

TR  
MINISTRY OF JUSTICE  
DIRECTORATE GENERAL FOR INTERNATIONAL LAW AND  
EXTERNAL RELATIONS  
HUMAN RIGHTS DEPARTMENT

RIGHT TO ACCESS TO A LAWYER IN  
CRIMINAL PROCEEDINGS IN  
TURKEY

Hacı Ali AÇIKGÜL  
Deputy Head of the Department

27 April 2013

# Presentation Plan

- Provisions of the ECHR
- Current situation in Turkey
- Studies being carried out

# Access to Lawyer in the ECHR

- ▣ Article 6/3 of the ECHR: Everyone charged with a criminal offence has the following minimum rights:
  - To defend himself in person or through legal assistance of his own choosing;
  - if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require

# Current Situation in Turkey

- **Representaion by a Defence Counsel**
- The suspect or accused shall be notified of
  - His right to appoint a defence counsel and that he may utilize his legal assistance,
  - That the defence counsel shall be permitted to be present during the interview or interrogation.(Article 147/1-c of the Code of Criminal Procedure [CCP])
- **The suspect or accused**
  - may benefit from advice of one or more defence counsel at any stage during the investigation or prosecution;
  - in cases where the suspect or accused has a legal representative , he may also choose a defence counsel on his behalf. (Article 149/1 of the CCP)

- ▣ **Request for an arrest** (Article 101/3 of the CCP)
- ▣ In cases where a request for an arrest has been submitted, the suspect or accused must have the legal assistance of a defence counsel chosen by him, or appointed by the bar association.

## The suspects or accused having no defence counsel

- ▣ Appointment of a defence counsel (Article 150 of the CCP no. 5271)
  - ▣ In cases where the suspect or accused declares that he is not able to choose a defence counsel, if he requests, a defence counsel shall be appointed on his behalf (his ability to pay is not taken into account)

# The suspects or accused having no defence counsel

- ▣ Appointment of a defence counsel (Article 150 of the CCP no. 5271)
  - ▣ If the suspect or accused who does not have a defence counsel is
    - A child,
    - An individual who is disabled to that extent that he cannot make his own defence, or deaf or mute,
    - charged or accused with a crime having lower limit as imprisonment of more than five years

without his request, a defence counsel shall be appointed.

## ▣ Representation for the victims

- In cases of ;
  - ▣ sexual assault, and
  - ▣ in crimes with lower limit as imprisonment of more than five yearsif the victim has no representative, upon his request, a lawyer shall be appointed on his behalf by the Bar Association. (Article 234/5 of the CCP)
  
- The ability to pay is not taken into account.



- ▣ The attorney-fee in favour of the accused who is acquitted
- ▣ A fixed attorney-fee is awarded in favour of the accused who is acquitted and has been represented himself by an attorney. (Article 13/5 of the Minimum Attorneyship Fee Tariff)
- ▣ This fee is paid by the Government.

- ▣ **Interview with the defence counsel**
- ▣ **Any suspect or accused at any time shall have the right to interview with a defence counsel in an environment where other individuals are unable to hear their conversation; a power of attorney is not required.**
- ▣ **Written correspondence by these individuals to their defence counsel cannot be subjected to control. (Article 154 of the CCP)**

## ▣ Restrictions

- ▣ In the investigation phase, during the interview, the maximum number of lawyers allowed to be present shall be three. (Article 149/2 of the CCP)
- ▣ In the cases concerning terror, the right of the suspect under custody to interview with his defence counsel could be restricted with the term of twenty four hours by the decision of judge and upon the request of the chief public prosecutor
- ▣ However, statement of the suspect could not be taken during this period (Article 13/3-e of the Anti-Terror Law)

## ▣ Guarantees

- ▣ Statements obtained by the police, without the defense counsel being present, shall not be used as a basis for the judgment, unless this submission had been verified by the suspect or the accused in front of the judge or the court. (Article 148/4 of the CCP)

### The right of the lawyer

- ▣ to consult with the suspect or the accused,
- ▣ to be present during the interview or interrogation, and
- ▣ to provide legal assistance

shall not be prevented, restricted at any stage of the investigation and prosecution phase.. (149/3)

## Responsible Institutions

A lawyer is appointed by the Bar Association

- At the phase of investigation; upon the request of the authority taking statement or the judge conducting the interrogation;
  - At the phase of the prosecution, upon the request of the court.
- ▣ The payments shall be made by the prosecutor's offices to be covered by the budget of the Ministry of Justice.

## Institutions in charge

### ▣ The Ministry of Justice

- The Presidency of Inspection Board- monitoring the Bar Associations regarding legal aid payment.
- The General Directorate of Criminal Affairs- issues regulations and circulars
- The Department of Strategic Development- makes payments
- The General Directorate of Civil Affairs- submits observations concerning legal aid practices in civil proceedings

### ▣ Bar Associations

- Appoint s defence counsels upon the decisions of assigning lawyers and representatives
- When requested, they can appoint defence counsels directly

## Cost of Legal Aid (By the end of 2012)

YEARS	CRIMINAL PROCEDIN GS	CIVIL PROCEDIN GS	THE PAYMENTS MADE BY THE BAR ASSOCIATI ONS	IN FAVOR OF THE ACCUSED WHO WAS ACQUITTED	TOTAL
2011	139.386.688	3.600,853	27.265.867	6.321.205	176.574.613
2012	158.121.088	4.200.472	30.079.154	14.659.582	207.060.296

# Legal Aid in Turkey

## ▣ Overview to Future

- Judicial reform strategy
- Goal 7: Facilitating Access to Justice
- Hedef 7/1: Reviewing legal aid system to enable effective access to the system



# Analysis and Planning Studies

- ▣ On 15-17 November 2011 “High-Level Conference and Workshop, themed judgements of the European Court of Human Rights concerning Turkey, Difficulties and Suggestions for Solutions”.
- ▣ 6 Study Groups
- ▣ Study Group on the Right to a Fair Trial

## Awareness Raising Activities

- The website [www.inhak.adalet.gov.tr](http://www.inhak.adalet.gov.tr) was opened.
- Today 2722 translated judgments are available on the database.
- Current judgments – current judgments concerning other countries – international reports – statistics – information for applicants.

# **Project on the Improvement of the Effectiveness of the Criminal Justice System**

- One of the key components of the Project in question, which aims to improve the Turkish criminal justice system and to implement the human rights standards in the Turkish criminal justice system in compliance with the European standards, is the right to a fair trial.
- As a result of the analysis to be made under the supervision of the experts, following the activities that will be carried out within the scope of the Project, problematic areas stemming from legislation and practice concerning the freedom of expression in Turkey will be identified, and solution offers will be submitted to the relevant authorities.

# Turkish Justice Academy

Turkish Justice Academy that is responsible for the pre-service and in-service training of the judges and prosecutors was established with the Law No. 4954.

- ▣ Lessons regarding the articles of the ECHR, including the right to a fair trial, were put in the curriculum for the prospective judges and prosecutors at the Justice Academy.
- ▣ A workshop on fair trial was held by the Academy on 22 - 23 April with the participation of over 100 judges and prosecutors.

## ▣ HCJP Project

- ▣ Project on Raising the Awareness of Judges and Prosecutors about the European Court of Human Rights Judgments (2012-2014)
- ▣ The aim of the project is to ensure that the judges and prosecutors take into account the assessments and case-law of the ECtHR concerning the rights and freedoms including right to fair trial guaranteed by the ECHR during the proceedings they conduct.
- ▣ Within the scope of the project, it is envisaged that 700 judges and prosecutors would pay study visits to Strasbourg

# Evaluation

- ▣ In conclusion,
- ▣ The Turkish legislation in force regarding the access to a legal assistant meets the standards of the Convention.
- ▣ There has been a serious progress in the practice.
- ▣ Moreover, efforts to enhance the practice are still continuing.

**THANK YOU**