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LEGAL AID IN TURKEY

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A- Introduction

Since 1950's the right to legal representation has been considered very important in connection with the civic rights. Several regional and/or international conventions which were introduced in particularly after World War II emphasized this need in a very systematic way. As a result of these provisions, strong obligations have been created on the states to provide free legal advice and/or representation in particularly in criminal sphere. This well orchestrated international initiative encouraged each state to create their own system to fulfil these obligations. After the introduction of European Convention on Human Right which was based mostly on the Universal Declaration, the need for a well functioning system became much more important and imminent for member states.

B- The UN Declaration of Human Rights 1948

The Universal Declaration of Human Rights of the united Nations which came into effect in 1948 dealt very extensively with the rights to fair trial and due process.:

Article 10

> Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11-1

> Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

C- International Covenant on Civil and Political Rights

Article 14 of the International Covenant on Civil and Political Rights (ICCPR) deepened the above formulation. Article 14.3 provides that:

> In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) to be tried without undue delay;

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(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any cases where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) to examine, or to have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) to have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) not to be compelled to testify against himself or to confess guilt.

The defendant has following rights in connection with legal aid under article 14.3 of the ICCPR right:

(h) To be informed of the accusation

(i) To conduct his defence by himself or through a lawyer of his choice

(j) To have adequate time for his defence,

(k) to be defended at trial by a lawyer of his choice and to have adequate time for preparation ('defence');

(l) to be informed of this right ('information');

(m) to be 'assigned' legal representation where 'the interests of justice' require ('the interests of justice' test);

(n) to have free legal aid where he does not have the means to pay for it (Public subsidy).

D- European Convention on Human Rights

The convention has a unique nature which is extensively aimed at the protection of the rights with a very well functioning control mechanism that is the European Court of Human Rights. Indeed the binding nature of the judgements of the Court and the implementation process of these judgements has accelerated the momentum in respect of fair trial rights.

The role of the Court and also of the Committee of Ministers which is the sole authority of implementation of the Court's judgments forced member states to adopt some practical solutions and schemes in order to tackle with the need for a legal aid system. Judgements of the Court interpreted the wordings of the provision in a very clear way. Today all the member

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states of the European Council (46 member) have their own model which are based on their culture, economy and customs but most importantly on the guidance created by the case-law of the Court

The experiences of the past 100 years have proven that individuals have a relatively weaker position against the state or public power. Therefore individuals should be protected against the arbitrary conduct of these powers in order to strike a balance between the interests of the individuals and state. The Court emphasized this need:

> "…In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 (art. 6-1) would not correspond to the aim and the purpose of that provision…. (see the Delcourt v. Belgium judgment of 17 January 1970, para.25).

The European Convention on Human Rights sets out fair trial guarantees for a defendant in particularly in article 6.1 which prescribes the general principle:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 6.3

Everyone charged with a criminal offence has the minimum rights:

a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b. to have adequate time and facilities for the preparation of his defence;

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d. to examine and have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e. to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

1- Representation in Criminal Cases

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In connection with the notion of the "criminal" the Court stated in J.B v. Switzerland judgement (3 May 2001, para.44):

> "In its earlier case-law the Court has established that there are three criteria to be taken into account when it is being decided whether a person was "charged with a criminal offence" for the purposes of Article 6. These are the classification of the offence under national law, the nature of the offence and the nature and degree of severity of the penalty that the person concerned risked incurring (see, among other authorities, *Öztürk v. Germany*, judgment of 21 February 1984, Series A no. 73, p. 18, § 50). In *A.P., M.P. and T.P. v. Switzerland* (cited above), the Court moreover found that proceedings leading to the imposition of a fine on account of the criminal offence of tax evasion fell in principle to be examined under Article 6 § 1 of the Convention.

a- Charge

Aim of criminal investigation and/or prosecution is to determine the elements of a crime including motive, perpetrator and victim through a fair investigation and trail. Of course the main subject of these processes is a suspect/defendant who keeps a relatively weaker position against the public and the state organs.

In order to strike a fair balance, a suspect/defendant should be informed, as soon as s/he charged, of his/her rights in a way s/he understands what they are and what they mean. This of course is a responsibility of national courts and investigators including police and prosecutor.

Under the Convention right to defence starts with a criminal charge. In connection with the notion of the "charge" the Court stated in the Sadak and Others v. Turkey, in which the applicants were members of Turkish parliament who were discarded as result of their alleged memberships to an illegal terrorist organisation, that (10 July 2001):

"1. The Court points out that the provisions of Article 6 § 3 (a) of the Convention reflect the need for special attention to be paid to the notification of the "accusation" to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on written notice of the factual and legal basis of the charges against him (see *Kamasinski v. Austria*, judgment of 19 December 1989, Series A no. 168, pp. 36-37, § 79). Article 6 § 3 (a) also affords the defendant the right to be informed not only of the cause of the accusation, that is to say the acts he is alleged to have committed and on which the accusation is based, but also, in detail, of the legal characterisation given to those acts (see *Pélissier and Sassi v. France* [GC], no. 25444/94, § 51, ECHR 1999-II).

2. The scope of Article 6 § 3 (a) must in particular be assessed in the light of the more general right to a fair hearing guaranteed by the first paragraph of Article 6 of the Convention (see, *mutatis mutandis*, the following judgments: *Deweer v. Belgium*, 27 February 1980, Series A no. 35, pp. 30-31, § 56; *Artico v. Italy*, 13 May 1980, Series A no. 37, p. 15, § 32; *Goddi v. Italy*, 9 April 1984, Series A no. 76, p. 11, § 28; and *Colozza v. Italy*, 12 February 1985, Series A no. 89, p. 14, § 26). The Court considers that in criminal matters the provision of full, detailed information to the defendant concerning the charges against him – and consequently the legal characterisation that the court might adopt in the matter – is an essential prerequisite for ensuring that the proceedings are fair (see *Pélissier and Sassi*, cited above, § 52).

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3. Lastly, as regards the complaint under Article 6 § 3 (b) of the Convention, the Court considers that sub-paragraphs (a) and (b) of Article 6 § 3 are connected and that the right to be informed of the nature and the cause of the accusation must be considered in the light of the accused's right to prepare his defence (see *Pélissier and Sassi*, cited above, § 54).

4. In the instant case, the Court notes first of all that in the bill of indictment filed by the prosecution on 21 June 1994 the applicants were accused solely of the crime of treason against the integrity of the State, as provided for by Article 125 of the Criminal Code. Although the applicants' links with PKK members were mentioned by the prosecution, the Court notes that throughout the investigation those links were examined only with a view to establishing the constituent elements of the offence of which the applicants were initially accused by the prosecution. It is not disputed that, up to the last day, the hearing before the National Security Court had related solely to the crime of treason against the integrity of the State.

5. That being so, the Court must ascertain whether it was sufficiently foreseeable for the applicants that the characterisation of the offence could be changed from the one of treason against the integrity of the State of which they were initially accused to that of belonging to an armed organisation set up for the purpose of destroying the integrity of the State. »

b- Right to defend himself in person

The aim of this provision is to provide legal protection with individuals as soon as s/he is charged with any type of crime. A suspect/defendant who is able to defend himself (a very delicate point) is entitled to conduct his/her defence by directly doing this at every stage of proceedings including police investigation. Nevertheless it should be noted that the ability of an accused in defending himself will certainly depend on both the complexity of the case and the severity of the punishment in question.

In order to tackle with the problems which arise in particularly in early stages of criminal proceedings, very limited margin of appreciation should be left to national authorities in connection with the right to defend himself in person where a suspect may mostly be unaware of his rights and seriousness of accusation.

In particularly at police stations, suspects are supposed to fill prearranged forms in which several of his crucial rights are referred slightly in a way that can not be understood properly as a result of tense circumstances surrounding a suspect or defendant. Furthermore suspects/defendants are often encouraged to mark in "no" boxes in the forms which usually includes his/her right to request assistance of a lawyer so as to speed up the proceedings/investigation.

The interests of justice require fair proceedings not only at early stages of criminal proceeding but throughout entire trial process including appeal courts. On of the consequence of this guarantee is the right of a defendant to appear before the court in person in order to conduct his/her own defence where the trial is held. In the Medenica v. Switzerland case (judgment of 14 June 2001 paragraphs 53-60) the Court pointed out the importance of a defendant to appear before national court himself. The court

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underlined that a defendant can be judged in absentia under some certain circumstances which do not limit his/her defence rights guaranteed under article 6 of the Convention. Therefore national authorities should take every necessary measure to ensure that defendant has unequivocally waived his/her rights to appear before the court where s/he is tried:

> "53. As the requirements of paragraph 3 of Article 6 are to be seen as particular aspects of the right to a fair trial guaranteed by paragraph 1, the Court will examine the complaint under both provisions taken together (see *Van Geyseghem v. Belgium* [GC], no. 26103/95, § 27, ECHR 1999-I).
>
> 54. The Court has previously stated that it is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests need to be protected – and of the witnesses. The legislature must accordingly be able to discourage unjustified absences (see *Poitrimol v. France*, judgment of 23 November 1993, Series A no. 277-A, p. 15, § 35, and *Krombach v. France*, no. 29731/96, § 84, ECHR 2001-II). Proceedings that take place in the accused's absence will not of themselves be incompatible with the Convention if the accused may subsequently obtain, from a court which has heard him, a fresh determination of the merits of the charge (see *Colozza v. Italy*, judgment of 12 February 1985, Series A no. 89, p. 15, § 29, and *Poitrimol*, cited above, pp. 13-14, § 31).
>
> 55. The Contracting States enjoy a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6, while at the same time preserving their effectiveness. The Court's task is to determine whether the result called for by the Convention has been achieved. As the Court pointed out in *Colozza*, the resources available under domestic law must be shown to be effective where a person "charged with a criminal offence" has neither waived his right to appear and to defend himself nor sought to escape trial (see *Colozza*, cited above, pp. 15-16, § 30).
>
> 56. In the instant case the Court notes that by an order of 19 April 1989 the President of the Canton of Geneva Assize Court dismissed the applicant's application for an adjournment of the trial, on the ground that his absence was due to his own culpable conduct. In a judgment of 26 May 1989 it convicted him *in absentia* and sentenced him to four years' imprisonment. The present case is distinguishable from *Poitrimol* (cited above), *Lala* and *Pelladoah v. the Netherlands* (judgments of 22 September 1994, Series A nos. 297-A and B, respectively), and *Van Geyseghem* and *Krombach* (both cited above), in that the applicant was not penalised for his absence by being denied the right to legal assistance, since the applicant's defence at the trial was conducted by two lawyers of his own choosing.
>
> 57. It is true that Article 331 of the Geneva Code of Procedure in principle allows persons convicted *in absentia* to have the proceedings set aside and to secure a rehearing of both the factual and the legal issues in the case. However, in the instant case, the Canton of Geneva Court of Justice dismissed the applicant's application to have the conviction quashed on the grounds that he had failed to show good cause for his absence, as required by that provision, and that there was nothing in the case file to warrant finding that he had been absent for reasons beyond his control (see paragraph 32 above). That judgment was upheld by the Geneva Court of Cassation and the Federal Court. In the Court's view, there is nothing to suggest that the Swiss courts acted arbitrarily or relied on manifestly erroneous premisses (see also *Van Pelt v. France*, no. 31070/96, § 64, 23 May 2000, unreported).
>
> 58. In the light of the circumstances taken as a whole, the Court likewise considers that the applicant had largely contributed to bringing about a situation that prevented him from appearing before the Geneva Assize Court. It refers, in particular, to the opinion expressed by the Federal Court in its judgment of 23 December 1991 that the applicant had misled the

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American court by making equivocal and even knowingly inaccurate statements – notably about Swiss procedure – with the aim of securing a decision that would make it impossible for him to attend his trial.

59. In the light of the foregoing, and since the instant case did not concern a defendant who had not received the summons to appear (see the following judgments: *Colozza*, cited above, pp. 14-15, § 28; *F.C.B. v. Italy*, 28 August 1991, Series A no. 208-B, p. 21, §§ 33-35; and *T. v. Italy*, 12 October 1992, Series A no. 245-C, pp. 41-42, §§ 27-30), or who had been denied the assistance of a lawyer (see the following judgments, all cited above: *Poitrimol*, pp. 14-15, §§ 32-38; *Lala*, pp. 13-14, §§ 30-34; *Pelladoah*, pp. 34-35, §§ 37-41; *Van Geyseghem*, §§ 33-35; and *Krombach*, §§ 83-90), the Court considers that, regard being had to the margin of appreciation allowed to the Swiss authorities, the applicant's conviction *in absentia* and the refusal to grant him a retrial at which he would be present did not amount to a disproportionate penalty…."

c- Access to a lawyer

In principle legal representation will be needed in particularly where deprivation of liberty is at stake. In the case of John Murray v. United Kingdom where the applicant had been denied access to a lawyer for the first 48 hours of his detention while he was in the control of police (8 February 1996) the Court stated that:

"62. The Court observes that it has not been disputed by the Government that Article 6 (art. 6) applies even at the stage of the preliminary investigation into an offence by the police. In this respect it recalls its finding in the Imbrioscia v. Switzerland judgment of 24 November 1993 that Article 6 (art. 6) - especially paragraph 3 (art. 6-3) - may be relevant before a case is sent for trial if and so far as the fairness of the trial is likely to be seriously prejudiced by an initial failure to comply with its provisions (art. 6-3) (Series A no. 275, p. 13, para. 36). As it pointed out in that judgment, the manner in which Article 6 para. 3 (c) (art. 6-3-c) is to be applied during the preliminary investigation depends on the special features of the proceedings involved and on the circumstances of the case (loc. cit., p. 14, para. 38).

….

64. In the present case, the applicant's right of access to a lawyer during the first 48 hours of police detention was restricted under section 15 of the Northern Ireland (Emergency Provisions) Act 1987 on the basis that the police had reasonable grounds to believe that the exercise of the right of access would, inter alia, interfere with the gathering of information about the commission of acts of terrorism or make it more difficult to prevent such an act.

65. It is observed that the applicant did not seek to challenge the exercise of this power by instituting proceedings for judicial review although, before the Court, he now contests its lawfulness. The Court, however, has no reason to doubt that it amounted to a lawful exercise of the power to restrict access. Nevertheless, although it is an important element to be taken into account, even a lawfully exercised power of restriction is capable of depriving an accused, in certain circumstances, of a fair procedure."

However this right is not absolute and may be subjected to several restrictions (John Murray v. United Kingdom, judgement of 8 February 1996):

"63. National laws may attach consequences to the attitude of an accused at the initial stages of police interrogation which are decisive for the prospects of the defence in any subsequent

> criminal proceedings. In such circumstances Article 6 (art. 6) will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation. However, this right, which is not explicitly set out in the Convention, may be subject to restrictions for good cause. The question, in each case, is whether the restriction, in the light of the entirety of the proceedings, has deprived the accused of a fair hearing."

Article 6, paragraph 3.c sets out the right to free legal assistance in the circumstances "where interest of justice so require". This test can only be conducted on a case basis. In Quranta v. Switzerland case (judgement of 24 May 1991, paragraphs 32-34) the Court stated that:

> "32. In order to determine whether the "interests of justice" required that the applicant receive free legal assistance, the Court will have regard to various criteria.
>
> ….
>
> 33. In the first place, consideration should be given to the seriousness of the offence of which h Mr Quaranta was accused and the severity of the sentence which he risked...
>
> 34. An additional factor is the complexity of the case…"

In the Kamanski v. Austria case the Court stated that the relevant legal aid obligations in connection with article 6, paragraph 3.b should be implemented practically and effectively (paragraph.65 of the judgement):

> Certainly, in itself the appointment of a legal aid defence counsel does not necessarily settle the issue of compliance with the requirements of Article 6 § 3 (c) (art. 6-3-c). As the Court stated in its Artico judgment of 13 May 1980: "The Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective .... [M]ere nomination does not ensure effective assistance since the lawyer appointed for legal aid purposes may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties. If they are notified of the situation, the authorities must either replace him or cause him to fulfil his obligations." (Series A no. 37, p. 16, § 33). Nevertheless, "a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes" (ibid., p. 18, § 36). It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel be appointed under a legal aid scheme or be privately financed. The Court agrees with the Commission that the competent national authorities are required under Article 6 § 3 (c) (art. 6-3-c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention in some other way.

2- Representation in Civil Cases

The case-law of the ECHR indicated that there is also a right to legal aid in cases involving a 'civil right' or 'civil obligation' under Article 6 of the Convention. Nevertheless the Court's understanding is very limited in comparison with criminal scope.

According to the case-law of the Court, article 6 requires assistance of a lawyer in civil cases only where 'indispensable for effective access to the court' either because a

lawyer is mandatory or there would be severe prejudice because of the 'complexity of the procedure or the case'.

In Airey v. Ireland the Court stated its approach in connection with civil claims before national courts (judgement of 9 October 1979):

> 26. The Government's principal argument rests on what they see as the consequence of the Commission's opinion, namely that, in all cases concerning the determination of a "civil right", the State would have to provide free legal aid. In fact, the Convention's only express provision on free legal aid is Article 6 para. 3 (c) (art. 6-3-c) which relates to criminal proceedings and is itself subject to limitations; what is more, according to the Commission's established case law, Article 6 para. 1 (art. 6-1) does not guarantee any right to free legal aid as such. The Government add that since Ireland, when ratifying the Convention, made a reservation to Article 6 para. 3 (c) (art. 6-3-c) with the intention of limiting its obligations in the realm of criminal legal aid, a fortiori it cannot be said to have implicitly agreed to provide unlimited civil legal aid. Finally, in their submission, the Convention should not be interpreted so as to achieve social and economic developments in a Contracting State; such developments can only be progressive.
>
> The Court is aware that the further realisation of social and economic rights is largely dependent on the situation - notably financial - reigning in the State in question. On the other hand, the Convention must be interpreted in the light of present-day conditions (above-mentioned Marckx judgment, p. 19, para. 41) and it is designed to safeguard the individual in a real and practical way as regards those areas with which it deals (see paragraph 24 above). Whilst the Convention sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature. The Court therefore considers, like the Commission, that the mere fact that an interpretation of the Convention may extend into the sphere of social and economic rights should not be a decisive factor against such an interpretation; there is no water-tight division separating that sphere from the field covered by the Convention.
>
> The Court does not, moreover, share the Government's view as to the consequence of the Commission's opinion.
>
> It would be erroneous to generalize the conclusion that the possibility to appear in person before the High Court does not provide Mrs. Airey with an effective right of access; that conclusion does not hold good for all cases concerning "civil rights and obligations" or for everyone involved therein. In certain eventualities, the possibility of appearing before a court in person, even without a lawyer's assistance, will meet the requirements of Article 6 para. 1 (art. 6-1); there may be occasions when such a possibility secures adequate access even to the High Court. Indeed, much must depend on the particular circumstances.
>
> In addition, whilst Article 6 para. 1 (art. 6-1) guarantees to litigants an effective right of access to the courts for the determination of their "civil rights and obligations", it leaves to the State a free choice of the means to be used towards this end. The institution of a legal aid scheme - which Ireland now envisages in family law matters (see paragraph 11 above) - constitutes one of those means but there are others such as, for example, a simplification of procedure. In any event, it is not the Court's function to indicate, let alone dictate, which measures should be taken; all that the Convention requires is that an individual should enjoy his effective right of access to the courts in conditions not at variance with Article 6 para. 1 (art. 6-1) (see, mutatis mutandis, the National Union of Belgian Police judgment of 27 October 1975, Series A no. 19, p. 18, para. 39, and the above-mentioned Marckx judgment, p. 15, para. 31).
>
> The conclusion appearing at the end of paragraph 24 above does not therefore imply that the State must provide free legal aid for every dispute relating to a "civil right".

To hold that so far-reaching an obligation exists would, the Court agrees, sit ill with the fact that the Convention contains no provision on legal aid for those disputes, Article 6 para. 3 (c) (art. 6-3-c) dealing only with criminal proceedings. However, despite the absence of a similar clause for civil litigation, Article 6 para. 1 (art. 6-1) may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court either because legal representation is rendered compulsory, as is done by the domestic law of certain Contracting States for various types of litigation, or by reason of the complexity of the procedure or of the case.

As regards the Irish reservation to Article 6 para. 3 (c) (art. 6-3-c) , it cannot be interpreted as affecting the obligations under Article 6 para. 1 (art. 6-1); accordingly, it is not relevant in the present context."

E-Legal aid in Turkey

A comprehensive amendment of Criminal Procedure Law was carried out in connection with legal aid in particularly after the acceptance of individual application to the European Court of Human Rights by Turkey in January 1990.

In 1992, Turkish parliament passed a new amendment which changed dramatically the rules of legal representation in criminal proceeding which at the beginning was criticized by law enforcement officers on the grounds that the new rights such as access to a lawyer in detention, limitation of detention periods, punishment of unlawful interrogation methods (see judgement Ireland v. the United Kingdom) etc. will damage the performance of law enforcement officers.

Nevertheless it did not happen as it was predicted by the law enforcement officers. As a result of the amendment and systematic training and dissemination of the judgements of the European court a substantial development has taken place though there are still some problems in connection with the practical application of guarantees.

a-Representation in Criminal Cases in Turkey

This legal aid service is carried out jointly by the Ministry of Justice, Union of Turkish Bar Associations and local Bar Associations. The Ministry of Justice is responsible of providing necessary funds which are distributed to local Bar Associations (under certain criteria) through Union of Turkish Bar association.

In June 2006 a new Criminal Procedure Law came into effect which largely contains the principals set forth by the case-law of the Court. Under article 150 of the code, a very large wording was adopted by the parliament:

Article 150

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aa. If a suspect and/or defendant states that s/he is unable to retain a lawyer, he is provided a lawyer if he requests so.

bb. If the a suspect and/or defendant is a juvenile or deaf or speechless or unable to defend himself in person and have not got any lawyer then a lawyer is automatically assigned without his/her request. (In this case the relevant state institutions including police station, prosecutor office or court inform the local Bar Association which is empowered to assign a lawyer 24 hours a day from the list of legal aid lawyers as soon as it receives such a request.)

cc. If the crimes requires maximum 5 years penalty (most of the crimes in Turkish Penal Code require this term) then a lawyer should automatically be assigned in accordance with the above mentioned provision.

This amendment created a very noisy criticism from law enforcement officers since most of the crimes in Turkish Penal Code require this term. The Parliament yielded this pressure and amended the above quoted provision on 19 December 2006. The new provision limited the legal aid representation since the law requires receivers of legal aid to pay incurred expenses including lawyer's fee if they are found guilty.

Under the new article 150 of Criminal Procedure Code:

aa. A suspect or defendant is requested to retain a lawyer. If the suspect or defendant states that s/he is unable to choose one and request a lawyer, then a lawyer is assigned.

bb. A suspect or defendant who has not got a lawyer is a juvenile or unable to defend himself in person or speechless or deaf (both of which make him unable to defend himself properly) then a lawyer is assigned to him/her without seeking his/her request.

cc. If the crimes require minimum 5 years penalty (most of the crimes in Turkish Penal Code doesn't require this term except extortion, homicide, murder and rape and a few others) then a lawyer should automatically be assigned in accordance with the above mentioned provision

As a result of this amendment, every law enforcement entity has been tended not to assign lawyers to those who are actually in need because of their cultural and educational background, complexity of the case, seriousness of the penalty etc.

Under article 156 of Criminal Procedure Code lawyers are assigned by local Bar Associations:

1. Under the condition which were mentioned in article 150, a lawyer is assigned by Bar Association

a) at investigation stage, on the basis of the request of the authority which conducts the investigator (police or gendarmerie or prosecutor) or the court which conducts the examination of a suspect or defendant;

b) at trial stage, on the basis of a request from a court which hears the case.

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2. If a suspect or defendant chooses a lawyer at later stages by his/her own means then the legal aid lawyer's duty terminates in connection with the case.

In addition to this amendment a new provision was enacted which indirectly requires defendants or suspects to pay the expenses of legal aid lawyer if they are found guilty of the accusation regardless of their economic sources.

As a result of this amendment many old problems surfaced again. Most of suspects and defendants have tended not to request assistance of a lawyer since they lack of necessary financial sources to pay the expenses incurred (See article 13 of law no.13). This amendment will certainly be brought to the attention of the European Court of Human Rights which will evaluate the current situation according to it case law some of which are refereed to above.

Furthermore the new Criminal Procedure Code created a direct legal representation right for those who are victims of a crime. Article 234 of Turkish Criminal Procedure Code states that:

Article 234

"….

3. The victim has right to request a lawyer if s/he has not got one;

….

4.

….

2) If the victim is under 18 or speechless or deaf or unable defend himself in person due to his/her ability then a lawyer is assigned without his/her request.

b- Representation in Civil Cases in Turkey

1- Legal Aid in connection with court fee and other trial expenses

Article 468 of Civil Procedure Law set forth conditions of legal aid service. Under the conditions of this provision, a person who request legal aid (in fact which is connected to court fee and other trial expenses) has to provide a document issued by elderly council of his/her neighbourhood or mayor of his/her town. The document should include information concerning his/her financial conditions which prove his need.

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2- Legal Aid in connection with assignment of a lawyer.

This legal aid service is also carried out jointly by the Ministry of Justice, Union of Turkish Bar Associations and local Bar Associations. The Ministry of Justice is responsible of providing necessary funds which are distributed to local Bar Associations (under certain criteria) through Union of Turkish Bar Association. Under this scheme Bar Associations assign lawyers to those who are unable to retain lawyer in their civil cases.

Every local Bar Association has an office to deal with such applications. Upon an application a duty lawyer in the office takes a statement of applicant concerning his/her case and/or complaint. At this stage an applicant is requested to provide a document issued by the head of his/her neighbourhood in order to prove that s/he lacks of financial sources. Furthermore the applicant is requested to sign upon a warranty letter by which s/he accepts that in case of any contradictory findings, s/he is obliged to pay all the expenses incurred as a result of his/her application. This system seems very well functioning even tough there some problems in connection with the quality of the service and monitoring.

3- Importance of legal aid for victims of abuse and torture

Unfortunately it has taken many years to root out application of torture and abuse in state institutions in Turkey. The judgments of the European Court of Human Rights have played a great role in connection with creating an understanding within state institutions in particularly after the 2nd half of 1990s.

Although there is still some resistance in particularly among police and gendarmerie, dissemination of judgements of the Court, training of law enforcement officers and practitioners also bore a very important fruit which indirectly and substantially reduced frequency of torture and ill-treatment by creating monitoring schemes at every stage.

One of the important contributors of this development is, amongst many others, the Human Rights Foundation of Turkey (www.tihv.org.tr) which in particularly has been providing very comprehensive treatment for victims of ill-treatment and torture. Through the reports and other documentation which were based upon the Foundation's treatment service, the Court and other European Institution focused their attention on this point.

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