementioned concepts are included in constitutions, it is also possible to assert that the viewpoint focusing on the technique, style and procedure of the procedural law is always more in the foreground in applications concerning this matter. In human rights law, particularly with the developments taking place in the second half of the 20th century, it can be said that the traditional definition and implementation framework of procedural law has broken with the acknowledgement of the right to fair trial and other related rights, and the efforts for the protection of these rights.

Within the context of human rights law, it is essential that a right is granted, protected and exercised, and its development is monitored. This axis, which expresses different functional phases, can be explained with one concept: *empowerment*. Of course, this is a concept that expresses the empowerment of the subject of the right. In other words, this situation expresses the logic in protecting the rights of a legal person (be it a real or juridical entity) through the law. Establishing the concept of “access to justice” based on the “empowerment” approach will also be one of the important legal, political and social instruments of transition from the traditional to a redefined procedural law that is under the effect of the human rights law.

This study by Seda Kalem Berk, titled *“Access to Justice” in Turkey: Indicators and Recommendations*, can be regarded as the analysis of an impact assessment that is capable of covering all the phases of the abovementioned development and re-definition axis. With this outlook, I can even say that it is an analysis from a social sciences lens, scrutinizing the domain of exercising “the right to legal remedy” and other factors affecting it in Turkey. On the other hand, this study is also an exemplary contribution in terms of the academic change demonstrating itself with social scientists starting to work alongside jurists in areas concerning the law.

The author examines the situation of access to justice in Turkey through the cross-sections opened by the headings “Legal Aid”, “Access to Information”, “Interpretation in Courts”, and “Electronic Case Filing.” In a sense, this represents an analysis of the “right to legal remedy” in present-day Turkey and in view of the current social, economic and technological development. In other words, these four headings specify the mechanisms and instru-

ments which should be discussed within the context of the “right to legal remedy” in Turkey and the determination and empowerment of the positions of those who will be accepted as the subjects of these and other connected rights. With this aspect, the study should be read as an analysis into one of the major structural elements of the policy area called “justice reform” or “judicial reform”, that calles for a human-focused approach.

Preface

Etyen Mahçupyan, *TESEV Democratization Program*

As Turkey continues to call herself a democracy, in reality she is still a country that strives to become democratic. It is only recently that we have recognized the structure of Republic as a tutelary regime, and have accordingly oriented ourselves towards a mindset required to deliver the desired changes in this structure. Presumably, the most important difference between democracy and a tutelary regime materializes in the concept of "the rule of law". This principle requires all governmental bodies, including the judiciary, to be subject to law while taking into consideration the universal rights and freedoms.

In Turkey, however, and also because of its privileged position created by the present coup d'état constitution, the judiciary sees itself as the definer of the law. Seen in this light, judicial reform emerges as one of the most critical steps that needs to be taken in moving ahead with the democratization process. With this insight, judiciary has been one of the key areas on which TESEV has focused its research activities in the last four years. In studies led by Mithat Sancar, the perspectives of first judges and prosecutors, and then of the society regarding the judicial system and its function, were scrutinized. These studies were all compiled in a book and published in May 2009. In March 2010, another study was published; authored by Meryem Erdal, the study explored into the media coverage by various organizations of some specific litigations, as well as the general approach of those same organizations to the judiciary. Thereby an opportunity was created to discuss the problems of perception surrounding the judiciary system.

Democratization of the judicial system, however, requires carrying out a policy of "reform" and sharing this policy with the public. Such a reform would need to evolve around two pillars: First requires reconsidering the concepts of "independence", "impartiality" and "legitimacy" in the context of the system in its entirety and the position of the judiciary, with the aim of ensuring that they are compatible with the international norms. In this context, the relationship between the executive branch and the judiciary, the position of the judiciary between the official ideology and universal law, and election system of higher judicial bodies appear as major problematic areas. The report titled, "A Judicial Conundrum: Opinions and Recommendations on Constitutional Reform in Turkey" edited by Serap Yazıcı and released in May 2010, discussed these issues that also constitute the subject matter of the government's judicial reform, from the point of view of universal democratic criteria, and provided a meaningful basis for the direction and framework of the reform.

The judiciary needs not only a systemic reform, but also a new perspective as a mechanism in order to meet citizens' need for justice. This present report authored by Seda Kalem sets out to explore and publicize one of the major issue areas of demand by the citizens from the judiciary: the problem of "access to justice". In the first section of the report, Seda Kalem discusses the conceptual background of access to justice and outlines the main international legal documents providing a normative framework on the issue. The second part analyzes the current state of affairs with regards to access to justice in Turkey under four subtitles: access to legal aid, access to information, the right to a free interpreter and

electronic case filing. The final chapter provides policy proposals on access to justice in Turkey by critically evaluating the legal treatment of this issue in the Judicial Reform Strategy, produced by the Ministry of Justice.

Thus, we hope to conduce toward covering essential elements that have to be present in a modern judicial reform, and respond to the public need for information about and discussion of the matter.

Introduction

I. Introduction

In studies on "access to justice", it seems important to underline two issues: The first is to define what we understand by "access to justice" and the second is to be able to develop policies through research to be carried out in line with this definition. Despite the late emergence of the concept in Turkey, access to justice gained considerable importance in recent years, particularly vis-a-vis the functioning of the judiciary. It is possible to observe this increase in importance in the ever increasing interest of researchers and the civil society towards the issue together with the greater amount of detail regarding the issue in policies developed by governments. However, despite the complexity of the conceptual framework on access to justice, it can be observed that studies and policies in Turkey approach the issue in reference to a number of key considerations. For instance, the increasing interest towards the issue seems to associate access to justice primarily with access to judicial services. In the Strategic Plan developed by the Ministry of Justice for 2010-2014, access to justice was defined as "the state providing and introducing all opportunities that are necessary for the people to easily have access to the justice they need and to seek their rights effectively".[1] In this context, issues such as "the resolution of disputes in courts within a reasonable period of time, ensuring that the court fees paid by the parties are at an acceptable fare, the efficient resolution of simple disputes before coming to court, joining different judicial procedures and increasing the efficiency of legal aid" are considered within the framework of access to justice.[2]

In this report, the current situation in Turkey with regards to access to justice will be analyzed in reference to the international context as well as the main domestic developments. The report will look at the manifestations of access to justice in Turkey in reference to the ways in which the concept has been examined in international literature. Access to justice issues will be particularly assessed in the context of the main headings of the Judicial Reform Strategy[3] of the Ministry of Justice. Issues that are given priority in the Judicial Reform Strategy prepared as part of Turkey's EU accession process provide a framework that allows for the comprehension of policies and steps taken in this direction. Following an overview of the current situation in Turkey regarding access to justice issues outlined in the Strategy, the last section of the report will examine the extent to which priorities outlined in the Strategy are in fact implemented. In addition, based on this examination, the last section of the report will also provide some recommendations on the possible steps to be taken for the improvement of these issues.

The issues covered in the Judicial Reform Strategy under the main heading of "Facilitating Access to Justice" are as follows:

1 **Strategic Plan of the Ministry of Justice 2010-2014, <http://www.adalet.gov.tr/stratejikplan/AdaletBakanlığıStratejik Planı2010-2014.pdf>.**

2 **Strategic Plan of the Ministry of Justice, 2010-2014,**

3 **Judicial Reform Strategy of the Ministry of Justice, 2009, <http://www.sgb.adalet.gov.tr/yrs/Yargi%20Reformu%20Stratejisi.pdf>.**

1. Increasing the efficiency of legal aid;
2. Facilitating access to information on judicial procedures;
3. Developing interpretation services in courts;
4. Finalizing the preparatory works on electronic case filing.

In addition to the Judicial Reform Strategy, the report will also refer to the Strategic Plan which was developed by the Ministry of Justice for 2010-2014. In this manner, it will be possible to assess access to justice on the ground in light of regulations and policies introduced and steps taken by the political authority.

Access to Justice in Turkey: General Assessment

II. Access to Justice in Turkey: General Assessment

The Priority no. 24.13 under the heading of "Justice and Home Affairs" in the National Programme of Turkey for 2003 is defined as "Ensuring All Citizens' Access to Justice and Continuing with Improving Legal Aid System for this Purpose".[4] This Priority refers to various activities of the EU under the title of Access to Justice and mentions that these and other similar activities are included within the framework of the "Democratization and Legal Reform" heading in the 58th government's Urgent Action Plan. Although it is possible to maintain that compared to the past, the issue of access to justice has become more visible among political priorities in Turkey; given the manifestation of the issue on the ground, it becomes clear that the legal arrangements and/or political plans are not always translated into practice. On the other hand, the European Court of Human Rights decisions against Turkey point to a recent history laden with unsuitable conditions and systematic violations in the field of access to justice. For instance, according to the European Court of Human Rights (ECtHR) data, Turkey has the highest number of convictions between 1959 and 2009.[5] Turkey also ranks first among countries which were identified to have violated at least one of the articles of the European Convention on Human Rights (ECHR) with Art. 6 on the right to a fair trial as the most frequently violated article. The ECtHR data constitute a significant reference point for identifying and collectively exhibiting unlawful practices with respect to various human rights issues. It is possible to maintain that Court data present the overall picture regarding significant issues in the theory and practice of access to justice such as the right to a fair trial and the length of trials. However, given that the data concern only the applications that have reached the Court, it becomes necessary to go beyond Court decisions in order to fully identify the situation on the ground.

Given that one of the outstanding issues in the discussions about access to justice is the efficient use of resources, the legislative efforts in the field of legal aid and the practical problems involved are meaningful when assessing the situation in Turkey.

1. LEGAL AID

The Judicial Reform Strategy emphasizes increasing the efficiency of legal aid as a priority under the heading of 'Access to Justice'.[6] On a general basis, in access to justice

4 The General Secretariat for EU Affairs, 2003 National Programme. <http://www.abgs.gov.tr/files/UlusalProgram/UlusalProgram_2003/Tr/doc/IV-24.doc>.

5 As of January 1, 2010 2295 decisions. "50 Years of Activity: The European Court of Human Rights Some Facts and Figures", <http://www.echr.coe.int/NR/rdonlyres/ACD46A0F-615A-48B9-89D6-8480AFCC29FD/0/FactsAndFiguresENAvril2010.pdf>. For detailed statistics prepared within the framework of data for the Republic of Turkey until 2009, see European Court of Human Rights, Statistics for Turkey, January 01, 2009, <http://www.echr.coe.int/NR/rdonlyres/38AF6006-60BE-49A5-8C61-F56E1C947882/0/Turkey.pdf>.

6 Legal aid exists in civil as well as criminal procedures in the Turkish legal system. In civil procedures, this service is provided most often on economic grounds by voluntary lawyers who are registered in the Legal Aid Bureaus functioning under Bar Associations. Criminal legal aid which is the second pillar of free legal representation, on the other hand, was incorporated into the legal system in 1992 mainly as a response to allegations of torture and

studies, it is frequently emphasized that the issue should not be assessed solely in terms of access to judicial services. In that respect, the necessity of judicial services to be easily accessible and free of charge, to bring about applicable results after an efficiently functioning process, and to have a high level of quality are also considered to be significant issues. In this context, the accessibility and the quality of legal services is considered to be one of the key indicators while assessing the functionality of a judicial system.[7] Improving legal aid services is both one of the priorities identified by the Government of the Republic of Turkey and an issue that can be considered within the framework of the Constitution in line with Articles no. 2, 5, 10 and 36. The improvements to be made in this area are also among commitments under ECHR and the International Covenant on Civil and Political Rights. On the other hand, improving the legal aid system is also significant in the context of Turkey's EU accession process. However, both the criticisms rose in the EU Progress Reports and the research carried out in Turkey on the issue point out to the fact that the legal aid mechanism is highly insufficient in terms of its functioning, its consequences and its impact.[8]

Local research also points out to problems in the functioning of the legal aid system.[9] Particularly, the regulations and the arrangements on the scope of legal aid services in criminal cases,[10] reveal both infrastructural shortcomings and serious problems regarding the ways in which legal aid is perceived by the policymakers and practitioners. For instance, in a study that examines the rates of using representation services at different stages of the judicial process for an understanding of the accessibility and the quality of legal aid system in Turkey, it was found out that around 90% of defendants have not been represented by a lawyer at any stage of the judicial process from the beginning of the investigation until the final verdict.[11] 8% of all the suspects involved in a criminal lawsuit have been sentenced to prison without ever being represented by a lawyer and 74% of all convicts who have been sentenced to prison have not had any representation at any stage. The rate of using legal aid was observed to be around 3% among all defendants. Research also found out that in criminal cases, the use of representation in general and legal aid in particular is highly limited. In addition, observations carried out in criminal courts explored the reasons for this

ill-treatment particularly concerning early 90s. In 2005-2006, the system has been amended particularly with regards to the scope of the services. Elveriş et. al. 2007, *Mahkemede Tek Başına: İstanbul Mahkemelerinde Müdafiliğin Erişilebilirliği ve Etkisi/Alone in the Courtroom: Accessibility* and Impact of Criminal Legal Aid in Istanbul Courts (Turkish/ English), Istanbul Bilgi University Editions, Istanbul.

7 The European Commission for the Efficiency of Justice, 2008. "European Judicial Systems", Edition 2008 (2006 data): Efficiency and Quality of Justice, CEPEJ Studies No: 11, <http://www.coe.int/t/dghl/cooperation/cepej/evaluation/default_en.asp>.

8 For instance, based on the finding that legal aid services "are insufficient in terms of the provision, the scope and the quality of the services provided", 2010 Progress Report primarily dealt with the problems encountered in terms of access to free legal representation, particularly in Southeastern Turkey and in rural areas in general. The Report also paid attention to the problems experienced by asylum-seekers in terms of access to legal aid. Turkey Progress Report 2010. European Commission Brussels, November 9, 2010 SEC(2010) 1327, <http://www.abgs.gov.tr/files/AB_Iliskileri/AdaylikSureci/IlerlemeRaporlari/turkiye_ilerleme_rap_2010.pdf>.

9 Elveriş (ed.) 2005. *Türkiye'de Adli Yardım: Karşılaştırmalı İnceleme ve Politikalar/ Legal Aid in Turkey: Policy Issues and a Comparative Perspective*, Istanbul Bilgi University Editions, Istanbul.

10 Until 2005, with the exception of minority and disability, the use of legal aid in criminal cases was limited to the defendant's demand. With the amendment in 2005, the scope of mandatory criminal legal aid was expanded by making legal aid mandatory for offenses with a prison term not exceeding five years. As a result of a serious increase in the number of cases eligible for mandatory legal aid as well as an increase in the costs, another amendment introduced in 2006 limited the scope of mandatory criminal legal aid to offenses with a prison term of at least five years. Law On Amending Various Laws No: 5560 dated December 06, 2006, <http://www.tbmm.gov.tr/kanunlar/k5560.html>.

11 Elveriş et al. 2007.

limited availability by looking at whether defendants are reminded of their rights to legal representation in hearings. Another issue which would constitute a problem in terms of access to justice comes into play at this point: out of 173 hearings, in only 4 of the 46 where statement was taken, defendants were reminded of their right to legal representation in a clear and audible manner. On the other hand, besides problems related to the accessibility of criminal legal aid services, data on the quality of the service also present a problematic picture. For instance, in more than half of the cases involving suspects represented by criminal legal aid lawyers, it was found out that lawyers do not raise any objections to pre-trial detention and both in Criminal Courts of General Jurisdiction and in Superior Criminal Courts pre-trial detention seems to be most common in cases where the defendant is represented by a criminal legal aid lawyer.

This becomes even more significant in an environment where the percentage of those who benefit from legal representation is generally low. According to the results of a nationwide study conducted in Turkey, 81% of the urban population have not benefited from representation by a lawyer at any point in their lives.[12] Only 38% of all the respondents believed that their rights would be defended in the court even without a lawyer which proves once again the significance of a functioning legal aid system in the context of access to a fair trial and access to justice in general. It is interesting that the response "I thought I could defend myself" is the most frequent one among the answers to the question of why respondents did not have legal representation. This necessitates further thinking on the views and perceptions of the citizens about the services provided by lawyers. The second most frequent answer "Because it is expensive" once again shows the significance of an efficient legal aid system in terms of ensuring access to justice. The absence of initiatives such as *pro bono* services or legal clinics in Turkey is also another factor that impedes access to justice due to the limited availability of legal representation and advice.

At this point, it is necessary to make a brief evaluation of the fact that since in Turkey legal aid bureaus are organized under Bar Associations, restrictions placed by the Bar administrations on the appointment of lawyers to legal aid have been observed to bear consequences in terms of access to justice such as undermining the right to a defense and the right to a fair trial. For instance, Istanbul Bar Association boycotted the "Legal Aid Plan" in 2009-2010 for almost a year and did not appoint any lawyers during this time which has also been raised as an issue in the 2010 Progress Report. In this period, the great majority of lawyers who served on the legal aid list of İstanbul Bar Association refused to be appointed because of reasons such as "the low amount of fees paid for their legal assistance, late payments and the lack of payments of expenditures".[13] The serious violations stemming from this decision caused disturbance among lawyers as well. A declaration issued by a group of lawyers from Istanbul Bar Association under the name of "Code of Criminal Procedure Platform for Justice and Freedom for All" called on to cease the boycott. The declaration mentioned that as a result of lawyers' refusal to take on the duty of criminal legal aid, the number of human rights violations has increased, detention periods turned into confinement, interrogation procedures are conducted in an unlawful manner due to the absence of lawyers therefore prolonging the detention period, and prisons are filled with people who do not know why they are detained. Besides, the declaration also included views which claim that appointments through the Code of Criminal Procedure cause unfair

12 **Kalem et.al. 2008a, *Justice Barometer: Public Opinion on Court in Turkey*", Istanbul Bilgi University Editions, Istanbul.**

13 ***Yeni Yaklaşımlar* 2010, "Zorunlu Müdafilik, Sorunlar ve Çözüm Önerileri" (Mandatory Criminal Legal Aid, Problems and Recommendations for Solutions), <http://www.yeniyaklasimlar.org/m.aspx?id=471>.**

competition among lawyers which violates the Law on Advocacy. The declaration also maintained that individuals who benefit from criminal legal aid services are already deprived of the economic means to hire a lawyer and therefore would be further deprived of representation if the scope of mandatory criminal legal aid is narrowed.[14]

On 21 February 2007, however, the president of Istanbul Bar Association Kazım Kolcuoğlu (Attorney-at-law) issued a declaration whereby he called upon his colleagues to be engaged in "sustained activism" against the restrictions upon the right to defense and the failure to pay legal aid fees caused by a reduction in the scope of mandatory criminal legal aid. Similarly, in relation to the Union of Turkish Bar Associations' Presidential Council decision dated July 20, 2006, appointments of criminal legal aid lawyers were suspended as of 1 August 2006 due to the failure of the state to pay for legal aid services to lawyers. However, upon a commitment to pay a part of the debt which was announced as 48 million YTL following a meeting between the Union of Turkish Bar Associations, the Presidents of Bar Associations and the Prime Minister, this protest was temporarily halted.[15] The decision to cease the boycott remained in place until March 2007. Then, the Union of Turkish Bar Associations decided to hold the appointment of mandatory criminal legal aid lawyers once again on the grounds that the payments to be made to lawyers depended on an "expenditure voucher"[16] to be issued by judges and prosecutors, in line with amendments to the Criminal Code of Procedure with the introduction of Law no. 5560 which entered into force on 19 December 2006. The Union claimed that this violates the independence of defense and that the failure to pay the legal aid fees "intentionally turns criminal legal aid services into a tedious task".

Legal aid in judicial fees (adli müzaharet) which constitutes another dimension of legal aid services has a significant impact on the access of individuals with limited economic means to justice because it allows such people to be exempt from court fees. The practice envisages that the state covers court fees and expenditures for financially vulnerable individuals. Within the framework of this practice, applicants are asked to submit "poverty certificates" and documents certifying that no immovable property is registered under their name both of which can be obtained from neighborhood administrative units called *muhtarlık*. This practice that has for a long time been regulated in this way under the former Code of Civil Procedure no. 1086, has recently been included under legal aid in the new Code of Civil Procedure no. 6100.[17] This new Code makes the conditions for application even harder for these individuals. In that sense, it is highly possible that this new regulation will have a negative effect on people's access to justice since it requires people seeking legal aid to submit a summary of their indictments, the necessary evidence to support their indictments and the documentation on their financial status certifying that they do not have the financial means to cover judicial fees. In addition, Art. 120 of the new Code of Civil Procedure that regulates the judicial fees and advance payments is also likely to be an obstacle before access to justice because it foresees that the plaintiff has to deposit the relevant judicial fees and the amount of advance payments determined by the Ministry of

14 *İbid*.

15 *Birgün* 2006. "Avukata 'Zorunlu' Randevu" ('Mandatory' Appointment To the Lawyer), August 2, 2006. <http://www.birgun.net/actuel_2006_index.php?news_code=1154534770&year=2006&month=08&day=02>.

16 The document in question is obtained from the prosecutor's office or from the court and it indicates legal fees. This practice was abolished in 2007. Regulation on the Procedures and Principles of Payments To Be Made For The Appointment of Criminal Legal Aid Lawyers and Representatives Pursuant To The Code Of Criminal Procedure dated March 02, 2007, Ministry of Justice. <http://www.cigm.adalet.gov.tr/yonetmelikler/yonetmelikmetinleri/mudafi_ilk.pdf>.

17 The Code Of Civil Procedures No:6100 dated January 12, 2011, <http://www.tbmm.gov.tr/kanunlar/k6100.html>.

Justice to the court cashier before filing a case. In a recent case, a secretary who has been dismissed from her job and attempted to file a case of reemployment, has reportedly taken her petition back because with a monthly wage of 700 YTL she could not pay the 617 YTL advance payment.[18]

There also seems to be -albeit limited- positive developments related to the payment of fees. For instance, the incorporation of the phrase "in pecuniary and non-pecuniary lawsuits filed as a result of death and material damage one twentieth of the fee shall be paid in advance" into the Art. 28/1(a) of the Act on Fees (no.492) can be considered a significant development. In addition, the inclusion of the provision that prevents "the failure to pay remaining court dues from constituting an obstacle to the communication of the verdict, follow-up procedures and appeals" also aims at removing the obstacles before the prevailing party to seek legal remedies. This again can be considered a significant development in terms of access to justice.

With regards the situation in criminal proceedings, on the other hand, amendments to the new Code of Criminal Procedure no.5271 passed on 4 December 2004 which were introduced with the Law no.5560 in December 2006 can be considered to be a setback in terms of access to justice. In the new Code of Criminal Procedure which came to force in 2005, the regulation which provides for "the appointment of a mandatory criminal legal aid lawyer during the investigation and prosecution of crimes that are punished by a term of imprisonment not exceeding 5 years" was replaced by a new regulation passed in 2006 providing for "the appointment of a mandatory legal aid lawyer in the investigation and prosecution of crimes that are punished by a term of imprisonment with a minimum of more than 5 years".[19] It is quite possible that this new regulation that narrows the scope of the appointment of mandatory legal aid will constitute obstacles for defendants in terms of their access to justice. With the new regulation, almost all of the cases before the Criminal Courts of Peace and Criminal Courts of General Jurisdiction and a significant majority of the cases before the Superior Criminal Courts have been left outside the scope of mandatory criminal legal aid.

However, it is also significant to identify the reasons behind this reduction in the scope of mandatory criminal legal aid. The problems with the appointment of criminal legal aid lawyers and the payments of legal aid fees caused by the initial enlargement in the scope of the mandatory criminal legal aid have resulted in direct violations of defendants' rights such as cancellations or delays in appointments. Therefore, one should not forget that a wider scope is not necessarily a more positive step and that using the existing infrastructural capacity efficiently is just as important as enlarging the scope of a service. With regards the implementation of criminal legal aid, this necessitates that defendants are provided with accurate and comprehensible information on these rights especially when there is a demand-based appointment system.[20] On the other hand, the removal of the previously granted right to the relatives of suspects and defendants to request criminal legal aid directly from the Bar Association is risky in terms of access to justice because in the new implementation the request for criminal legal aid can only be submitted by the police station where the defendant is detained, by the prosecution office or by the court. In this sense, it is possible to foresee that the delegation of the defendant's right to defense to the system may prevent the timely and efficient use of this right or maybe not allow its

18 *Bianet* 2011. "Yargıda Avans Zorunluluğu: Yoksullar Giremez" (Mandatory Advance Payment in the Judiciary: The Poor Not Allowed", <http://bianet.org/bianet/toplum/133256-yoksullar-giremez>.

19 The Code Of Criminal Procedures No:5271 dated December 04, 2004, < http://www.tbmm.gov.tr/kanunlar/k5271.html>.

20 Elveriş et al. 2007.

use at all. In addition, the introduction of the obligation to pay a fee of 40 YTL for appeals in criminal cases with Art. 13 of the Law no. 6217 passed on 31 March 2011, is yet another negative development in terms of access to justice mainly with regards to its potential of deterring defendants or victims to appeal their decisions.

At this point, it is also crucial to consider the relation between legal aid services and poverty. This relation in fact needs to be considered against the relation between law and poverty in general because research suggests that the majority of the world population makes a living in the informal economy.[21] As for Turkey in particular, data from the Turkish Statistical Institute (Turk-Stat) for 2009 show that, in Turkey where the monthly poverty threshold is 825 YTL, 12 million 751 thousand people live under the poverty threshold which only includes food and non-food items and 339 thousand people representing 0.48% of the population live under the starvation threshold which only includes food.[22] At this point, it becomes clear 140 TL which is the minimum fee for lawyers is an amount that would be hard to pay for a significant portion of people in need of legal assistance.[23] One should further consider the impact of bureaucratic obstacles that citizens face while trying to reach legal aid services in terms of access to justice. Particularly, the process of applying for legal aid in judicial fees that requires obtaining certificate of poverty hinders or delays the process of access to justice for the individuals concerned.[24] The lack of a standard procedure between Bar Associations also results with inequalities in terms of the services that citizens can reach.[25] These differences can be so wide that while legal aid service providers under some Bar Associations require a simple declaration of need or documents to prove financial needs, some legal aid bureaus under other Bar Associations require a more rigorous process.[26] On the other hand, it is maintained that in cases where the decision for legal aid is rendered through a hearing rather than based on the case file, courts carry out an examination on the economic situation of the applicant next to the legitimacy of the claim and that this examination often takes a long time and sometimes the judgment can be delivered even before this examination is finalized.[27]

It is commonly accepted that the cost of legal services provided by lawyers constitute an obstacle before the access of particularly the poor and the disadvantaged segments of the society to these services. However, the relation between poverty and access to legal services cannot be considered solely in terms of legal representation fees. First of all, fees for application to court, for hearings, for site visits etc. can be considered among factors impeding these groups' access to courts as well. On the other hand, an important pillar of access to these services is the geographical accessibility of the judicial institutions particularly courts and other mechanisms which can directly

21 UN Development Programme 2008, "Making the Law Work for Everyone", Report of the Commission on Legal Empowerment of the Poor Volume II Working Group Reports, <http://www.unrol.org/doc.aspx?n=making_the_law_work_II.pdf>.

22 TurkStat 2009a, "Poverty Study, 2009", <http://www.tuik.gov.tr/PreTablo.do?tb_id=23&ust_id=7>.

23 "Reaching the poor with students', İdil Elveriş interview, <http://www.haberler.gen.al/2010-01-16/istanbul-bilgi-universitesi-ogretim-gorevlisi-elveris-adli-yardim-hizmeti-bezginlik-araci-olmamali/>.

24 Elveriş 2006, "Türkiye'de Adalete Erişim" (Access to Justice in Turkey), *Adalete Erişim Uluslararası Sempozyum Notları*, İstanbul Barosu Yayınları. For a comprehensive evaluation on the issue, please see, "Technical Assistance for Better Access to Justice Project" EuropeAid/123555/D/SER/TR Legal Aid Committee Report, February 12, 2009, Ankara., <http://www.adrcenter.com/international/Legal_Aid_Committe_Report.pdf>.

25 As of 2011, there are 78 Bar Associations in Turkey. Union of Turkish Bar Associations, <http://www.barobirlik.org.tr/Detay.aspx?ID=5423&Tip=Menu>.

26 Yaşar 2006, "Adli Yardım Uygulaması" (Legal Aid Practice), *Adalete Erişim Uluslararası Sempozyum Notları*, İstanbul Barosu Yayınları.

27 *Ibid.*

address people's legal demands such as mediation centers abroad.[28] In the case of Turkey, with regards the project on the centralization of courthouses in Istanbul a certain lack of interest can be observed concerning the potential problems related to citizens' access to these courthouses. Although there are attempts to portray these new courthouses emerging in Bakirköy, Çağlayan and Kartal neighborhoods as "modern" structures in relation to the old ones, it is obvious that the "modernness" in question does not entail the physical distance between citizens and courthouses. It is mentioned that the "suitability to the working conditions of the judiciary", "modern architecture", and "functionality" are the features that are particularly highlighted while building these structures.[29] Therefore, it can be observed that the potential obstacles that citizens might face while trying to reach the courthouse have not been considered while determining the geographical location of these structures. For instance, a frequently raised concern by civil society organizations is that "the difficulty of physical access to courts" is a major obstacle before women's access to courts.[30] On the other hand, it has been observed that particularly the urban poor experience various legal problems with regards to issues related to Accommodation Law like rent problems or problems with title deeds; or issues related to Social Security Law like problems on insurance and wages; or, issues related to Family Law most frequent ones being divorce and custody.[31] These issues pretty much constitute the overall legal needs framework of the urban poor which as such constitutes the foundation and the frequency of their relationship with the courts.

At the same time, access of the poor to legal assistance also means access to legal information and simple legal advice. For instance, in relation to women's access to justice, the absence of legal advice units in public institutions such as Bar Associations, courthouses, district administrations and the police can be seen as one of the major obstacles.[32] In this context, initiatives aimed at improving access to legal mechanisms and procedures can be seen as steps that will allow the poor to perceive law not as an instrument of oppression and/or a "barrier" but as an empowerment mechanism and/or an "opportunity".[33] It is also possible to consider this tendency to view legal aid as an empowerment mechanism in the context of basic principles of human rights. Within this context, it is possible to imagine legal aid services as part of the "empowerment of the relatively weaker party" effort which is a significant tool in reaching the objective of "ensuring the protection of a right or freedom via suitable instruments" which is the key issue in safeguarding human rights.[34] At this point, we should particularly look at the role of these services in the lives of disadvantaged groups in the society.

i. Legal Aid and Refugees

In the Working Report of Istanbul Bar Association for 2008-2010, it is stated that legal aid is also provided for those "in need of legal assistance" such as refugees, asylum-seekers and victims of torture. However, the 2010 report "Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals to Legal Aid" prepared by Amnesty

28 UN Development Programme, Progress Report Working Group 1: Access to Justice and Rule of Law. Commission on Legal Empowerment of the Poor, <http://www.undp.org/legalempowerment/pdf/WG1_Progress_Report.pdf>.

29 Judicial Reform Strategy of the Ministry of Justice, 2009.

30 Ayata 2009, *Kadınların Adalete Erişimi: Mevzuat, Engeller, Uygulamalar ve Sivil Toplumun Rolü* (Women's Access to Justice: Legislation, Obstacles, Practices and the Role of Civil Society),Unpublished MA thesis, İstanbul Bilgi University, Institute of Social Sciences, LLM.

31 "Reaching the poor with students".

32 Ayata 2009.

33 UN Development Programme, Progress Report Working Group 1: Access to Justice and Rule of Law. Commission on Legal Empowerment of the Poor.

34 Tarhanlı 2003, *İnsansız Yönetim: Türkiye'de İnsan ve Hakları*, Dost Publications, Ankara.

International Turkey and Ankara University Political Science Faculty Human Rights Center, points in the opposite direction.[35] The report makes recommendations about providing legal aid in civil cases and criminal legal aid services in criminal cases for asylum-seekers, refugees and victims of human trafficking. The report maintains that these individuals who are deported after being prosecuted for violating the Passport Law even before they are able to submit their asylum applications to officials cannot benefit from any legal assistance during this whole process.[36]

The ECtHR decisions where Turkey was convicted such as *Abdolkhani and Karimnia v. Turkey* and *M. B and Others v. Turkey* proved these findings to be accurate. In the first decision, the Court decided that Turkey violated Articles no. 2, 3, 5 and 13 of the Convention by deporting Iranian citizens Mohsen Abdolkhani and Hamid Karimnia who had been granted refugee status by the headquarters of the United Nations High Commissioner for Refugees in Geneva and who as a result of being caught upon illegal entry expressed to the authorities their will to go to Istanbul in order to apply for asylum to Canada and were taken to the foreigners' department in Hasköy. The Court convicted Turkey to pay 40 thousand Euros to the applicants.[37] The Court decided that although the applicants "clearly demanded to be represented by a lawyer", they were not provided with legal aid at the time of their apprehension and indictment as well as during their time at the police headquarters in Hasköy.[38] In the decision *M. B and Others v. Turkey*, on the other hand, the applicants stated that they were taken into custody without being granted the right to objection, that they did not have access to a lawyer during this period of time and that they were brought before the court deprived of any legal representation.[39] "Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals to Legal Aid" calls for the introduction of mandatory criminal legal aid for foreigners who are victims of human trafficking or migrant smuggling and defines this practice as an extension of both constitutional responsibilities and international commitments of the Republic of Turkey. On the other hand, it is demanded that with amendments to the Regulation of the Union of Turkish Bar Associations, "asylum-seekers, refugees, or people whose applications for asylum or refugee are examined or those whose applications are rejected by relevant authorities or non-nationals who are detained by law enforcement agencies for any given reason" should be exempt from the obligation of submitting documents required from citizens of the Republic of Turkey and that the bureaucratic process should be facilitated for these individuals.[40]

Another work that manifests the challenges encountered by refugees and asylum-seekers in terms of access to legal assistance is the November 2007 Report of the Helsinki Citizens

35 **The report was prepared at the end of a workshop on the legal problems of foreigners' guest houses in Turkey co-organized by Amnesty International Turkey and Ankara University Political Science Faculty Human Rights Center. "Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals To Criminal Legal Aid" 2010, co-prepared by Amnesty International Turkey and Ankara University Political Science Faculty Human Rights Center, <http://www.amnesty.org.tr/ai/system/files/EK2.pdf>. For further information on the report, please see, <http://www.amnesty.org.tr/ai/node/1238> ; <http://ihm.politics.ankara.edu.tr/#>.**

36 **"Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals To Criminal Legal Aid" 2010.**

37 **European Court of Human Rights (ECtHR) 2009, *Abdolkhani and Karimnia v. Turkey*, No. 30471/08, September 22, 2009. <http://www.echr.coe.int/Eng/Judgments.htm>.**

38 **Coordination for Refugee Rights 2010a,"Abdolkhani and Karimnia/Türkiye", December 9, 2010. <http://multecihaklari.org/index.php?option=com_content&view=article&id=149:abdolkhani-ve-karimnia-tuerkiye&catid=25:ahm-kararlar&Itemid=83>.**

39 **Coordination for Refugee Rights, 2010b, "M. B. et al. v. Turkey", December 9, 2010. <http://multecihaklari.org/index.php?option=com_content&view=article&id=153:mb-ve-dierleri--tuerkiye&catid=25:ahm-kararlar&Itemid=83>.**

40 **"Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals To Criminal Legal Aid" 2010.**

Assembly which has been providing legal assistance to such individuals since 2004. The report that is authored by Levita, Kaytaz and Durukan contains an analysis of the interviews conducted with refugees from 17 different countries.[41] The report presents rights violations that occur in practice in light of basic international principles on the detention of refugees as well as in the context of the existing legal framework. It is mentioned that the individuals under custody are not informed on how long they will be detained, that there is no judicial supervision mechanism on procedural rights violations and that the access of these individuals to legal representation is very limited. In light of the statements of the interviewed refugees, it is maintained that refugees under custody only rarely have access to legal advice and legal representation. Also, the report highlights that the situation is even more alarming for refugees held in transit regions deprived of any legal assistance. The limitations placed not only upon refugees' access to lawyers but also upon their meetings with civil society organizations increase the legal and administrative problems they experience under their period in custody. Similar findings can be found in Amnesty International's report entitled "Stranded: Refugees in Turkey Denied Protection". This report points to the incompatibility of the asylum procedures in Turkey with international standards and concludes that one of the key indicators of this incompatibility is the limitations and problems related to access to legal assistance. Amnesty International voices concerns about the limited amount of or lack of national regulation related to asylum-seekers' access to legal aid in Turkey.[42]

The functioning of the judicial process in Turkey shows that sometimes the deprivation of refugees and individuals of similar status from support mechanisms can even extend beyond their lifetime. The course of the case of Nigerian asylum-seeker Festus Okey who was shot by the police officer on duty at the İstanbul Beyoğlu Police Station on a charge of "involuntary manslaughter" , in a way manifests the infiniteness of the obstacles before these individuals' access to justice. Besides the problem of access to justice created due to the failure of authorities to identify the victim in the third year of the case, the fact that the organizations such as Migration Solidarity Network (Göçmen Dayanışma Ağı), Human Rights Association, Istanbul (İnsan Hakları Derneği İstanbul Şubesi) and Contemporary Lawyers Association (Çağdaş Hukukçular Derneği) or individuals who wanted to participate in the case were denied participation, demonstrates the extent to which refugees and individuals of similar status are deprived of their rights. These groups and individuals demanded participation because "their conscience is uncomfortable" as citizens of the Republic of Turkey and that "they do not feel safe because of the murder committed at the police station". However, these demands have been rejected unanimously by the penal of judges on the grounds that they have not been direct victims of the offense. Moreover, the Court even filed a criminal complaint against these applicants pursuant to Art. 125 and 288 of the Turkish Penal Code for "insulting the Court via submitting petition and for their verbal and written statements aiming at influencing the penal of judges".[43] The representatives of Contemporary Lawyers Association claimed that their application for criminal legal aid was also rejected on the grounds that Festus Okey was not a citizen of the Republic of Turkey. The efforts of the representatives of this Association to receive power of attorney from Festus Okey's family also failed due to the limited

41 Helsinki Citizen's Assembly 2007, "Unwelcome Guests: The Detention of Refugees in Turkey's "Foreigners' Guesthouses." < http://www.hyd.org.tr/staticfiles/files/multeci_gozetim_raporu_tr.pdf>.

42 Amnesty International 2009, "Stranded: Refugees in Turkey Denied Protection", <http://www.amnesty.org.tr/ai/printpdf/991>.

43 Migration Solidarity Network 2011, "Festus Okey Davasında, Dejavu" (Dejavu in Festus Okey Case), January 27, 2011. <http://gocmendayanisma.org/blog/2011/01/27/festus-okey-davasinda-dejavu/>.

resources of human rights advocates in Nigeria. As a consequence of all these problems, the prosecutor in the court has become the sole advocate of Festus Okey.[44]

ii. Legal Aid and Women

It is possible to observe that the challenges related to refugees and asylum-seekers' access to legal assistance apply to other disadvantaged groups in the society as well. Women and ethnic and religious minorities are the primary groups in this situation. For instance, because women are already subject to inequalities in social life, it is inevitable that they come across difficulties while trying to have access to justice. Istanbul Bar Association's data for 2008-2010 show that the number of women applicants to legal aid is nearly three times higher than the number of men applicants. This can also be interpreted as evidence to the fact that women have greater need for such services than men. Another factor which stands out as a significant development in terms of women's access to legal aid mechanisms and the quality of the service provided is the merger between Women's Rights Centers functioning under two of the biggest Bar Associations in Turkey, Istanbul and Izmir Bar Associations. Istanbul Bar Association's Women's Rights Center was established in 1995 as a commission which later on began to provide legal aid services as a center in order to ensure a more efficient and rapid response to the grievances suffered by women.[45] However, in 2008, the Center was incorporated into Istanbul Bar Association's Legal Aid Center and the majority of women lawyers serving at the Women's Rights Center who were specialized in women's rights issues had to be combined with the list of lawyers providing legal aid.[46] This meant that women complainants applying for legal aid had to receive legal aid from a lawyer appointed from the list which reduces their chances of being appointed specialized women lawyers whom they prefer to consult.[47]. Similarly in 2003, Izmir Bar Association's Women's Rights Center was closed upon allegations that "the Bar Association has a public services bureau" which "actively and successfully carries out the same function".[48] In a social context where violence against women is an everyday phenomenon[49], and where mechanisms to prevent women's victimization are both insufficient and most of the time dysfunctional[50], limitations on the provision of legal aid services by specialized lawyers constitute a problem regarding women's access to justice.

44 Korkut 2009. "Festus Okey'in Tek Avukatı Savcı, O da Bir Şey Talep Etmiyor" (Festus Okey's Only Advocate is the Prosecutor and He Won't Ask for Anything), *Bianet* September 30, <http://bianet.org/bianet/insan-haklari/117353-festus-okeyin-tek-avukati-savci-o-da-bir-sey-talep-etmiyor>.

45 Koyuncuoğlu 2009, "Baro'da Gönüllü Avukatlar" (Voluntary Lawyers At the Bar), *Radikal*, January 25, 2009. <http://www.radikal.com.tr/Radikal.aspx?aType=EklerDetay&ArticleID=918351&CategoryID=42>.

46 For Istanbul Bar Association's Executive Committee Decision, please see, <http://www.istanbulbarosu.org.tr/Detail.asp?CatID=1&SubCatID=1&ID=3821>.

47 At this point, the fact that 49% of women who are victims of domestic violence never talked about this with anyone gives significant information on the sensitivity of these cases and thus on the difficulties of sharing them. General Directorate on the Status of Women, 2009, "Summary Report of Research on Domestic Violence Against Women in Turkey", <http://www.ksgm.gov.tr/Pdf/siddetarastirmaozetrapor.pdf>.

48 *Türk Hukuk Sitesi*, June 5, 2003, "İzmir Barosu Kadın Hakları Danışma ve Uygulama Merkezi Kapatıldı!!!" (İzmir Bar Association's Women's Rights Solidarity and Implementation Center Closed!!!),<http://www.turkhukuksitesi.com/showthread.php?t=2545>.

49 Official data concerning only officially married women show that 39% of women in Turkey have been subject to physical violence at some point in their lives. General Directorate on the Status of Women, 2009.

50 92% of women who state that they have been victims of domestic violence in Turkey state that they have not made any applications regarding this situation. This finding requires questioning the accessibility of public institutions with a responsibility to prevent such grievances by these women. General Directorate on the Status of Women, 2009. At the same time, the low number of shelters for women who are victims of violence and the problems with the violation of the privacy of these shelters also result with increased victimization. *Kaos GL* 2010, "Kadın Sığınakları Kurultayı Sonuç Bildirgesi Yayınlandı" (Women's Shelters General Assembly Final Declaration Issued), December 31, 2009. <http://www.kaosgl.com/icerik/kadin_siginaklari_kurultayi_sonuc_bildirgesi_yayinlandi>.

iii. Legal Aid and LGBT

In addition to asylum-seekers, refugees and people of similar status and women, LGBT (Lesbian, Gay, Bisexual, Transgender) individuals are subject to multiple victimization but their disadvantaged position is more often than not ignored in political rhetoric as well as social demands. The challenges faced by these individuals in terms of access to justice are an issue that should be tackled separately. Leave aside the fact that these groups have not been recognized as disadvantaged in the official discourse and programs, they have also not been the subject of any efforts of improvement or strengthening by the government. Particularly the frequency and prevalence of incidents of violence that transgender individuals are exposed to, be it in their social encounters or with the law enforcement, necessitates the rapid identification and resolution of the difficulties suffered by these individuals with regards to access to legal assistance. For instance, on the evening of May 17, 2010, five transgender activists who are also members of Pembe Hayat Life LGBTT Solidarity Association were told to pull over by the police, forced to get out of the car although they had shown their identity cards and beaten and kicked with batons. This incident is a clear manifestation of the routine violence faced by these individuals. Besides the fact that criminal complaints filed by the victims following the incident did not result in any progress, the police also filed a criminal complaint against the victims for "resisting the police", "damaging public property" and "insult".[51] It is possible to observe that in recent years, this attitude has almost become a tactic developed by law enforcement officials against human rights movements. A "revengeful" attitude towards not only LGBT groups but all human rights organizations is the case. This situation presents a serious challenge to the effectiveness of the channels through which legal remedies are sought in the sense that any potential attack from the law enforcement may discourage these groups and individuals from claiming their rights.

At the same time, in cases where the judiciary adopts a similar attitude, the gravity of the situation in terms of seeking rights increases. For instance in the case of Festus Okey, the Court filed a criminal complaint against those who asked to be participants in the case for "insulting the Court by submitting a petition and verbal and written statements to influence the penal of judges" in line with Articles no. 125 and 288 of the Turkish Penal Code (TPC). Similarly, a criminal law suit was filed against the family of Baran Tursun who was killed because of allegedly "not stopping after the warning stop made by the police". The family was accused of "influencing officials who serve in the judiciary" and "insulting the Government, judiciary, military and law enforcement officials". On the other hand, it is alleged that certain methods are used to persuade those who seek to bring cases of police violence before the court to withdraw their complaint, and if they refuse to do so difficulties are created in these people's work environment and those who intend to file a complaint are thus sent "warning messages" and threatened.[52] This situation is no doubt extremely

51 *Kaos GL* 2011. "Pembe Hayat 2010'u Değerlendirdi" (Pembe Hayat Assessed 2010), January 3, 2011. <http://www.kaosgl.org/icerik/pembe_hayat_2010u_degerlendirdi>. Reportedly, this incident attracted attention of international transgender rights activists so the case was dropped after one hearing. However, a similar incident was experienced on the night of June 19, 2010 where again three trans actvists were taken into custody forcefully by the police and a case was filed against them again for "resisting the police", "damaging public property" and "insult". The last hearing of the case was held on October 25, 2011 and the activists were sentenced to imprisonment from 5 months to 1 year. The sentences of Tunç and Güdümlü have been postponed, but the 5 month sentence of Kılıçkaya remains in effect. However, there seems to be no development with regards the activists' complaint against the police officers for arbitrary custody. *Kaos GL 2011*. "Trans İnsan Hakları Savunucularına Hapis Cezası Verildi" (Trans Human Rights Activists Sentenced to Imprisonment), October 25, 2011. < http://www.kaosgl.com/sayfa.php?id=9874>.

52 Kılıçkaya 2010, "3 Mart Dünya Seks İşçileri Günü" (March 3, World Sex Workers Day), *Lubunya*, Sayı 5.

alarming particularly for those individuals who work under life-threatening conditions. The attitudes of law enforcement officials towards these incidents, the ways and the language in which the mainstream media portray these cases of transgender people, the transphobic experiences during the judicial process, the loopholes in the legislation[53] and the indifference of the political authority regarding the issue[54] are accepted as indicators of the status of transgender individuals "as one of the most vulnerable groups among social groups in Turkey in the face of violence and as one whose demands are most ignored."[55]

At this point, one should emphasize the fact that discrimination and hate crimes committed against LGBT individuals are not limited with those committed by the state; discriminatory practices and hate crimes also occur on a social and political basis, in other words, at the horizontal level. The discriminatory attitudes of citizens or their actions which should be considered within the scope of hate crimes are viewed as a weakness on the part of the state due to the failure to fulfill its responsibility to prevent and sanction such actions.[56] LGBT individuals and particularly transgender people who face serious obstacles in filing complaints for acts of violence they suffer from or even in bringing these acts before judicial institutions come to face the "heterosexist ideology" that is reproduced in the attitudes of the judiciary. Especially, the frequency of resorting to "unjust provocation" that results in the reduction of the sentence by one fourth in gay or transgender murder cases indicates that these homophobic and transphobic attitudes and the violence they lead to are considered "understandable" in judicial practices.[57] These reduction decisions are rendered in accordance with the definition of "unjust provocation" as outlined in article no. 29 of the TPC which goes as: "When individuals commit a crime in a state of anger or mental anguish induced by an unjust action, their aggravated life sentence penalty may be reduced to 18-24 years and their life sentence penalty may be reduced to 12-18 years. In other cases, from one fourth to three-fourth of the penalty to be given is reduced". The article is reasoned by stating that "what is meant by unjust provocation is any behavior that is not considered being appropriate by the legal system", and it is maintained that a natural consequence of this reasoning would be

53 **There is no regulation in the Turkish legislation which defines "hate crime" and foresees sanctions regarding this crime. Besides, there isn't any specific "discrimination" law either. On the contrary, it is even observed that the existing legal framework is used as an instrument for discriminatory or even violent interventions against LGBT individuals. Turkey Progress Report 2010.**

54 **This indifference is mainly associated with the lack of regulations on the security in working and living conditions of transgender individuals and particularly with the absence of a law against "transphobic hate". Pembe Hayat 2010, *Transfobik Nefrete Karşı Bize Bir Yasa Lazım!*, Nefret Suçları Mağduru Trans Bireyleri Anma Buluşması Kitabı (*We Need a Law Against Transphobic Hate!, Book on the Meeting in Memoriam of Trans Individuals who have been Victims of Transphobic Hate Crimes*). The former State Minister Responsible for Women and Family Selma Aliye Kavaf's March 7, 2010 statement in an interview where she said "I believe that homosexuality is a biological disorder, a disease. It needs to be treated" is undoubtedly one of the most significant examples of the homophobic, transphobic and discriminatory statements made by political authorities with regards to homosexual and transgender individuals. Bildirici 2010, "Eşcinsellik Hastalık, Tedavi Edilmeli" (Homosexuality is a Disease, It Needs to be Treated), *Hürriyet*, March 07, <http://arama.hurriyet.com.tr/arsivnews.aspx?id=14031207>.**

55 ***Kaos GL* 2011.**

56 **This situation was confirmed with the decisions of ECtHR in Hrant Dink and Nahide Opuz cases. Ataman 2010, "Sorumlu Kim?: "Nefret Suçlarını Yaratan Dinamikler" (Who is Responsible: Dynamics Creating Hate Crimes), *Transfobik Nefrete Karşı Bize Bir Yasa Lazım!" Nefret Suçları Mağduru Trans Bireyleri Anma Buluşması Kitabı* (*We Need a Law Against Transphobic Hate!, Book on the Meeting in Memoriam of Trans Individuals who have been Victims of Transphobic Hate Crimes*), PembeHayat, p. 20.**

57 **See Karaca 2009, "Lezbiyen, Gay, Biseksüel, Travesti ve Transseksüeller Onur Haftalarında Son Bir Yılda İşlenen 13 Eşcinsel Cinayetini Sorguluyorlar: 'Biz De Varız!'" (In Their Pride Week, Lesbians, Gays, Bisexuals, Transvestites and Transsexuals Question the Murder of 13 Homosexuals in the Last Year: We Exist too!), *Yeni Aktüel*, <http://www.yeniaktuel.com.tr/top110,194@2100.html>.**

defining homosexual relationship as an attitude deemed inappropriate by the legal system".[58] It is possible to think that this situation shows that in terms of the reduction in the penalty "the lives of the individuals in question are less valuable than those of heterosexuals".[59]

This state of extensive "vulnerability" that is the consequence of being marginalized by the law enforcement officials, the judiciary, the media and the society all together can be even more aggravated when sex workers are in question. Within the framework of a research by Human Resource Development Foundation for the "Project on Social Cooperation for Democracy and Human Rights" organized by the Municipality of Kadiköy, 50 sex workers who work within the boundaries of Kadıköy Municipality were interviewed with regards to their experiences with violence. 43 participants said their clients committed acts of violence against them while 37 of them stated that they have been victims of police violence.[60] Around half of the participants said that despite having notified the police and/or the prosecutor's office regarding the violence from the clients, legal procedures were initiated in only few of these complaints, and that in even fewer of these complaints the complainant received a "decent" treatment. In other cases, sex workers who have been victims of violence stated that the officials did not attend to their case, that they were insulted or battered.[61] Of course, these incidents block the channels through which these individuals seek legal remedies when they are subject to violence.

2. ACCESS TO INFORMATION

Given that legal aid is not solely "legal representation" but also and quite often "access to legal information" and as such can be seen mainly as a "protective" and "preventive" mechanism, another significant issue in terms of access to justice is "access to information".[62] Easy and rapid access to relevant information regarding legal regulations and transactions is also the second issue covered under access to justice in the Judicial Reform Strategy. This issue presents a serious challenge in terms of access to justice in societies like Turkey where a significant portion of the population has a low level of knowledge on the legal system and legal rights. Research shows that there is a serious lack of information among citizens in Turkey about judicial activities and transactions as well as legal rights. According to the results of a nationwide survey in Turkey, 41.4% of 3000 respondents have no knowledge/information on the legal system and law in general, and 45.4% of them only have little information. These responses were verified through answers given to questions that evaluated the level of knowledge on some basic issues regarding the legal system. The figure below shows the percentages of wrong answers given to some questions on general knowledge.[63]

58 Özsoy 2009. "Eşcinsel İlişki Teklif Etmek 'Haksız Bir Fiil' Midir?" (Is Proposing Homosexual Relationship an 'Unjust Act'?), *Bianet*, March 17, <http://bianet.org/bianet/toplumsal-cinsiyet/113198-escinsel-iliski-teklif-etmek-haksiz-bir-fiil-midir>.

59 Güner 2009. "Ağır Tahrik Teşviki" (Promotion of Severe Provocation), <http://www.kaosgl.com/content/agir-tahrik-tesviki>.

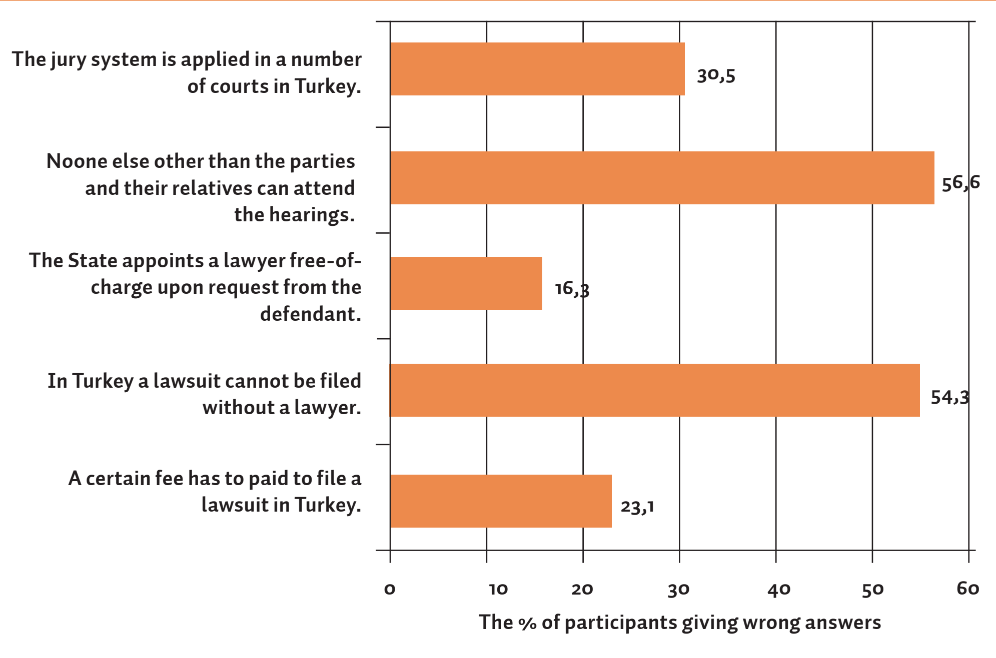
60 Küntay ve Çokar 2007, "Ticari Seks Medya Dosyası" (Commercial Sex Media File), Cinsel Eğitim Tedavi ve Araştırma Derneği-CETAD (Society for Sexual Education, Treatment and Research), <http://www.ikgv.org/sws_dosyalar/CETAD_resimli.pdf>.

61 *Ibid.*

62 Elveriş 2006.

63 The correct answers to these questions are as follows: Wrong, Wrong, Right, Wrong, Right.

Figure 1. The percentage of respondents who gave wrong answers to a number of information questions on the legal system and rights.[64]



In light of the information above, it is possible to maintain that a significant portion of the society lacks basic legal information which can influence the exercise of their rights. For instance, given the low number of individuals benefiting from representation by a lawyer, the fact that more than half of the respondents believe that a lawsuit cannot be filed in the absence of a lawyer might constitute a serious obstacle before access to justice. This proves once again the necessity of an accessible and high-quality legal aid system because obstacles stemming from citizens' lack of information, the expensiveness or the inaccessibility of legal representation can be overcome through a well-functioning legal aid mechanism. The same study also assessed citizens' level of knowledge on the Right to Information Act which is a significant development in ensuring transparency and accountability in the relation of citizens to public institutions. The results of the survey demonstrate that 76.5% of the respondents were not aware of such a right and 33% were misinformed about it. For instance, 5.9% of the respondents who said they knew what the "Right to Information" meant, defined this right as "the right of a citizen to request any information on other citizens from public institutions", whereas a significant 27.2% defined it as "the obligation of citizens to provide the government with any information it requests, that is, the right of the state to be informed about citizens".[65]

At this point, when the existing situation regarding the insufficient dissemination of information is closely examined, it becomes clear that basic legal information is hardly shared by the society at large. This can be considered as a natural consequence of the failure of the official education system to provide such information and the lack of comprehensible and accessible presentation of such information by the public institutions in daily life. For instance, at courthouses which are the most visible faces of law in practice, citizens' access to basic information regarding legal transactions is seriously hindered by the

64 This figure was originally published in Kalem et al. 2008a, p. 23.

65 These results also provide significant indicators on people's perceptions of the state. Kalem et al. 2008a.

lack of units that are designed to provide such information. An observation study carried out in 10 courthouses in Istanbul revealed the lack of an information desk or a front office from where people can receive information on basic procedural issues.[66] On the other hand, various NGOs provide legal consultancy services to those groups who are underlined in the Strategic Plan as "in need of" such services. For instance, the Consultancy Center which functions under Van Women's Association (VAKAD) provides psychological as well as legal support for women. According to the data collected by VAKAD, in 2009, 408 women applied to the Association for the first time. Data show that 21% of these women apply directly for legal support and such requests are almost always submitted alongside applications for protection and accommodation. Data also show that the most frequent request is related to economic support and women tend to give up their rights to file a lawsuit because of economic concerns. Thus, legal aid services play a vital role in women's lives.[67] The Association is known to have received 245 applications from refugees and asylum-seekers in 2009. Data also reveal that the majority of the applications were submitted for reasons such as "seeking support in writing official letters of request, seeking support and guidance in carrying out transactions in state institutions, economic aid demands (assistance in employment, housing benefit and coal aid), psychological support and accommodation request due to exposure to violence and similar reasons".[68]

As underlined in the beginning of this report, various activities carried out by the EU in the field of access to justice are tackled within the scope of Priority no. 24.13 of the 2003 National Programme and these activities are assessed in the Urgent Action Plan of the 58th Government. In this framework, "launching information campaigns and the publication of user manuals on access to justice, the establishment of a database on legal issues and a judicial network" as well as "the preparation of standard multilingual court petitions" are among the goals set under the title of "Democratization and Legal Reform" in the Urgent Action Plan of the 58th Government dated January 2003.[69] In line with these goals, activities such as the establishment of "Legal Advice Offices" which will be in charge of "raising awareness nationwide and providing basic legal information that can prevent disputes among citizens before they actually take place", and the publication of "informative booklets, brochures, leaflets and guidebooks by public institutions and organizations to inform citizens about their roles and responsibilities with regards to their fields of operation" are defined as "protective law" activities.[70] Similarly, in the 60th Government's Action Plan dated January 10, 2008, it is stated that the citizens will be informed about their rights and responsibilities via methods such as "offices, kiosks, announcement boards, internet, manuals, brochures" under "protective law" activities. The 60th Government's Action Plan sets as a goal, the provision of basic legal information starting from primary school in order to "prevent the emergence of conflicts in basic issues among citizens".[71] On the other hand, the report prepared by the Judicial Services Specialization Commission (Adalet Hizmetleri Özel İhtisas Komisyonu) for the period 2007-2013, the "Judicial Services Vision" for 2013 was defined as follows: "Establishing a fair legal system and providing our society with easy, rapid, well-targeted, efficient and reliable legal and judicial services

66 Kalem et al. 2008b. *Adliye Gözlemleri* (Court Watch), İstanbul Bilgi University Publications, İstanbul.

67 Van Women's Association Consultation Center Data for 2009, <http://www.vakad.org.tr/index.php?action=icerik&sayfa_no=29>.

68 Van Women's Association Consultation Center Data for 2009.

69 58th Government of the Republic of Turkey, Urgent Action Plan, 2003, <http://ekutup.dpt.gov.tr/plan/aep.pdf>.

70 58th Government of the Republic of Turkey, Urgent Action Plan, 2003.

71 60th Government of the Republic of Turkey, Action Plan, 2008, <http://ekutup.dpt.gov.tr/plan/ep2008.pdf>.

in line with the requirements of the democratic, secular and social rule of law state and the fundamental principles of universal law".[72] Emphasizing the significance of taking into consideration the people who will benefit from these judicial services, the Commission also considered "the creation of environments aiming at providing a continuous, viable training on law and justice for every segment and level of the society, and raising individuals with a strong conscience of law and justice" among its objectives.

The Judicial Reform Strategy also points out those necessary steps to put these activities defined under the title of "protective law" in the Government Programme into practice will be taken. For instance, the Ministry of Justice cooperated with the Council of Europe in organizing the EU-financed project titled "Support to Court Management System in Turkey" between December 1, 2007 and November 30, 2009. Within the framework of this project, a needs assessment study was carried out following visits to courthouses of different sizes and with different characteristics in different regions of Turkey. The results of the report drafted at the end of these assessments have been implemented in five pilot provinces: Aydın, Manavgat, Mardin, Konya and Rize. The second phase of the project, on the other hand, focused on informing the personnel and the citizens on the court system as well as on activities aimed at increasing awareness on the functioning of this system. Within this framework, in order to ensure the continuous and timely delivery of judicial services, the project aimed at establishing front offices so that some of the routine tasks undertaken by court clerks can be transferred to these offices. At the same time, information desks from where the citizens can get the necessary information on the courthouse together with the establishment of colored directional signs and the preparation of brochures containing general information about the functioning of the courthouse have also been envisioned as means to make sure that the people can have easy access to the unit and the information they seek in this setting. The results of the needs assessment study conducted within the framework of this project go hand in hand with the assessment made above regarding the courthouses in Istanbul. The preliminary work demonstrates that in the absence of information desks, even those people who have come to courthouses for simple transactions are disoriented in these settings and that the fact that they may not always get responses from the courthouse personnel might also create tension. Therefore, individuals who are trained within the framework of this pilot project began to serve at the recently installed information desks. The trained personnel to be deployed in the front offices will have functions beyond that of information desks and will follow up all transactions regarding the documents submitted by citizens to the courts or those requested from the courts. An increase in the level of knowledge and awareness of the legal system in general is targeted through brochures that give clear and practical information on what citizens should do when they are at the courthouse.

Following this project, in the 2009 dated "Information Note on the Projects of the Ministry of Justice" (Adalet Bakanlığı Projeleri Hakkında Bilgi Notu) prepared by the Directorate General for EU Affairs of the Ministry of Justice, it is stated that a new project entitled "Strengthening the Court Management System in Turkey" is launched for the period of December 2009-December 2011. The objective of this new project is stated to be the wider implementation of the system established in the scope of "Support to Court Management System in Turkey" project by increasing the number of pilot courthouses up to 20. Although these initiatives portray an ambitious program on behalf of the government, the fact that no official assessment has been made regarding the impact of the activities in the

72 9th Development Plan (2007-2013) Report of the Expert Commission on Judicial Services. Adalet Hizmetleri, <http://plan9.dpt.gov.tr/oik20_1_adalet/adalet-9p-oik.pdf>.

first project or the ones planned out in the scope of the second one again makes it hard to assess the extent to which these initiatives in fact contribute to improvements in access to justice.[73]

On the other hand, it is possible to have access to the assessments of the activities carried out by the Bar Associations in the provinces where some of the selected pilot courts are located. For instance, in a working group meeting with the presidents of five Bar Associations, the President of Rize Bar Association, stated that in the scope of this project "the hearing notification system started to be applied in Rize for the first time in Turkey" and that as a consequence of the project activities, Rize Courthouse now looks "very modern and functional".[74] However, it is also added that the failure to address the demands of the lawyers during the planning and implementation stages of the project as well as the failure to incorporate the assessments of Bar Associations in the action plan of the project have resulted with serious shortcomings. The Presidency of Mardin Bar Association took this criticism one step further by filing a lawsuit against the Ministry of Justice in 2009 demanding "the annulment of the project and the illegal administrative actions and transactions related to the implementation of the project and the suspension of execution". The plaintiff, Mardin Bar Association, maintains that some of the arrangements foreseen in the project are not compatible with the existing physical conditions at the courthouse, that these arrangements are likely to impede lawyers' work and that the project tries to relieve the workload of the clerks who are already coping with a heavy workload through the deployment of a limited number of front office personnel.

On the other hand, another reason behind the ignorance on legal rights is the incomprehensibility of the language used both in verbal and written legal transactions, particularly for the poor and uneducated sections of the society. Given that nowadays, the right to self-representation is gaining support from different circles, it is crucial that basic legal information is not only accessible but also understandable by the people at large. As the language of law is a technical language, it is no doubt that for many who have not pursued a law degree or who do not have a legal background, it is a special language that is difficult to comprehend. However, it is also observed that this situation is particularly alarming for people who are disadvantaged in social and economic terms. For instance, it is argued that the poor can be subject to various types of victimization, incidents of "exploitation" or "abuse" just because they do not know or understand the laws.[75] Similarly, it is maintained that women are more likely to have problems in terms of access to justice both because of the difficulties they face under oppressive traditions and the sexist distribution of roles in public life and because they lag behind men in terms of benefiting from education opportunities.[76]

Beyond the lack of sufficient command of the legal terminology or the inability to read or understand legal documents due to illiteracy, this situation can also manifest itself in terms of the issue of mother tongue in which case the possibility of multiple victimization is even more likely.

73 For an exception, please see, Konya Regional Administrative Court, <http://www.konyabim.adalet.gov.tr/default.asp?id=projeler>.

74 Rize Bar Association, <http://www.rizebarosu.org/baroduyuru.aspx?id=94>.

75 UN Development Programme 2008; Ayata 2009.

76 Ayata 2009. According to the TurkStat data for 2009, 80% (among a total of 5.672.252 people, 3.757. 203) of all illiterate individuals in the 6-65+ age group are women. TurkStat 2009b, "Population according to literacy, gender and age group", <http://tuikapp.tuik.gov.tr/adnksdagitapp/adnks.zul?kod=2>.

3. INTERPRETATION IN COURTS

The issue of interpretation services in courts which is the third title in the Judicial Reform Strategy is one of the particularly emphasized problems by the access to justice movement. The issue is emphasized mainly in reference to "language barriers" faced by individuals in their dealings with public institutions, and particularly with law enforcement officials, prosecutor's office and courts because they do not sufficiently understand or not understand at all the legal terminology.[77] Studies and regulations on the right to translation and interpretation services in judicial proceedings reveal that the issue is often addressed within the framework of two main issues.[78] The first of these issues is related to the *accessibility* and the second to the *quality* of translation and interpretation services. The issue of accessibility necessitates evaluating the *scope* of the existing services -whether they are available only in criminal procedures or in all procedures-, the *number of existing translators and interpreters* -particularly the sufficiency of the services in the face of growing demand-, and the *functionality of the institutional infrastructure* providing such services -particularly the appointment system of interpreters. In this context, when assessing the accessibility of these services, we should primarily consider the scope of these services and the possible access to justice problems that emerge in the absence of such services. For instance, in the State of California in the U.S., the fact that interpretation services are provided only in criminal cases seems to reinforce the disadvantaged status of immigrant groups in particular because these groups already face problems in areas such as employment, education, housing, health, social security and family matters. In this case, many of these individuals whose English is not good enough are often deprived of rights such as minimum wage, overtime wage or the right to a decent and safe working environment mainly because they have beginners' or seasonal jobs or jobs without social security. Therefore, it is stressed it is particularly significant for these groups' access to justice to believe they can take their problems to judicial mechanisms.[79] It is possible to say that in Europe the scope of the service is wider because the right to interpretation is also regulated for civil procedures although it is generally based on demand. The problem of low number of interpreters which constitutes the other dimension of accessibility, on the other hand, seems to be a far more common problem. Finally, issues concerning the ways in which interpretation services are regulated, whether interpreters work under a separate unit or not, and how these people are appointed are other problems that could constitute obstacles before the accessibility of the services provided. This brings along the question of how and by whom the need for interpretation is identified. It is particularly stressed that in cases where judges or other judicial personnel decide whether interpretation services are needed or not, these people should receive special training that will allow them to understand how much support the individual before them needs.[80]

77 "Translating Justice", Vera Institute of Justice, <http://www.vera.org/project/translating-justice>; Shah, Susan, Insha Rahman and Anita Khashu, 2007.

78 Shah et.al. 2007. "Overcoming Language Barriers: Solutions for Law Enforcement", Vera Institute of Justice, <http://www.vera.org/download?file=411/Overcoming%2BLanguage%2BBarriers%2BFINAL.pdf; "Translating Justice", Vera Institute of Justice, <http://www.vera.org/project/translating-justice>; "Laying the Path: Creating National Standards for Language Access to State Courts". American Bar Association Standing Committee on Legal Aid and Indigent Defendants, <http://www.abanet.org/legalservices/sclaid/atjresourcecenter/downloads/2010_LanguageAccess.pdf>; Hang Ng 2009, "Beyond Court Interpreters: Exploring the idea of designated Spanish-speaking courtrooms to address language barriers to justice in the United States", Rebecca L. Sandefur (der.), *Access to Justice. Sociology of Crime, Law and Deviance*, Volume no.12; *Aequitas: Equal Access to Justice across Language and Culture in the EU*, Antwerp: Lessius, 2001, (GROTIUS Project 98/GR/131), <http://www.agisproject.com/>.

79 "Language Barriers to Justice in California" 2005, A Report of the California Commission on Access to Justice, <http://www.svcls.org/media/1880/language%20barriers%20to%20justice%20in%20california.pdf>.

80 "Language Barriers to Justice in California" 2005; Shah et.al.. 2007.

The provision of interpretation services for those who do not speak or understand the official language or who cannot express themselves well in the official language is a must in terms of the principle of equality; however, there is another issue that can be considered within the framework of access to justice which is covered in international studies or reports but not approached in a systematic fashion. This is the issue of whether individuals can demand to communicate in their mother tongue in judicial procedures although they can speak the official legal language. In this context, defense in mother tongue is conceptualized as a preference rather than a *necessity*, thereby shifting the axis of the issue from an equality-based approach towards a political and cultural rights context. For instance, in Belgium which has three official languages, laws stipulate that every citizen before the courts is free in the selection of the language to use in the court. In this practice, the official documents should state that such a right to select the language of communication is granted to the individual, otherwise the transactions would be void.[81] In Canada which has a bilingual official judicial system, this issue is considered within the framework of "language rights".[82] Therefore, in addition to the right to express them in the official language of their choosing in judicial procedures, the Official Languages Act also grants every individual the right to be "heard" and "understood" in the language of their choice without an interpreter's assistance. This right necessitates that judges understand both official languages in which judicial services are provided; therefore, the issue is rather considered as a "right to communication".[83]

On the other hand, the decisions of the United Nations' Human Rights Committee which monitors the implementation of UN Covenant on Civil and Political Rights on the issue of courtroom interpretation point to the contrary. In *Guesdon v. France* and *Shukuru Juma v. Australia* decisions, the Committee decided that it is not a requirement of the right to a fair trial for the state to provide interpretation services ex officio or upon demand to those individuals whose mother tongue is different from the official legal language but who can express themselves in the official language. In the former decision, the Committee decided that the right to a fair trial granted to the applicant as defined in the article 14 of the Covenant on Civil and Political Rights includes the right of the suspect to expresses herself in criminal procedures in the language in which she normally expresses herself and rejected the claim that the failure to provide interpretation services in the present case would violate Art. 14 of the Covenant. In the second decision, the fact that the applicant's sufficient command of English was certified was one of the reasons why the court denied the applicant's claims that the right to interpretation services was hindered.[84] In other words, the Committee decided that the use of only one official language in courts does not violate Art. 14 and the right to a fair trial does not require the provision of interpretation services to individuals who are able to express themselves in the recognized official language.

The second significant issue in terms of interpretation services in judicial procedures is related to the *quality* of this service. In most cases, the lack of standards on the qualifications of interpreters often comes up as the first

81 Hertog and Bosch,"Access to Justice across Language and Culture in the EU", ed. Erik Hertog, *Aequitas Access to Justice across Language and Culture in the EU*, <http://www.eulita.eu/sites/default/files/Aequitas_Acces%20to%20Justice%20across%20Language%20and%20Culture%20in%20the%20EU.pdf>.

82 For more information on the Canadian Model, see, Department of Justice Canada, "Initiative in Support of Access to Justice in both Official Languages", <http://www.justice.gc.ca/eng/pi/pb-dgp/prog/olsf-fajlo.html>; Canadian Heritage, Roadmap for Canada's Linguistic Duality 2008-2013,<http://www.pch.gc.ca/pgm/slo-ols/strat-eng.cfm>.

83 Hang Ng 2009.

84 The United Nations Human Rights Treaties, <http://www.bayefsky.com/themes/legal_criminal_interpreter_jurisprudence.php>.

problem about the quality of the service. This issue should be given priority in that it creates serious differences in the services provided by different interpreters appointed during hearings or at other stages of judicial process. For instance, research conducted in California reveals that despite the increase in demand for interpretation services many individuals cannot benefit from these services due to the decrease in the number of qualified interpreters. It can be said that this situation is also related with the fact that court interpretation is a highly demanding profession that requires serious skills and training. People who will work in this area need not only be experts in both languages but they also need to be able to translate what is said in one language into another preserving the integrity of the message and paying attention to all differences in dialect/accent/cultural meaning, to body language, movements, gestures and the specific legal terminology.[85] It is maintained that qualified interpreters would be able to translate in full not only the content of the statements in courts -here familiarity with legal terms becomes significant-, but also all elements related to the form of the statements such as the "pauses", "hesitations" or the "self-correction" of the person.[86]

The EU also grants significance to similar concerns and particularly to the issue of identifying the standards related to the qualifications of court interpreters. It is argued that due to the fact that "linguistic proficiency" levels for court translators and interpreters have not been standardized across the EU member states, the recommendations related to quality should be as "explanatory and detailed" as possible.[87] In the EU Directive 2010/64 which was issued in 2010 regulating the right to interpretation and translation services in criminal procedures, guaranteeing the quality of such services is emphasized as a basic obligation of the member states. The Directive also holds the member states responsible -as long as it is in tandem with their own national regulations- for guaranteeing the suspect's or defendant's right to question a decision that deems interpretation services unnecessary. This opened up the way for increasing the transparency of standards used in identifying the situations where interpretation services are necessary.[88]

i. Interpretation in Courts, Defense in Mother Tongue and the case of Turkey

As the accessibility and quality of interpretation services in court hearings is an issue covered in the Judicial Reform Strategy, it seems like lately the Ministry of Justice grants significance to this matter. The subtitle 7.4 under the main title of "Facilitating Access to Justice" is related to setting standards for interpretation services in courts which discuss primarily the challenges encountered in finding qualified interpreters. In this context, due to the difficulty of finding professional interpreters in "local languages" spoken by the people, officials on duty are used for such services which are alarming for the quality and reliability of the interpretation.[89] However, it can be observed that what is meant by the standardization of interpretation services within the framework of the Judicial Reform Strategy is in fact "the identification of individuals whose reliability and objectiveness is recognized by everyone and who has a very good command of the local language in question, the announce-

85 "Language Barriers to Justice in California" 2005.

86 Gonzales et.al. 1991. *Fundamentals of Court Interpretation: Theory, Policy and Practice*, Carolina Academic Press, Durham, NC, "Language Barriers to Justice in California", 2005.

87 Ostarhild, "Linguistic standards for legal interpreters and translators at Diploma or First Degree level and at MA level", ed. Erik Hertog, *Aequitas Access to Justice across Language and Culture in the EU*, <http://www.eulita.eu/sites/default/files/Aequitas_Acces%20to%20Justice%20across%20Language%20and%20Culture%20in%20the%20EU.pdf>.

88 Official Journal of the European Union, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:280:0001:0007:EN:PDF>.

89 Judicial Reform Strategy of the Ministry of Justice, 2009.

ment of these individuals in advance like an expert list and the submission of these names to the courts". In other words, the Judicial Reform Strategy does not foresee any instruments such as an official training or exam requirement for individuals who will serve as legal translators or interpreters in judicial procedures or a supervising unit to identify or assess the quality of the services provided. In the Strategic Plan of the Ministry of Justice for 2010-2014, one of the set goals is defined as "carrying out efforts to introduce standards for interpretation services in courts until the end of 2010" and the fact that efforts on changing the legislation have been initiated is considered as a "performance indicator".[90]

Although the right to interpretation services in judicial procedures is granted by the laws -albeit in a limited fashion-, as is the case in other issues related to access to justice, it can be observed that this right has not been sufficiently realized in practice.[91] For instance, providing rapid and high quality interpretation services for refugees and asylum-seekers not only in courts but at every stage of the judicial process to ensure that they fully understand legal transactions is of vital importance in terms of access to justice. Otherwise, given the difficulties these people face in terms of access to legal aid, they would be completely defenseless in the face of legal transactions initiated against themselves. It is known that because these individuals do not have a command of the Turkish language or of Turkish laws, in the absence of interpretation services they are often deported before even placing their asylum applications. Therefore, in the report "Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals to Legal Aid", there is a demand for amending Art. 150/2 of the Turkish Penal Code which regulates legal aid to incorporate the provision "to assign a criminal legal aid lawyer for suspects, defendants and victims of foreign origin who do not speak Turkish without their application for criminal legal aid".[92] The lack of progress in issues related to the use of the right to interpretation together with the fact that even in cases where such services are provided there are serious problems with quality are also issues raised in various reports on Turkey's EU accession process.

It is also possible to consider the exercise of the right to interpretation as an issue of seeking legal remedies in an individual's mother tongue. This issue has not been fully explored in international studies or regulations. In paragraph 3(e) of Art. 6 of the European Convention on Human Rights, the right to have the free assistance of an interpreter in cases where the person charged with a criminal offence cannot understand or speak the language used in court is considered to be among the minimum rights of any such individual. It is maintained that such a situation is foreseen in cases where the individual in question does not understand or speak the language used in hearings. In other words, the right to interpretation is not valid for those who can understand or speak the legal language yet demand to give their statements or defend themselves in their own mother tongue. This

90 Strategic Plan of the Ministry of Justice 2010-2014,

91 The provision of legal interpretation services in criminal procedures is limited to situations where the defendant or the victim does not have sufficient command of Turkish to express themselves and/or where the defendant or victim is disabled. In civil procedures, interpretation services are foreseen in situations where witnesses do not speak Turkish or where they are 'deaf, mute'. At the same time, the Ministry of Justice Circular no. 632 on "Refugees and Asylum-Seekers", regulates the issue of identifying translators-interpreters who will serve during the applications within the framework of the privacy of data related to individuals who apply for asylum and for refugees and asylum-seekers. As to the quality of the services provided by interpreters and the qualifications of these interpreters, the Notary Law envisages that in cases where the person in question does not speak Turkish,"an interpreter under oath" shall also be present during notary transactions. However, issues such as the appointment of these interpreters, the procedure of oath taking and the withdrawals of interpreters from duty have not been regulated.

92 Working Group Report on the Access of Refugees, Asylum-Seekers and Other Non-Nationals To Criminal Legal Aid", 2010.

situation is associated with the fact that the Convention regulates the right to interpretation with the objective of "eliminating the possible inequalities among those prosecuted which may stem from a language problem".[93] For instance, in the case of *Luedicke, Belkacem* and *Koç v. Germany*, the Court ruled that the fact that the convicted party was also made to pay interpreter's fees was against Art. 6 and 14 of the Convention. This ruling is associated with the fact that the covering of interpretation fees has been associated with the principle of equality of arms in judicial proceedings. Also, the Court reached the conclusion that the right to interpretation also includes the defendant's right to demand the translation of documents against her.[94] The EU Directive 2010/64 which is one of the most significant steps taken by the EU in this direction, limits the scope of the right to interpretation to cases where the suspect or the defendant does not speak or understand the language in criminal procedures. However, in Belgium, for instance, individuals are granted the right to decide on the language in which they will defend themselves. Of course, this freedom is limited to the right to defense in one of the three official languages stipulated by the law. Canada is another country with a similar practice in this area, as the judiciary in Canada is bilingual with two official languages (English and French). However, going beyond this model, Canada grants individuals not only the right to express themselves in their mother tongue but also the right to be "understood" in their mother tongue.[95] The significant issue in both practices is the fact that the state policy is based on the recognition of more than one language. In this case, the issue of the right to seek rights in mother tongue is related on the one hand to the need for interpretation due to a lack of command of the official state language or legal language and to the right of people to use their mother tongue in which they can comfortably and easily express themselves in judicial procedures on the other hand.

It is observed that in Turkey's legislative framework, seeking legal remedies in mother tongue is limited to cases where individuals do not have sufficient command of the official legal language.[96] Art. 39 of the Treaty of Lausanne which is considered to be the founding treaty of the Republic of Turkey, foresees that the necessary facilities shall be provided for oral defense in cases where the language used in the court is not understood. In addition, the Circular of the Ministry of Justice issued on December 24, 1996 also limited the scope of the right to interpretation to cases where the legal language is not understood or to cases of "deafness or muteness".[97] However, this is increasingly questioned over the recent years with recent experiences and particularly with increase in demands for defense in Kurdish. The first case where these demands were brought to attention was the hearing of Mehdi Zana at Aydın Superior Criminal Court on 20 June 1997. At the hearing, Zana expressed his demand for defending himself in his mother tongue Kurdish. Upon his insistence for defense in Kurdish, the Court recorded that Mehdi Zana "did not make a defense". The defense lawyers took this case to the ECtHR. Upon examining the case, the Court ruled that the fact that the defendant was deemed to have waived his right to defense was in violation of Art. 6 par. 1 and 3(e) and convicted the Republic of Turkey to pay for damages.[98] Here, it is maintained that the association of this conviction by the ECtHR not with the failure to "appoint an interpreter free-of-charge" but with the fact that "the defense could not be made", is an indicator of the Court's interpreta-

93 Tezcan, "Tercümandan Yararlanma Hakkı" (The Right to Benefit From Interpretation Services), *Ankara University Faculty of Political Sciences Magazine*, Volume 52, Issue 1. <http://dergiler.ankara.edu.tr/dergiler/42/480/5598.pdf>.

94 Tezcan, "Tercümandan Yararlanma Hakkı".

95 Hang Ng 2009.

96 The jurisprudence of the Supreme Court of Appeals also limits the right to free interpretation services to individuals who do not understand the language spoken in the court. Supreme Court of Appeals Criminal General Assembly 1996/6-2 E. 1996/33 K. < http://www.hukukturk.com/>.

97 Tezcan, " Tercümandan Yararlanma Hakkı".

98 European Court of Human Rights (ECtHR) 2001, *Mehdi Zana v. Turkey* No: 29851/96, June 6,2001. <http://www.echr.coe.int/Eng/Judgments.htm>.

tion of the issue in reference to the "right to defense" rather than to "mother tongue". In other words, the ECtHR ruled that the fact that "the defendant's statement was not taken albeit in Kurdish" violated the right to defense rather than the right to defense in mother tongue.[99] This decision played a significant role in the acceptance of the appeal of BDP (Peace and Democracy Party) officials whose demand for defense in Kurdish in a separate case in Hakkari was declined by the court. On December 21, 2010, in the first hearing of the case at Yüksekova 1, Criminal Court of General Jurisdiction filed for "violating the Law on Assemblies and Marches", upon the dismissal of their demands to give their statements in Kurdish, BDP officials' lawyers appealed the decision at Hakkari Superior Criminal Court. The Superior Criminal Court granted the appeal and referred to the 1997 dated *Zana v. Turkey* decision of ECtHR and held that the defendants can give statements in Kurdish if they wish to even if they can speak Turkish.[100] In its final decision, Hakkari Superior Criminal Court declared that it interprets the demand for "defense in Kurdish despite knowing Turkish" in the context of the "right to defense", and ruled that "if the defendant states that although he knows enough Turkish to express himself, he would defend himself better in another language", then the Court would not have a discretionary power in such a case.[101]

The first example where Kurdish defense was accepted by the court was the case filed on December 2, 2010 at Şanlıurfa 5. Criminal Court of General Jurisdiction against 98 people for allegations on "violating the Law on Assemblies and Marches" and "praising crime and criminal".[102] It is alleged that upon the defendants' request to defend them in Kurdish, the presiding judge appointed a member of courthouse staff as interpreter and thus the court attempted to provide interpretation services as such.[103] However, it is stated that as the appointed personnel did not understand the defendants, the presiding judge asked the defendants to use a 'softer Kurdish' so as not to prolong the court procedure any longer. This incident reveals the seriousness of the previously mentioned quality issue. Given that as of 2011, across Turkey there is only one person who is registered as certified interpreter in Kurdish, it can be argued that quality-related concerns are not irrelevant.[104] In any case, this decision is hailed as a "historical decision" as the demand for defense in Kurdish was accepted by the Court.

The most recent example of this situation was observed in the case of Union of Kurdistan Communities/ Turkey Assembly (KCK/TM), popularly known as the KCK case. In the case brought before Diyarbakır 6. Superior Criminal Court, the penal of judges has continuously been rejecting the defendants' demands for giving statements and defending themselves in

99 *TimesDoğu* 2011. "Kürtçe İfade İçin Emsal Karar" (Landmark Decision for Statement in Kurdish), January 19, 2011, <http://www.timesdogu.com/haber-detay.php?id=3531>.

100 *Ibid*.

101 *TimesDoğu* 2011; Öztürk 2011. "Mahkemeden Emsal Olacak Kürtçe Kararı" (Landmark Decision From the Court on Kurdish), *Sabah*, January21, <http://www.sabah.com.tr/Gundem/2011/01/21/mahkemeden_emsal_olacak_kurtce_karari>.

102 Leylak 2010, "Kürtçe Savunma Talebine Kabul" (Demand For Defense In Kurdish Accepted), *Hürriyet*, December 02, <http://www.hurriyet.com.tr/gundem/16432550.asp>.

103 *Bighaber* 2010, "Kürtçe Savunmaya İzin Çıktı Adliye Çalışanı Tercüman Oldu" (Permission For Defense In Kurdish, Courthouse Personnel Became The Interpreter", December 02, <http://www.bighaber.com/kurtce-savunmaya-izin-cikti-adliye-calisani-tercuman-oldu/>.

104 Mehdi Tanrıkulu, the first interpreter under oath working in Kurdish in Turkey, accepted the offer made by Istanbul 1st Notary where he had gone in order to carry out transactions related to the publishing house where he was the editor and started to work as an interpreter at the Notary. Tanrıkulu who calls himself a 'language activist' spoke in Kurdish when he was brought before the court for a number of books he had published when he was working as a publisher and ensured that this language went in the court record. *Doğubayazıt* 2009. "Bir Dil Militanı: Mehdi Tanrıkulu" (Mehdi Tanrıkulu: A Language Militant), <http://www.dogubayazit.biz/index.php?topic=7813.0>.

Kurdish since the beginning of hearings.[105] These demands sometimes led to reactions such as the recording of statements like "it has been observed that the defendant gave a statement in a language which we think is Kurdish", and sometimes to ones like the outright ban on the use of Kurdish in the Court with justifications such as "there is no doubt as to the fact that the defendants can understand and speak Turkish that is used in court proceedings".[106] In fact, before identity check, Mehmet Hatip Dicle asked for permission to speak on behalf of all defendants and stated that they can all speak Turkish; they have a very good command of Turkish; they have no intellectual or physical problem in speaking in Turkish; however, they would like to defend themselves in their mother tongue Kurdish within the framework of laws which grant them this right and the international agreements to which the Republic of Turkey is a party. In the reasoning of their rejection, the panel of judges underlined the fact that the defendants can speak and understand Turkish and that the appointment of interpreters for Kurdish would prolong the trial[107], upon which the defense lawyers called upon Prof. Baskın Oran as an expert pursuant to Art. 178 and 179 of the Code of Criminal Procedure. The fact that the demands of the defense lawyers in this direction had also been rejected, was interpreted as a decision limiting their "right to present evidence freely".[108]

A similar attitude was also observed in hearings of the Ağrı KCK case held before Erzurum 2. Specialized Superior Criminal Court. The defendants in this case also demanded defense in Kurdish which was found by the presiding judge to be a "ridiculous" demand.[109] Interestingly however, different practices can be observed for other cases before Diyarbakır 6. Superior Criminal Court. For instance, in the case of Sabahattin Korkmaz, a defense lawyer who defended himself in Kurdish, held before the Diyarbakır 6. Superior Criminal Court in 2010, the Court appointed an interpreter from Dicle University. It is known that other courts in the same jurisdiction also look upon defense in the defendants' mother tongue Kurdish on favorable terms. For instance, in another case where the demand for defense in Kurdish was brought before Diyarbakır 4. Superior Criminal Court around the same period, the demand was accepted and it was decided that an expert would be appointed to translate the text of the defendant's defense in Kurdish into Turkish.[110] This reveals that the right to seeking legal remedies in mother tongue which has a general framework established by the laws is left to the discretion of the courts in practice. It is also maintained that although most of these practices where the demand for interpretation have been denied may be seen as in conformity with the wording of the law since Art. 202 of the Criminal Code of Procedures limits the scope of the right to interpretation to cases where the suspects and defendants do not speak Turkish "well enough to express themselves", these

105 Üstündağ 2010, "KCK Davasında Kürtçe Savunma Kararı Yarına Kaldı" (KCK Case: Decision On Defense In Kurdish Due For Tomorrow), *Bianet*, October 18,2010. <http://bianet.org/bianet/insan-haklari/125502-kck-davasinda-kurtce-savunma-karari-yarina-kaldi>; *Marksist.Org* 2010, "KCK Davasında 3. Gün: Ana dilde Savunma Hakkı Çiğneniyor" (3rd Day In KCK Case: Right To Defense In Mother Tongue Violated), October 20, <http://www.marksist.org/haberler/2188-kck-davasinda-3-gun-ana-dilde-savunma-hakki-cigneniyor>.

106 *Sabah* 2011, "Kürtçe Savunma Krizi Aşılamadı" (Crisis Of Defense In Kurdish Still Not Overcome), January 13, <http://www.sabah.com.tr/Gundem/2011/01/13/kcktm_ana_davasina_devam_ediliyor>.

107 *Bugün* 2010, "Mahkeme TRT ŞEŞ'i Örnek Gösterdi" (The Court Mentioned TRT ŞEŞ As Example), November 5, <http://www.bugun.com.tr/haber-detay/126572-mahkeme-trt-ses-i-ornek-gosterdi-haberi.aspx>.

108 Human Rights Joint Platform (İHOP), Report on the Diyarbakır KCK Case, <http://www.ihop.org.tr/dosya/diger/20110415_KCK_TR.pdf>.

109 Pardeli 2011, "Kürtçe Savunma Talebine 'Çok Komiksiniz' Tepkisi" (Reaction To Demand For Defense In Kurdish: 'You are being ridiculous'), *Hürriyet*, January 21, <http://www.hurriyet.com.tr/gundem/16818276.asp>.

110 *Haber61.Net* 2010. "Kürtçe Savunma Kabul Edildi!" (Demand For Defense In Kurdish Accepted!), November 25, <http://www.haber61.net/news_detail.php?id=70529>.

practices are still considered to be contrary to international human rights standards.[111]

In practice, next to defendants, rights violations are also experienced as a result of failure to provide interpretation services for victims and complainants. In such situations, in addition to the failure to provide for the fair conduct of the court procedure and to ensure the principle of "equality of arms", a number of procedural transactions are also prevented. For instance, in cases where interpretation services are not provided for the participants of a case which results with these people not understanding the defendants' statements given during the hearings, Art. 201 of the Code of Criminal Procedure that grants the participants the right to pose questions to the defendant via the judge is also violated. For instance, in the court case no. 2009/470, publicly known as "Temizöz Case", held before Diyarbakır 6. Superior Criminal Court, it is argued that although most of the victims did not speak Turkish, during the hearings where the defendants were questioned the victims who would need interpretation were not identified and as a result they were not provided with such services. Regarding this particular case where some of these victims were also heard as witnesses, it is maintained that the questioning of the number one defendant and the short statements given by other defendants were not understood by the victims. In this case, the right to pose questions to defendants via the judge, regulated by Art. 201 of the Code of Criminal Procedures, has become an invalid provision as the complainants did not understand the language spoken during the trial and particularly the statements given by the defendants. Furthermore, it is also stated that the provision in Art. 215 of the Code of Criminal Procedure which stipulates that "after hearing the accomplice, the witness or the expert and reading the documents, the participants or their representatives, the prosecutor, the defendants and her representative will be asked if they have anything to say" would not mean anything in the absence of interpretation services for victims and participants since they would not be able to follow the hearing anyway. Again, on the same grounds, the possibility of the victims' realization of reasons for disqualification of the judge that might emerge during the hearings or their possibility to exercise this right will also be eliminated.[112]

The problems of access to justice due to language of law being the official language of the state are not limited to courtrooms. For instance, one of the major obstacles encountered by women in terms of access to justice stems from the fact that the literacy rate is lower among Kurdish women, particularly in Eastern and Southeastern parts of Turkey compared to other regions. Women in this region who have a low literacy rate in Turkish not only experience problems in terms of access to legal information but also face the problem of not understanding the information they receive because they do not know Turkish.[113] Interpretation services for Kurdish women who do not speak Turkish are among the activities carried out by NGOs such as Van Women's Association (Van Kadın Derneği-VAKAD) and Diyarbakır Women's Problems Research and Implementation Center (Diyarbakır Kadın Sorunları Araştırma ve Uygulama Merkezi -DİKASUM).[114] The representatives of VAKAD point out to the fact that as the majority of women who consult the Association are either refugees or asylum-seekers, one of the biggest obstacles they face is related to finding interpreters.[115] Significant protective measures are taken through the Prime Ministry Circular No. 2006/17 on "Measures to be taken to

111 Human Rights Joint Platform (İHOP), Report on The Diyarbakır KCK Case.

112 Üçpınar and Koç 2010. "Hukuk Destek Çalışmaları Işığında Cezasızlık Olgusu" (The Concept Of Impunity In Light Of Legal Support Efforts), İzmir, TİHV Publications, <http://www.tihv.org.tr/index.php?iskenceyi-onleme>.

113 Ayata 2009.

114 Ayata 2009.

115 *Mülteci.Net* 2008, "Van Kadın Derneği (VAKAD) ile Röportaj" (Interview with Van Women's Association (VAKAD), November 13, <http://www.multeci.net/index.php?option=com_content&view=article&id=104:vakad&catid=41:roportaj&Itemid=63>.

Prevent Custom and Honor Killings and Violence against Children and Women"[116]. However, the Circular fails to outline measures for overcoming the problem of lack of interpreters in public institutions such as courthouses or hospitals which is a very common problem particularly in the Southeast. This is considered to be a major shortcoming of the Circular.[117] This problem is no doubt limited to the Eastern and Southeastern regions because language barriers and the problem of access to interpreters which is related to language barriers, also determine the access to justice experiences of Kurdish women in migrant receiving metropolitan cities. For instance, the representatives of İzmir Women Solidarity Association (İzmir Kadın Dayanışma Derneği) which is primarily working in the field of violence against women mention the complexity of judicial procedures among the problems experienced by women in their region. However, these representatives also state that the types of victimization experienced by the Kurdish women living in the region are not limited to problems with legal language. In addition to being unfamiliar to the legal language, the fact that Kurdish women have either a very little or no command of Turkish is considered to be the other reason for the difficulties they experience in judicial procedures.[118]

4. ELECTRONIC CASE FILING

In the Judicial Reform Strategy prepared by the Ministry of Justice, the last topic under the main heading of "Facilitating Access to Justice" is electronic case filing. One of the key issues related to the issue of electronic filing is the National Judicial Network Project (Ulusal Yargı Ağı Projesi -UYAP). UYAP is an informatics system compatible to e-signature infrastructure. It allows carrying out various judicial activities online such as filing or following a case or exchanging of legal information and documents between the judiciary and other public institutions like the law enforcement or the land registry.[119] In this manner, UYAP aims to accelerate the judicial process and increase its efficiency thereby saving time and financial resources and also ensuring that the citizens have fast, easy and efficient access to judicial services.[120] UYAP Information System, established in 2008, made it possible for citizens to have access to "notices, data and announcements about all transactions including case files and information on execution proceedings that have been made via UYAP Justice, Lawyer, Citizen portals and other portals" through short message services (SMS).[121] This system allows both lawyers and citizens to have access to basic information on judicial procedures such as filing a lawsuit, the current status of their case, initiating execution proceedings, the date of hearings etc. through short messages automatically sent on mobile phones.[122] With the objective of establishing and developing UYAP, the number and diversity of technical devices used in informatics in the central and provincial organizations of the Ministry of Justice have been increased and the network infrastructure between the relevant judicial units and other relevant institutions has been strengthened.

116 Prime Ministry Circular No. 2006/17 on "Measures To Be Taken To Prevent Custom And Honor Killings And Violence Against Children And Women" Official Gazette No:26218 dated July 04, 2006.

117 Durukan 2006, "Özgökçe: Güneydoğu İçin Tercüman Unutulmuş" (Özgökçe: Interpretation Is Forgotten For The Southeast), *Bianet*, July 6, <http://bianet.org/bianet/kadin/81862-ozgokce-guneydogu-icin-tercuman-unutulmus>. For a brief summary of the issues tackled in the Circular see, *Bianet*, 2006, "Erdoğanın Kadına Şiddeti Önleyin Genelgesi" (Erdogan's Circular To Prevent Violence Against Women), July 4, <http://www.bianet.org/bianet/kultur/81654-erdoganin-kadina-siddeti-onleyin-genelgesi

118 Ayata 2009.

119 National Judicial Network Project (UYAP).

120 Strategic Plan of the Ministry of Justice 2010-2014. For UYAP's contributions to the judiciary see, Ministry of Justice Announcements, 2009. National Judicial Network Project (UYAP), <http://www.adalet.gov.tr/duyurular/2009/ocak09/uyapbilgi.htm>.

121 For other portals under UYAP see, National Judicial Network Project (UYAP), < http://www.uyap.gov.tr/>.

122 Ministry of Justice 2009 Ministerial Activity Report, <http://www.sgb.adalet.gov.tr/faaliyetlerimiz/2010/2009.bakanlik.faaliyet.raporu.pdf>.

As of late 2008, 587 Courthouses, 25 Regional Administrative Courts, 134 Probation Centers, 65 Forensic Units, 439 Correctional Institutions have been incorporated into the UYAP system and with these figures "the percentage of compatibility with UYAP reached 100%".[123] According to 2009 data, the other figures remaining the same, the number of Probation Centers was increased to 135 and the number of Correctional Institutions up to 444.[124] Thanks to UYAP Document Management System, the possibility of electronic exchange of official correspondence and electronic archiving of official documents was introduced. UYAP is a project which has been praised in international reports on Turkey. For instance, the 2008 Advisory Visit Report prepared for the European Commission -based on the data from 2008 CEPEJ Report- mentions that the level of computerization of the judiciary in Turkey is far more advanced than in other member states of the Council of Europe.[125] According to CEPEJ data, Turkey is considered in the group of countries where the level of computerization of the judiciary is considered to be high. CEPEJ report states that, thanks to UYAP project, the computerization of the judiciary "is now part of an integrated approach", and that in this manner all case files have been made available online and made available for the access of judges. In this framework, in the Advisory Visit Report, the Ministry of Justice is praised for both developing such a system and ensuring its functionality.[126] However, it is not possible to say that these positive developments are translated into practice with the same speed. It is known that as of late 2009, out of 110.007 subscribers to UYAP, 107.814 were citizens and the remaining 2.193 subscribers were lawyers. Again, as of late 2009, the total number of SMS sent via the system was 1.501.423. Given that only in the year 2009, a total of 3.382.608 cases were filed in civil and criminal courts and that this number excludes the cases filed at administrative courts, juvenile courts and superior courts, it is not possible to consider 1.501.423 SMS sent and 107.814 citizen subscriptions as sufficient improvements in terms of access to justice for those who benefit from judicial services.[127]

On the other hand, according to the results of "Household Survey on the Use of Information Technologies" carried out in April 2010 by TurkStat, 41.6% of all households in Turkey have access to the internet.[128] The fact that this percentage was 30% in 2009 shows that internet use is becoming more and more widespread in Turkey. However, the fact that there has been a serious increase in the total number of internet users in Turkey does not seem to eradicate the disadvantages caused by the existing structural inequalities and the gender roles. For instance, the same survey also shows that computer use and internet use among individuals of 16-74 years of age is 53.4% and 51.8% among men respectively and 33.2% and 31.7% among women.[129] Given that the percentages for computer and internet use are highest among people with university and graduate degrees, it also becomes obvious that the technology used by UYAP will not always facilitate access to justice for individuals who are disadvantaged in economic as well as social terms.

123 Ministry of Justice 2008 Ministerial Activity Report, April 2009, <http://www.sgb.adalet.gov.tr/faaliyetlerimiz/2009/2008.BAKANLIK.FAALIYET.RAPORU.pdf>.

124 Ministry of Justice 2009 Ministerial Activity Report, <http://www.sgb.adalet.gov.tr/faaliyetlerimiz/2010/2009.bakanlik.faaliyet.raporu.pdf>.

125 Giegerich et.al. 2008. "Türkiye Cumhuriyetinde Yargı Sisteminin İşleyişi" (The Working of the Judicial System in the Republic of Turkey), November 17-21 Advisory Visit Report to Turkey, <http://www.abgm.adalet.gov.tr/pdf/2008%20İstişari%20Yargı.pdf>.

126 Giegerich et.al. 2008.

127 General Directorate for Criminal Record and Statistics, Ministry of Justice, , 2009 Statistical Charts, <http://www.adlisicil.adalet.gov.tr/istatistik_2009/ist_tab.htm>.

128 TurkStat 2010, "Household Survey on the Use of Information Technologies", <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=6308>.

129 TurkStat 2010.

Main Findings and Recommendations

III. Main Findings and Recommendations

This report presents the general picture on the manifestations of some of the key access to justice issues in Turkey both in terms of policies and the implementation of the relevant legislation. In line with the information covered in this report, it is not possible to claim that objectives and the activities underlined in both the Judicial Reform Strategy and the Action Plan of the Ministry of Justice have been sufficiently translated into practice. In addition, it is just as difficult to analyze the government's latest efforts in relation to these issues mainly because outlined projects in these policy documents have already ended by late 2009 and there does not seem to be enough publicly available information on the outputs of these projects. With regards the issue of legal aid for instance, it is quite difficult if not impossible to find information on the latest developments in the field in terms of facilitating access to justice. Nevertheless, the issues covered in the scope of this report still point out to certain distinguishable findings which allow for a general assessment. In this framework, on the basis of data collected with regards the four main issues covered in the Judicial Reform Strategy under the title of access to justice, the last part of this report will also introduce some recommendations as to the development and the improvement of legislation, policies and activities in the field of access to justice.

LEGAL AID

Findings	Recommendations
The problems experienced in reminding the defendants about their right to criminal legal aid, in appointing criminal legal aid lawyers, and in ensuring the privacy of meetings between criminal legal aid lawyers and clients prevent the efficient and effective use of this right.	The Ministry of Justice should cooperate with the Turkish Union of Bar Associations and as a result of this cooperation necessary legal measures to prevent violations of defendants' rights should be introduced and implemented.
Experiences in recent years reveal that when there is a clash with the interests of the legal profession (as in the case of legal aid fees not being paid by the government), there will be a possible suspension of legal aid services.	With the assumption that as professional organizations Bar Associations would give priority to the interests of the profession, the risks that are entailed by the institutionalization of legal aid and criminal legal aid services under Bar Associations should be considered and alternative institutionalization models should be explored.
There is need for serious scientific research on the legal needs of particularly disadvantaged groups, on how these groups try to meet these needs and on the accessibility of legal mechanisms to serve to these needs.	Political authorities and judicial institutions should carry out scientific studies on identifying "legal needs" in cooperation with academia and NGOs.
In cases where legal needs cannot be identified, it is not possible to know areas in which particularly disadvantaged groups have the highest level of difficulty in reaching legal assistance or information. This can result in an inefficient use of resources of the legal aid system, in terms of time, financial means and labor force.	A "legal needs" assessment should be conducted for determining what types of specialization should be developed or increased in what types of areas. The particular situation of disadvantaged groups should be taken into consideration. As a result of such an enterprise, by ensuring the specialization of legal aid lawyers on certain topics, significant progress can be made in reaching out to disadvantaged groups and in responding to the legal needs of these groups.
The merging of lawyers who work at women's centers with the list of legal aid lawyers in the legal aid bureaus has reduced the possibility of being appointed an expert lawyer. This situation has especially brought about challenges for women who apply for legal aid. There is need for lawyers who specialize on women's rights in general and who can follow closely women's legal needs in particular.	In legal aid services, efforts should be carried out to bring specialization based appointment instead of rotating list method. Even if lawyers will be appointed from the same list, separate lists of expert lawyers should be annexed to these lists.
There are serious problems suffered by asylum-seekers, refugees and individuals of similar status in having access to criminal legal aid services during the legal procedure initiated against them for violating the Passport Law even before they express their asylum request.	Because of the problems these individuals face both due to language barriers and due to being in a foreign country and unfamiliarity with the legal system of the country, it is necessary to ensure that these individuals have rapid and efficient access to legal assistance from a lawyer from the moment they come before judicial units. The lawyers to be appointed for these people should speak foreign languages and be experienced in asylum matters.
More often than not, the term "legal aid" is used to refer to legal representation only.	The diversification of legal assistance methods should be facilitated. Alternative legal support mechanisms such as law clinics, pro bono services and legal consulting centers should be established. In order to facilitate such practices, efforts to amend existing legal measures and particularly certain articles of the Law on Advocacy should be carried out.

ACCESS TO INFORMATION

Findings	Recommendations
In spite of the existing commitments made by the government to take steps to facilitate access to information on legal matters, it can be argued that no serious progress can be observed in this field.	The government should immediately realize the targets given below: ➢ Preparing websites for courthouses in a standard and user-friendly structure and an easily understood language; ➢ Making necessary arrangements to teach basic legal information starting from elementary school; cooperating with universities on the issue; ➢ Developing "Protective Law" practices.
In studies conducted on access to information, the assessment of the levels of success is always based on numerical data. The assessment of success is made only in terms of criteria such as "the number of legal manuals distributed at the local and national level", "the number of references to legal manuals", "the number of news articles on legal rights", "the frequency of stakeholder's meetings" or the "frequency of legal aid applications".	It should be recognized that an increase in numbers does not necessarily signify a similar increase in quality and that an infrastructure needs to be established in order to meet the increasing demand. The evaluation of outcomes should also be related to the level of satisfaction regarding the services provided and to the quality of these services. The experiences of citizens on access to legal information should be followed and necessary policies should be developed upon the analysis of these experiences.
The dissemination of information is not sufficient; the society at large is not familiar with basic legal information.	It is absolutely necessary to reshape official and compulsory education should to incorporate basic legal information in the curriculum.
The citizens are not informed about basic legal information that will have direct influence on the use of their rights.	In order to facilitate access to legal information, alternative services particularly in courthouses such as information desks and information stands should be established. The legal information provided here should be simple and clear.
The disadvantaged groups' access to justice is particularly limited. It is observed that particularly women, asylum-seekers and individuals of similar status are in need of such information support.	As the state cannot finance such informing activities from the state budget, it should extend support to NGOs and voluntary organizations providing legal support to these group and review legal measures and practices that hinder such activities.
Limitations placed upon exchange of information are also results of a deliberate policy which is usually an extension of professional struggles particularly among lawyers.	Alternative conflict resolution mechanisms should be promoted and made accessible in order to change the general tendency to consider that justice can be ensured only through court procedures and lawyers.
Another reason which explains the situation of "Lack of information on legal rights" is the complexity of legal terminology. The legal language can be totally incomprehensible particularly for groups with a low level of education and with limited social resources.	Efforts should be carried out to simplify the legal language used in simple legal transactions that are quite common in people's lives. The official language used in courts should be comprehensible for citizens who are not represented by a lawyer as well. One of the significant developments in the world in terms of access to justice is the individuals' right to represent themselves without a lawyer. The efficient use of this right is possible with court procedures and the language of court procedures that can be understood and used even by individuals who are not trained in law.

INTERPRETATION IN COURTS

Findings	Recommendations
The existing legal framework for interpretation services in courts is not sufficient.	Questions such as who can be court interpreter; how and under which conditions can an individual serve in courts as an interpreter should be regulated within a legal framework.
In addition to insufficient legal framework, it is almost impossible to find experienced interpreters, who are familiar with legal interpretation and who can provide professional interpretation services. In such cases, courts attempt at using the courthouse personnel or the relatives of the defendants for unofficial interpretation services.	Experts who can provide interpretation services between Turkish and different mother tongues spoken in Turkey (primarily Kurdish) should be trained. Court interpreting should be considered as a profession and an area of expertise and as such should be subject to professional regulations and supervision.
The government plans foresee the identification of reliable and impartial individuals and the announcement of these individual's names in advance as experts who can provide interpretation services between Turkish and "local languages" in order to introduce standards for interpretation services.	Such an arrangement is certainly insufficient to introduce quality standards for such services. An official standing interpretation system should be established in courts. Individuals who not only provide professional interpretation services between these languages but who are also familiar with the legal language should be appointed from these lists. Rapid communication networks should be established so that these interpretation services can be rapidly provided in case of urgent need. At the same time, it is necessary to identify the languages which require interpretation services in courts and to make sure that people who translate/interpret these languages are on duty at courts
There is no standardized assessment of linguistic qualifications required for interpreters. In practice, diplomas or certificates to be presented to the notary by interpreters are considered to be sufficient to prove their linguistic qualifications. It is known that courts do not even ask for these documents. In practice, interpreters are known to be appointed in so far as they state their language competence and take an oath.	Decisive and objective criteria should be introduced for linguistic qualification and these criteria should be applied by the notaries indiscriminately. It can then be possible to apply certain standards in terms of the quality of court interpreting. Legal arrangements should be made to ensure that the failure to pay attention to the provision of standard certificates on the linguistic qualifications of interpreters is considered as a reason for higher courts overturn the decision of the lower courts.
The law of the Republic of Turkey limits the right to interpretations to "verbal" statements where the language used in the court is not understood or is not fully understood.	In addition to interpretation services, written documents used in judicial procedures should be prepared in primarily Kurdish (also in other languages if there is need). This should be the case for documents related to the court procedure but also those related to printed forms, brochures and such documents providing information on judicial procedures. The fact that a criminal lawsuit was filed against Van Bar Association for legal transactions in Turkish and Kurdish is a clear indication that such initiatives are hindered in practice.
The right to seeking legal remedies in mother tongue which has a general framework in laws has in practice been left to the discretion of the courts in practice.	In such cases, the declaration of the individual on his/her linguistic qualification regarding the language of the court should be sufficient to appoint an interpreter.
In line with the laws of the Republic of Turkey, interpretation services in courts are provided for both civil and criminal procedures. Given that these services are provided only in criminal procedures in many examples abroad, this practice can be considered to be a positive one.	On the other hand, the fact that these services are provided only for defendants and that victims or complainants cannot benefit from these services can be considered a loss of rights on behalf of these people. On a similar terrain, interpretation services should also be provided for defendants and plaintiffs as well as for witnesses in civil proceedings.

Findings	Recommendations
The problems of access to justice stemming from the fact that the legal language is the official language are not limited to court rooms. For instance, in Eastern and Southeastern Turkey, women of the region whose literacy rate for Turkish is quite low, not only experience problems in terms of access to legal information but they also experience the problem of not being able to understand the information they have access to as they do not speak Turkish.	Particularly, in Southeastern Turkey the failure to employ interpreters in public institutions such as courthouses or hospitals is a widespread problem. However, it is not possible to see this problem as specific to these regions. Language barriers and the related problem of access to interpretation define the experiences of Kurdish women residing in major, migrant-receiving cities in terms of access to justice as well. Interpretation services should be provided to make it possible for women to carry out legal transactions in public institutions by themselves even without speaking the official language or being literate for that matter. This will be a positive step towards overcoming women's social dependencies.

ELECTRONIC CASE FILING

Findings	Recommendations
The National Judicial Nwetwork Project (UYAP) is a system developed compatible with the e-signature infrastructure, allowing for online judicial services and exchange of documents between units. It is as such a project praised in international reports on Turkey. Turkey is considered to be among the group of countries where "there is a very high level of computerization" particularly in terms of the judiciary.	UYAP stills lacks in facilitating legal services for citizens in an equal manner. It is observed that UYAP is far behind the sufficient level in terms of access to citizens. Regarding this issue, regular surveys should be carried out to determine the frequency of the use of UYAP by citizens in terms of filing lawsuits and the follow-up of their case; their assessment of the user-friendliness of the system; the types of improvements that can be made to increase the accessibility of the system. At the same time, in institutions where citizens carry out judicial and administrative transactions such as courthouses, notaries, municipalities etc., equipment providing practical information on how to use UYAP should be available. Such a practice will be particularly useful for disadvantaged groups who have almost no opportunity to benefit from UYAP due to reasons such as law literacy rates or limited Internet access.

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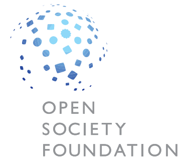

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