1. **Basic Information**

1.1 CRIS Number (Year 1):
1.2 Title: **Better Access to Justice in Turkey**
1.3 Sector: Justice and Home Affairs
1.4 Location: Ankara-Turkey
1.5 Duration: 24 months

2. **Objectives**

2.1 **Overall objective**

*Strengthening the rule of law in Turkey and guaranteeing all citizens access to justice in line with the EU standards.*

Having considered that access to justice reforms mainly have consisted of efforts to improve legal aid systems, make Alternative Dispute Resolution (ADR) more effective and applicable and other strategies of court reforms which lead to citizens rapid and easy access to justice, this project aims to promote access to justice in Turkey primarily by developing legal aid system to ensure that all citizens enjoy access to justice, strengthening the functioning of the justice system in a way that citizens will have a rapid and easy access to justice via technological opportunities and alternative disagreement solutions.

The rights of access to justice and to a fair trial are guaranteed under Article 6 of the European Convention on Human Rights. At this point, it is important to remember that legal aid is primarily an issue of human rights law which concerns fundamental principles such as equality of arms and right to a fair trial. Legal aid should not be merely seen as a service provided by Bars but it should be seen as a part of a criminal justice policy. Thus, the European Court of Human Rights has a large body of jurisprudence which envisages that the state has responsibility for the operation and nature of legal aid.

Moreover, access to justice is not just access to judicial system, but it includes access to adequate dispute resolution process for citizens. Thus, alternative dispute resolution processes are of significant importance in terms of access to justice. The establishment of alternative means of dispute resolution could serve to significantly reduce the number of minor disputes before the civil courts and thereby lead to an increase in overall efficiency in the justice system. Therefore, effective implementation of alternative means of dispute resolution explicitly eases the citizens’ access to justice as well.
2.2 Project purpose

*Improved access to justice by increasing the utilization of the legal aid system, making ADR more applicable in the justice system and strengthening the functioning of the judiciary*

This purpose is intended to pursue the following achievement indicators:

- By means of creation of a sound legal basis for ADR in Turkish legal system and awareness raising activities for the lawyers and citizens on ADR, it is planned to ensure that application of ADR is applied in 10% of legal disputes by 2007.

- By increasing the utilization of the legal aid service which will be achieved by public awareness activities and training activities for lawyers, public confidence of fair trial will increase to a certain extent which will be determined by a survey to be conducted under this project.

- With the introduction of ADR into the Turkish legal system and practice which will block the entrance of the minor disputes into the judicial system, and thus it is planned to ensure that the length of the civil and criminal trials shortens (10%) and the average caseload of the civil and criminal courts decreases (10%) by the end of 2008.

- By strengthening the technical infrastructure of the Ministry of Justice, the judicial statistics which provide transparency in terms of functioning of the judiciary, will be obtained in two months instead of 1 year, in other words, the length of monitoring the performance of the judiciary will decrease from 1 year to two months by the end of 2008.

2.3 AP and NPAA priority

This project proposal addresses the areas defined in the revised Accession Partnership (AP) and the National Programme for the Adoption of the Acquis (NPAA) for Turkey’s accession to the EU, as follows:

**AP 2003:**

- Strengthen efforts to develop information and awareness programmes on the legislation and best practices in the European Union in the field of JHA. (Short term priority)

- Strengthen efforts to develop sustainable training programmes on the acquis and its implementation in the field of JHA also with a view to increasing administrative capacity and improving inter-agency co-operation. (Medium term priority)

- “Further develop the legal aid system to ensure that all citizens enjoy access to justice”.

**NPAA**

“In the 2003 Accession Partnership under the requirement of the ability to take on the obligations of membership in the area of Justice and Home Affairs, the priority of further

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1 Turkish National Programme for the Adoption of the Acquis (NPAA)- 2003, Priority 24.13.
developing the legal aid system to ensure that all citizens enjoy access to justice was listed under the medium term priorities.

In particular, the heading of access to justice and legal aid emphasizes preparing regulations on awareness campaigns, publication of guidebooks, establishing an information system and a justice network on legal issues, a study on the minimum standards of legal aid, determining common procedural norms for certain cases such as alimony cases and expertly judicial proceedings, promoting alternative disagreement solutions and setting minimum standards for protecting unjustly treated/victims.”

Regular Report 2004:

• “NGOs have reported that access to a lawyer during pre-trial detention is improving. Official sources indicate that individuals are more inclined to exercise this right; of those accused of crimes related to the State Security Courts in the first quarter of 2004, 46% requested and were given access to their lawyers, whereas the figure for the same period in 2003 was 28%. However, such access varies throughout the country. While the CPT report indicates instances of the security forces discouraging detainees from requesting a lawyer, or not informing them of their right, NGOs have suggested that many individuals may not be inclined to exercise this right even when it is offered because they might fear, for example, that to request a lawyer could be seen as an admission of guilt. While there has been an improvement in informing relatives when suspects are held in custody, this obligation is reportedly still not always respected.”

• “Two expert advisory missions on the functioning of the judicial system took place in September-October 2003 and in July 2004 respectively. The second advisory mission found that significant progress had been made since the first visit. The Ministry of Justice had followed up on the recommendations produced by the October mission by organizing meetings with judges and public prosecutors from throughout Turkey to discuss the suggestions contained in the report. The Ministry has presented a plan of action for implementing many of the suggestions in the report.”

• “As regards the functioning of the judiciary, in general trials last for long periods and are subject to repeated adjournments. There has been a reduction in the average trial period in the Serious Felony Courts, the Criminal Courts of First Instance and the Juvenile Courts. Following an increase in the number of civil courts from 3,217 in 2002 to 3,358 in 2003, the average number of cases before each court decreased from 616 in 2002 to 604 in 2003. The average trial period before the Commercial Courts decreased from 434 days in 2002 to 417 in 2003, while the average trial period before the General Civil Courts decreased slightly from 242 days in 2002 to 240 days in 2003. In order to increase the efficiency of the court system, during the reporting period 136 courthouses with an inadequate caseload were closed and 511 judges and prosecutors transferred to work in other courthouses.”

2.4 Contribution to National Development Plan

Not applicable
2.5 Cross Border Impact

Not applicable

3. Description

3.1 Background and justification

In the course of progress towards accession to the European Union and in response to the obligations of the acquis of the EU and its Member States, the Turkish government, is actively following a National Programme for the Adoption of the Acquis. However the objective of the process of law approximation is to not only implement the relevant amendments to existing legislation but as importantly, to strengthen those institutions responsible for the enforcement or implementation of the new procedures and processes. This process of ‘institution building’ to enhance administrative capacity is seen as crucial in ensuring the successful transition for Turkish Institutions to the standards, norms and achievements of similar EU Member State administrations.

As a part of this process, in particular, improving access to justice is one of the priorities of the Turkish Government which is determined to meet “the provision of effective justice required by modern society” and “to guarantee individuals the easy and rapid access to justice via technological opportunities.”

Regarding the technical opportunities allocated for better access to justice in Turkey, it is important to remember that the Ministry of Justice has almost completed the work for making available the judgements of the High Courts on their official web sites.

In fact, it is evident from the web sites of the Court of Cassation and the Constitutional Court where the judgments of these two High Courts are already posted and accessible to public currently.

As a recent development, the Council of State has also initiated a technical work with its own financial resources for improving its official web site which will be covering more than 20,000 judgments of the Court.

Legal aid:

The Turkish Constitution sets out in Art. 2 that the Republic of Turkey is a democratic, secular and social state governed by the rule of law. Further, Art. 10 provides that all individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Under Art. 36, everyone has the right to a legal remedy either as plaintiff or defendant and the right to a fair trial before the courts. In view of the above provisions, it may be said that the Turkish state has a duty to establish an effective mechanism for the realization of access to justice including free legal assistance.
It should be stressed that Turkey, as part of its harmonization process with the EU Acquis, undertook under the heading of access to justice and legal aid, to prepare regulations on awareness campaigns, publication of guidebooks, establishing an information system and a justice network on legal issues, a study on the minimum standards of legal aid, determine common procedural norms for certain cases and others.

In general, Legal Aid is funded, provided, and controlled by the local bar organizations in Turkish System. This means that where the local bar associations have the power, funding and infrastructure, a legal aid service is provided. It also means that where any of these are not present there will be no legal aid service. The level of the service, the amount of access to legal aid and the quality of the service are all highly dependent on the goodwill, funding, abilities and structure of the local bar association.

The project will conduct the funding of a study to identify the needs and gaps of the current system with a view to recommending improvements, while at the same time heightening Turkish citizens' awareness of their right to legal representation.

Regarding the public awareness activities, there is a risk that running a publicity campaign before the deficiencies of the legal aid system have been fixed might raise expectations which the current system cannot fulfil. But given that so few detainees currently ask to see a lawyer, even if a publicity campaign was wildly effective and quadrupled that number, the current unreformed system could probably cope with that at least for a while until the recommendations of the study have been implemented.

Since the current system for legal aid provision in Turkey is based on “judicare”, organized by the local Bars and funded by them, the only major changes that would be needed in order to set up a sensible “judicare” system would relate to the source of funding and any system of control of quantity and quality of work.

**Alternative Dispute Resolution**

Article 6 of the European Convention on Human Rights encomasses the ideal that promptness and fairness. If justice must be prompt without being unjust, it must be efficient. This article recognizes that justice that is not available within a “reasonable time”\(^2\) is inaccessible justice for many people\(^3\). Moreover, access to justice is not just access to judicial system, but it includes access to adequate dispute resolution process for people\(^4\). Thus, there is a special place for alternative dispute resolution processes in access to justice. Because, the establishment of alternative means of dispute resolution could serve to significantly reduce the number of minor disputes before the civil courts and thereby lead to an increase in overall efficiency. So, effective implementation of alternative means of dispute resolution explicitly eases the citizens’ access to justice\(^5\).

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\(^2\) For the analysis of the principles established by the European Court of Human Rights concerning the notion of time and how its “reasonableness” see Council of Europe, *The length of civil and criminal proceedings in the case-law of the European Court of Human Rights* (Human Rights Files No. 16, 1999).

\(^3\) Cappelletti, Garth p. 190.

\(^4\) European Committee on Legal Co-operation, *23rd Conference of European Ministers of Justice, Cost-Effective Measures Taken By States To Increase The Efficiency of Justice*, London 2000, p. 9.

The existing system of civil procedure in Turkey is troubled by excessive costs, delay, and complexity. Over the past several decades, the average time required for civil cases to get into court has lengthened, adding to the cost and uncertainty of the litigation process. Court dockets are loaded, so civil litigation can easily be put off for years. On the other hand, disputes can be negotiated quickly if both parties are interested in doing so.

Since there are some limited provisions about ADR in the various Turkish legislation such as Advocate ship Law, Code of Criminal Procedures, Code of Labour, and Code of Consumer Protection, the practice of ADR in Turkey is far below the EU member states standards. Besides the lack of awareness on ADR systems, the above-mentioned provisions do not create a suitable legal environment where ADR can play a central role in all fields of civil dispute resolution. In fact, the Civil Procedural Code does not provide necessary authority to use ADR. So, it is widely accepted that the Civil Procedural Code should be amended to provide a broad authority for using ADR processes in all civil actions.

In Turkish justice system, ADR should be promoted by legislative and operational initiatives. In the light of Turkish constitutional requirements, our legislation should be reviewed with regard to ADR.

At this point, there is a need to note that a Legislative Commission has recently been established by the Ministry of Justice which is drafting the new Civil Procedural Code. The Commission is planning to insert provisions concerning the ADR systems into this Code which will be applied to all civil cases.

This project aims to provide study visits to the members of the above mentioned Commission to EU Member states. The study visits will prove useful because; it will increase awareness of dispute resolution options among the legal system’s constituents, assist stakeholders within and outside of the judiciary in developing ADR Systems, identify and develop specialized ADR programs and services, developing ADR practice for courts. Moreover, the Commission will be investigating the implementation criteria; effective selection, training and supervision of ADR providers, financial support, outreach, effective case selection and management, program evaluation procedures and recommendations.

As the ADR system is regulated in the new Criminal Procedure Code and is expected to be introduced in the said draft Civil Procedure Code, it would be beneficiary to organize seminars about the implementation of the ADR systems, training of judges, prosecutors and lawyers, and planning and developing programs for monitoring and evaluating the ADR system.

It is important to note here that in “the Report of the Advisory Mission on the Functioning of the Judicial System in the Republic of Turkey”, “establishment of mechanisms for Alternative Dispute Resolution in Turkey” and “training activities on this matter” were also strongly recommended.

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6 See the Annex 11 for the relevant Turkish legislation on ADR.
7 See the ANNEX 7 for the relevant passage from the Second Advisory Report.
Recording systems in the court houses

Since it is argued that modern approach to access to justice is more concerned with the quality of justice rather than greater access to justice, this technological measure will address the issue of quality of justice concerning guaranteeing right to access to justice.

Recently provisions concerning the use of sound and visual recording technology in the courts have been included in the new Turkish Criminal Procedure Code, No: 5271. Articles 52, 58, 81, 87, 180 and 196 of the new Criminal Procedure Code, no: 5271 which will enter into force on 1 June 2005 imposes an obligation on the Penal Courts and Prosecution Offices to use both sound and visual recording systems for the certain procedures and transactions.\(^8\)

In view of these new provisions concerning the use of sound and visual recording systems in the penal courts, the Ministry of Justice shall establish the necessary technical infrastructure in 1775 Penal Courthouses. In this context, the IT Department of the Ministry of Justice has already initiated the preparation work for establishing these visual and sound recording systems in all penal court houses and this technical feasibility study will have been completed before the start of the project.

On the other hand, within the framework of this project, it is planned to establish these systems in only 225 Heavy Penal Courts as a pilot project.

Besides this legal necessity, the Turkish judiciary is in need of these visual and sound recording systems due to the following reasons:

Evidences will be recorded thoroughly, the possibility of reaching the truth in the criminal justice will increase, not only the submissions and arguments but also the gesture of the parties will be recorded which will lead to an increase in the quality of justice, judges and prosecutors will spend more time for investigating the facts of the case and they will not be facing a difficulty of entering all the evidence and submission of parties into the court record through a court stenographer, the administration of criminal justice will be swift, all the visuals and sounds recorded via this recording systems will be archived and be checked when a dispute has arisen in terms of their accuracy.

In addition to these benefits, one of the fundamental principles of the criminal law which is the directness of the evidence will be strengthened.

Furthermore, it is important to note here that “the Advisory Report on The Functioning of Judicial System in Republic of Turkey”\(^9\) has also inspired and encouraged the Ministry to put such a technological system into place in the courthouses. In the report, issue of recording of witness evidence and submission of counsel has been addressed under the heading of the equality of arms.\(^9\)

\(^8\) See the ANNEX 10 for the relevant articles of the Criminal Procedure Code.

\(^9\) See the ANNEX 7 for the relevant passage from the Advisory Report.
Technical infrastructure of the Ministry of Justice

With this part of the Project, it is aimed to guarantee individuals the easy and rapid access to justice by improving the technical infrastructure of the Ministry, DG for the Judicial Record and Statistics (DGJRS).

Under the EU Project entitled “Judicial Modernization and Penal Reform in Turkey” (JMPR) which is currently implemented under the MEDA Programme, an increased statistical and IT skills in the DGJRS as well as improved performance of the new data storage system of the DGJRS are expected to be obtained through intense training activities and procurement of equipment. In this context, it is important to note that supplies and services which are envisaged by this project to improve the capacity of the DGJRS are regarded complementary to that of the JMPR Programme. In accordance with the present project the emerging needs of the Ministry of Justice will be met with EU funding.

Since this department of the Ministry of Justice is working on two critical areas including judicial statistics and judicial records, strengthening the technical capacity of DGJRS is very crucial for the functioning of the Turkish judiciary.

As the DGJRS has three sub-units namely; Judicial Records, Judicial Statistics and IT Units, it has three areas of expertise. Currently two units of the DGJRS, judicial record unit and statistics unit, need to be improved for advanced service in line with the EU standards.

The judicial record unit of the DGJRS is responsible for obtaining and processing the data concerning the criminal records of all citizens and providing them to judiciary as well as all interested individuals. Without this service, trials can not be concluded due to its substantial relevance to the criminal and civil justice. Another possible scenario is that trials cannot be concluded in a reasonable time and in a fair way if this service is not provided to courts swiftly and thoroughly. In the final analysis, citizens can get a swift and fair judgment provided that this unit provides services properly and rapidly.

In the current situation, the mainframe of the Judicial Record System is capable of serving only 350-400 locations in the whole country. However, the problem is that in 2005 investment programme of UYAP, (National Judicial Network Project) which aims to connect all judicial units (courts, prosecution offices) in Turkey electronically each other until the end of 2005, it is foreseen that the number of locations served by UYAP (National Judicial Network Project) will reach to 709 and thus, our judicial record system will not be able to meet this increasing need.

The current situation in the judicial statistics unit of the DGJRS, is that judicial statistics are collected mechanically once a year via survey forms completed by all prosecution offices and courts and the data are entered into the database by data entry operators of Statistics Unit of DGJRS. It is important to note here that the data collected and entered into database maintained by the DGJRS is protected by highly advanced soft wares and the DGJRS is taking the protection of privacy issue very seriously.

The process of collecting, entering to database and evaluating the data in question takes for around 10 months. The problem is that this situation is preventing all associations and institutions including the EU as well as researchers from getting up-to-date data and statistical information on the quality of justice and functioning of the Turkish judiciary. Thus, the
DGJRS is inevitably dependent on a limited data while it is analyzing the performance of the Turkish judiciary.

The Ministry of Justice considers that accurate, rapid and reliable statistics and system of measurement are the basis of future actions to be taken to overcome the weaknesses of the current justice system in terms of access to justice.

By putting all equipments listed in Annex 4-a into place, statistics will be collected and evaluated rapidly and accurately and it will be available to researchers, public institutions and EU organs as well as all interested individuals under the restrictions arising from the data protection requirements. This practice will ensure a transparency in terms of the functioning of the judiciary. And one can argue that transparency is the key to access to justice.

The programme will support this department to shorten the duration required to collect and evaluate data from 1 year to two months. For more detailed information about the current capacity and performance of the DGJRS, please see the Annex 8.

The key areas of interventions are to be as follows:

- Improving legal aid
- Improvement of Alternative Dispute Resolutions
- Establishment of recording system at Heavy Penal Court Rooms
- Strengthening the technical capacity of the Ministry of Justice for Access to Justice

3.2 Sectoral Rationale

Not applicable

3.3 Results

To achieve the project purpose (section 2.2), the project will produce four key results during which are briefly discussed under their subsequent headings.

3.3 - 1 Increased utilization of the present legal aid system

With the help of the TA, a research study will be conducted by the Legal Aid Committee (hereinafter “Committee”) consisting of the members of the Union of Turkish Bars Associations (UTBA), Bar Associations from different regions of Turkey, academicians to identify the gaps and needs of the present legal aid system in Turkey. The Committee will primarily study developing the sources of the Legal Aid Fund and raising the quality of the implementation along with other issues that may arise in connection to the improvement of the system. On the basis of the findings of this study, the Committee will develop policy recommendations to improve the structure and organization of the legal aid service which can be used as a basis for future interventions in this area.
In addition, the utilization of the present legal system increased by public awareness activities and training sessions for lawyers will be reviewed and where possible enhanced. With the help of TA, various public awareness (TV advertisements, info-packs, etc.) and training activities will be designed and conducted according to the needs and gaps identified by the above-cited study. Increasing the utilization of the present legal system also requires that 800 lawyers will be trained as trainers on the issue of legal aid and an international symposium on legal aid will be organized with the participation of 300 legal professionals (judges, prosecutors, academicians, etc.)

3.3 – 2 Introduction of ADR into the Turkish legal practice

With the help of TA, public awareness (posters, CD demo etc.) and training activities will be designed and conducted to raise awareness on ADR among Turkish lawyers and citizens. 30,000 CD-ROMs will be designed and distributed to the legal practitioners and 5000 posters on ADR will be published and placed in the courthouses and bar associations.

In addition, 1000 lawyers will be trained as trainers on various aspects of ADR and 3 international symposiums will be organized with the participation of 300 legal professionals. In this context, a study visit to Germany and Netherlands for 12 members of the Commission of MoJ and 2 members of the Ankara Bar Association will be implemented.

3.3 – 3 Improvement of fairness in criminal proceedings

As a part of Ministry’s criminal justice policy which envisages the instalment of audio and visual recording equipment in all 1775 penal courts in Turkey, this recording systems will be established in 225 heavy penal court houses as a pilot project with the support of this project.

3.3 – 4 Strengthening the technical capacity of the Ministry of Justice

Another key result is the improvement of the infrastructure for access to justice which is anticipated to improve the functioning of the judiciary in line with the EU standards. The infrastructure equipment listed in Annex 4-a will be procured and installed at the Statistics and Judicial Record Units of the DGJRS in order to improve the functioning of the judiciary with a view to promoting access to justice in Turkey.

Also under the sub-heading, the staff of the DGJRS will be trained to enable them to utilize the new technical infrastructure efficiently through study visits and training activities in TR on IT issues.
3.4 Activities

All components except the procurement of supplies will be implemented by a service contract.

3.4 - 1.1 Conduct a research study to identify the gaps and needs of the present legal aid system

A research study will be carried out by the Legal Aid Committee (hereinafter “Committee”) consisting of the members of the Union of Turkish Bars Associations (UTBA), Bar Associations from different regions of Turkey, academicians and a STE (for 5 months) to identify the gaps and needs of the present legal aid system in Turkey.

In that connection, the Committee shall assess the structure and organization of the legal aid system, existing legislation and the implementation in this area. The Committee will also search and study on the subject of developing the sources of the Legal Aid Fund and rising the quality of the implementation along with other issues that may arise in connection to the improvement of the system.

At the end of the study the Committee will identify proposals to improve the structure and organization of the legal aid service which can be used for designing further projects in that area.

3.4 - 1.2 Public awareness activities

The purpose of the activities under this component will be to inform the citizens and social partners about the rights of the citizens on their right to legal aid. These activities will be carried out by awareness raising and dissemination groups consisting of sufficient members of UTBA and selected bar associations

Develop information materials - With the help of TA, appropriate information materials will be developed in Turkish, which will be available to support information and awareness raising campaigns, as well as other dissemination activities by partners at local level. A communication/ information package with posters, brochures about legal aid will be prepared.

Develop and broadcast 2 TV Advertisements - With the help of TA, two TV advertisement programs (fifteen minutes) will be prepared for the rights of citizens and will be broadcasted on national TV channels. These TV programs will serve to reach the illiterate citizens who will not have the chance to access by other awareness raising activities.

Improve the website of the UTBA - With the help of TA, the web-page of the UTBA including all information regarding the rights of citizens in terms of legal aid will be improved.
3.4 - 1.3 Training for Lawyers

The recommendations proposed by the Committee described in activity 3.4 - 1.1 will be realized to the extent possible by the UTBA and other bar associations from different parts of the country in accordance with a work plan to be prepared by the Committee.

In accordance with the findings of the study carried out by the Committee and the STE, the STE will assist the UTBA with the design of the methodology and the contents of the training sessions to be carried out all across Turkey for the lawyers on the subject of rising the quality of the service of the legal aid in addition to other issues raised by the Committee where appropriate.

**Develop and implement 8 two-days training of trainers seminars for 800 lawyers** - The training sessions may indicatively be as consisting of eight sessions in two years. The cities will be selected by the Committee according to the caseload. In the study sessions there will be local experts as the speakers on the subject of Turkish legal aid system and its implementation and foreign experts for best practice in the EU.

With the help of TA, it is aimed to train 100 lawyers as a trainer in each session (50 of them will participate from the city that the sessions will take place and the other 50 of them will come from the nearest cities) and at the total number trained will indicatively be 800 lawyers as trainers.

**Organize two-days international symposium for 300 legal professionals** - With the help of TA, UTBA and Ankara Bar Association shall organize jointly an international symposium on legal aid issues in Istanbul or Ankara to enlighten 300 legal professionals including judges, prosecutors, academicians, etc.

The current Turkish legal aid system and various EU Member States’ systems of legal aid shall be discussed in this event which will be an international organization with the participation of international and local expert-speakers.

The speeches and papers submitted in the symposium shall be published and then shall be disseminated to ensure the sustainability of this activity.

3.4 - 2.1 Public awareness activities on ADR

**Develop and disseminate 30,000 CDs on ADR Demo** - With the assistance of the TA, model arbitration and model mediation samples will be designed and be recorded to CD’s. 30,000 copies of this CDs will be disseminated to lawyers, prosecutors and judges. The Union and the MoJ (IT department) will cooperate in this activity.

**Prepare and disseminate 5000 posters on ADR** - With the assistance of the TA, 5000 posters promoting the awareness and application of ADR shall be prepared and placed to all court houses and Bar Associations. The UTBA will be involved in the preparation work for the design of the posters. The MoJ will ensure that these posters will be posted in suitable spaces of the courthouses.
3.4 - 2.2 Training for Lawyers

Develop and implement 7 training of trainers seminars for 1000 lawyers on ADR - With the assistance of the TA, the UTBA shall organize short term (each two-day) sessions both on the related Turkish legislation and the ADR Implementation in EU Member States.

These sessions will take place in seven different regions of Turkey in seven different cities. The cities where the sessions will take part will be chosen by UTBA in cooperation with other bar associations and special importance shall be given the places where the caseload is heavy.

Around 1000 lawyers will be trained as trainers. UTBA staff will join to the sessions for the organizations and monitoring.

The training on ADR will indicatively focus on the following branches:

a. General principles and practice of basic out-of-court dispute resolution methods like mediation or arbitration,
b. Court-based ADR,
c. Negotiation techniques,
d. Civil and commercial mediation,
e. Family mediation,
f. Employment mediation and conciliation,
g. Victim-offender mediation and reparation,
h. Online dispute resolution.

The training on court-based ADR will focus on the following topics:

a. Using of ADR,
b. Selecting cases appropriate for ADR,
c. Matching the ADR process to the case,
d. Deciding on party consent, client attendance, and degree of party participation,
e. Selecting the neutral,
f. Necessary qualifications and standards to appoint a neutral,
g. Ethical principles for ADR neutrals, establishing a code of conduct for neutrals,
h. Compensating the neutral,
i. Confidentiality of ADR communications,
j. Referring of the case to ADR and elements of the judge’s referral order,
k. Managing cases in the ADR process

Organize 3 international symposiums for 900 legal professional - With the assistance of the TA, 3 international symposiums in Ankara, Istanbul and Izmir shall be organized to raise awareness of judges, prosecutors, academicians, lawyers and other professions from private and public sector on ADR. These will be indicatively 3-days symposiums with the participation of international and local experts.

It is aimed to have the participation of 300 people at each of this conferences in which ADR methods and techniques of the EU Member States and the implementation and the current law articles of Turkey will be discussed.

These activities will be organized and implemented by UTBA in cooperation with the Ministry of Justice (along with the participation of other bar associations which will have
their own Steering and Implementing Committees for organization and monitoring of these activities.)

Organize and implement study visits for the Commission of the MOJ (12) and (2) lawyers of the Ankara Bar Association for 15 days to Germany and the Netherlands - With the assistance of TA, 12 members of the Commission which consists of academicians, judges, the representatives of Ministry of Justice and 2 lawyers form the ADR committee will attend 15 days of study visit to be held in EU members which have similar system with Turkey, preferably, Germany and Holland.

3.4 - 3.1 Procure and install audio and visual recording systems at all Heavy Penal Court Rooms

The sound and visual recording systems will be provided through a supply contract. It is planned to install this technology in 225 Heavy Penal Courts. This activity will be carried out under the supervision and management of IT Department of MoJ.

3.4-4.1 Procure the infrastructure equipment in Annex 4-a and install at DGJRS

The equipment listed in the Annex 4-a will be procured. These equipment will be installed at Statistics and Judicial Record Units of the DGJRS. This activity will be carried out under the supervision and management of the DGJRS of MoJ. (For justifications of the procurement of the supplies mentioned above please see Annex 9)

3.4-4.2 MoJ staff trained on using the infrastructure

In order to utilize efficiently the new infrastructure, the following training to staff of the DGJRS is considered vital.

Organize study visit for 9 staff for 7 days - With the assistance of TA, 7 -days study visit to EU Member States will be helpful for the staff of the DGJRS to increase their technical knowledge and experience in particularly, on the subjects of desktop publishing and application of judicial statistics, operational principles of statistical servers.

Conduct training on IT issues for 15 DGJRS staff for 3 months in TR - The following training will be delivered by the TA in Turkey (TR):

- Training on Principals of UNIX
- Training on Database Application Development (Developer 2000, Java, etc)
- Training on Unix System
- Training on Network based on Unix
- Training on Database Management
- Training on Oracle
3.4 - 5.1 Conduct a nationwide survey to measure the success of the Project

With the assistance of TA, a nationwide survey will be designed and conducted to measure the success of the project.

3.5 Linked activities

Within the area of judicial reform the following programmes are linked to this area:

Judicial Modernization and Penal Reform Programme

The Turkish government has started planning and implementing various measures on penal reform and judicial modernization. This programme which will provide support to enhance these efforts in certain areas and will also seek to contribute more generally to increasing the capacity of the Ministry of Justice to design and implement broader reform strategies for the future, drawing on good practice in the EU was launched in 2004.

The overall objective is to advance penal reform and modernization of the judiciary in Turkey as foreseen in the Accession Partnership and the National Programme for the Adoption of the Acquis.

The Project has two components: support to the judiciary and support to the penitentiary system.

One of the levels of intervention under the heading of the support to the judiciary is monitoring the performance of the judiciary which is closely linked to the fourth component of the present project which aims to strengthen the capacity of the DGJRS. In fact, under the said subcomponent of the judicial modernization and penal reform programme, it is envisaged that the GD for judicial record and statistics will get technical assistance in judicial statistics and in IT, organizing training and financial support for the procurement of the equipment for the new data storage system.

The tender procedure for this Programme have been recently initiated.

Support to the Establishment of the Courts of Appeal

Turkish Grand National Assembly adopted the law on the establishment duties and powers of the ordinary courts of first instance and regional courts of appeal and the law amending the code of civil procedures on 26 September 2004 and Code on Criminal Procedures on 4 December 2004. The said laws were adopted by the Turkish Parliament and were published in the Official Gazette.

The purpose of the two laws (No: 5236 and 5235) is to establish a second instance ordinary court for civil and criminal matters and therefore clarify the role and function of the Court of Cassation (also referred to as the High Court of Appeals) as a law court. Both laws will enter into force on 1 June 2005. The Court of Appeals to be established under this Code will start to operate on 1 June 2007.
The contract procedure has recently been initiated for this project which will provide training for approximately 1,000 judges and prosecutors of the new Court. The introduction of Court of Appeals into the Turkish judiciary will lead to a considerable improvement in the functioning of the Court of Cassation by decreasing significantly the caseload of this Court.

3.6 Lessons learned

N/A

4. Institutional Framework

The beneficiaries of this project will be the Ministry of Justice, the UTBA and Ankara Bar Association.

The relevant departments of the MoJ are as follows:

DG for European Union Affairs as a coordinator, IT Department, DG for Legislative Issues, DG for Judicial Records and Statistics.

A Project Steering Committee (PSC) will be set up, consisting of the above mentioned institutions as well as representatives of the European Commission, CFCU. The PSC will meet at least three times a year and will monitor the implementation of the activities through regular review of progress of the program activities, deliver recommendations concerning any problems that might arise during the implementation and give support in the promotion and dissemination of the programme.

Specific working groups may be set up at any moment during the project to analyze specific questions with experts upon request of the TAT.

The activities in this project imply the need for close cooperation and good lines of communication with and between the many actors involved especially, a number of department of the MoJ and the various Bar associations involved.

5. Detailed Budget

<table>
<thead>
<tr>
<th>Phare/Pre-Accession Instrument support</th>
<th>Co-financing</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>€M</td>
<td>National Public Funds (*)</td>
<td>Other Sources (**)</td>
</tr>
<tr>
<td>Year 2005 - Investment support</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>jointly co funded</td>
<td></td>
<td></td>
</tr>
<tr>
<td>------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sub-project 1: IB</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Sub-project 2: Supplies</td>
<td>2.445</td>
<td>0.815</td>
</tr>
<tr>
<td>Investment support – sub-total</td>
<td>2.445</td>
<td>0.815</td>
</tr>
</tbody>
</table>

| % of total public funds | max 75% | min 25% |

<table>
<thead>
<tr>
<th>Year 2005 Institution Building support</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-project 1: IB</td>
</tr>
<tr>
<td>Sub-project 2: Supplies</td>
</tr>
<tr>
<td>IB support</td>
</tr>
<tr>
<td>Total project 2005</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>indicative Year 2006 Investment support</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>indicative Year 2006 IB support</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Total (indicative) project 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>-</td>
</tr>
</tbody>
</table>

(*) contributions form National, Regional, Local, Municipal authorities, FIs loans to public entities, funds from public enterprises
(/**) private funds, FIs loans to private entities

1. All investment sub-projects supported by the pre-accession fund must receive co-financing from national public funds. Minimum requirement for co-financing from national public funds is 25% of the combined PHARE and national contributions to the overall investment support.

2. Many Institution building projects will also have a degree of co-financing – this should be quantified and included wherever possible.

3. Expenditure related to equipment (regulatory infrastructure or ESC- related) and to Technical Assistance supporting investment (e.g. pre feasibility study / supervision of works / technical specifications) should be considered as Investment support in the project fiche.

4. All co-financing must be provided on a joint basis. Parallel co-financing will, in a principle, not be accepted. Exceptions to this rule have to be agreed with the Commission in advance.

5. All co-financing should be clearly quantified, also the degree of certainty of such co financing (i.e. for National Public Funds: is it already earmarked in local or national budget, for FIs Loans, private funds: are they already approved/ under appraisal, etc..).

6. Where parallel co financing is accepted and justified per exception to the normal rule it should be provided in monetary form. If this is not possible there should be clear
criteria set out for the valuation of any non-monetary contributions (that should be quantified in the table)

7. If twinning is involved, clearly state the expected budget of the twinning covenant

8. The financial engineering of the project should be closely monitored against actual delivery during implementation and against the objectives that were set in the project fiche so that corrective actions may be taken where required.

6. Implementation Arrangements

The Institutional Parties:

The Union of Turkish Bars

Tulay YILMAZ, Lawyer
Tel: 00 90 312 418 0512 Email: tulayy@barobirlik.org.tr

Ankara Bar Association

Dr. Mustafa Ozbek, Lawyer
Tel: 00 90 312 287 26 43 / 458 Email: mozbek77@hotmail.com

The Ministry of Justice ,

IT Department

Hakan ATASOY, Judge
Tel: 00 90 3122126595, E-mail: hakan.atasoy@adalet.gov.tr

DG for The Judicial Records And Statistics

Muharrem SONGUR, Judge
Tel: 00 90 3124148575, Email: muharrems@adli-sicil.gov.tr

DG for European Union Affairs

Omer ATABEY, Judge
Tel: (+90 312 4147924), Fax: (+90 312 4191163)
6.1 Implementing Agency

The Central Financing Contracting Unit (CFCU) will be the Implementing Agency and will be responsible for all procedural aspects of the contracting matters and financial management (including payments) of the project activities.

Central Finance and Contracts Unit (CFCU)
N. Ercan TORTOP
PAO
Phone: +90 -312- 285 2002
Fax: +90 -312- 285 96 24
e-mail: ercan.tortop@cfcu.gov.tr

6.2 Twinning

N/A

6.3 Non-standard Aspects

N/A

6.4 Contracts

Sub-project 1: Institution and capacity building

All technical assistance provided to the beneficiaries under the institution and capacity building sub-project, within the programme will be covered by a single Technical Assistance contract. The selected contractor will need to provide the range of expertise necessary to achieve the project purposes.

For the delivery of the TA part of the project, an international service tender will be launched by the CFCU and one technical assistance contract will be concluded with a maximum value of **1.140 MEURO**

Sub-project 2: Supplies

All supplies provided to the beneficiaries under the supplies sub-project, within the programme will be covered by two separate supply contracts. The selected contractors will need to provide the equipment listed in Annex 4.

For the delivery of supplies under this project, two international procurement tender will be launched by the CFCU with a maximum value of **3.260 MEURO**
7. **Implementation Schedule**

7.1 Start of tendering/call for proposals

- Sub-project 1 – TA : April 2006
- Sub-project 2 – Supplies : January 2006

7.2 Start of project activity:

- Sub-project 1 – TA : November 2006
- Sub-project 2 – Supplies : July 2006

7.3 Project completion:

- Sub-project 1 – TA : November 2008
- Sub-project 2 – Supplies : November 2008

For details, see Annex 2 – Implementation chart in standard form

8. **Equal opportunity**

The proposed Programme will comply with EU equal opportunity policies. Equal treatment of men and women in project implementation at all levels will be one of the most important principles in project management and implementation. Great attention will be given on having equal participation within the personnel that will be trained as well. The beneficiaries are employers of equal opportunity. Appropriate professional qualifications and experience will be the main decisive factors in personnel recruitment and evaluation. Both women and men have identical prospects.

9. **Environment**

N/A

10. **Rates of return**

N/A

11. **Investment criteria**

11.1 Catalytic effect

Under the EU Project entitled “Judicial Modernization and Penal Reform in Turkey” (JMPR) which is currently implemented under the MEDA Programme, an increased statistical and IT skills in the DGJRS as well as improved performance of the new data storage system of the DGJRS are expected to be obtained through intense training activities and procurement of equipment. It is important to note that supplies and services which are envisaged by this project to improve the capacity of the DGJRS are regarded complementary to that of the JMPR Programme. In accordance with the present project the emerging needs of the Ministry of Justice will be met with EU funding.

11.2 Co-financing
Under this project, 0.815 MEUR amounting 25% of the total investment costs - which is 3.260.000 - will be provided by the national public funds.

11.3 Additionality

N/A

11.4 Project readiness and size

With regard to the supplies under this project, the necessary technical specifications have been completed and listed in Annex 4.

11.5 Sustainability

This project complies with the relevant EU acquis, JHA. In order to manage effectively and ensure the sustainability of this project, a Project Steering Committee (PSC) will be set up with the participation of the representatives of the institutional parties to this project, as well as representatives of the European Commission, and CFCU. The PSC will meet at least three times a year and will monitor the implementation of the activities through regular review of progress of the program activities, deliver recommendations concerning any problems that might arise during the implementation and give support in the promotion and dissemination of the programme.

Moreover, specific working groups may be set up at any stage during the project to analyze specific questions if required in conjunction with the TA experts.

11.6 Compliance with state aids provisions

Supplies covered by this project shall respect the state aid provisions of Turkey’s Europe Agreement.

12. Conditions and sequencing

There is no pre-condition for the start of the project.

ANNEXES TO PROJECT FICHE

1. Logical framework matrix in standard format (compulsory)

2. Indicative implementation chart (compulsory)

3. Contracting and disbursement schedule, by quarter, for full duration of project (including disbursement period) (compulsory for year 1)
4. Reference list of feasibility/pre-feasibility studies (compulsory)

5. Reference list of relevant laws and regulations (compulsory)

6. Reference list of relevant strategic plans and studies

7. The relevant passages from the Advisory Report on the Functioning of the Turkish Judiciary of Republic Turkey

8. Detailed information about the current capacity and the performance of the DGJRS

9. Justification for procurement of the supplies of the DGRS

10. The relevant articles of the Criminal Procedure Codes on visual and sound recording


12. Statistical data concerning the average caseload of the courts and length of the trials in Turkish judiciary.
<table>
<thead>
<tr>
<th>ANNEX 1</th>
<th>LOGFRAME FOR BETTER ACCESS TO JUSTICE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>General Objective</strong></td>
<td><strong>Objectively verifiable indicators</strong></td>
</tr>
<tr>
<td>1. Strengthening the rule of law in Turkey 2. Guaranteeing all citizens’ right of access to justice in line with EU standards</td>
<td></td>
</tr>
<tr>
<td><strong>Project Purpose</strong></td>
<td><strong>Objectively verifiable indicators</strong></td>
</tr>
<tr>
<td>Improved access to justice by increasing the utilization of the legal aid system, making ADR more applicable in the justice system and strengthening the functioning of the judiciary</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Application of ADR in 10% of legal disputes (2007)</td>
</tr>
<tr>
<td></td>
<td>Increased public confidence of fair trial</td>
</tr>
<tr>
<td></td>
<td>Length of the civil and criminal trials shortened (10%) by the end of 2008. (see annex 12 for the relevant statistics)</td>
</tr>
<tr>
<td></td>
<td>The average caseload of the civil and criminal courts decreased (10%) by the end of 2008 (see annex 12)</td>
</tr>
<tr>
<td></td>
<td>Length of monitoring the performance of the judiciary decreased from 1 year to 2 months (2007)</td>
</tr>
<tr>
<td><strong>Results</strong></td>
<td><strong>Objectively verifiable indicators</strong></td>
</tr>
<tr>
<td>1. Increased utilization of the present legal aid system</td>
<td>Increased awareness of the citizens on their rights to legal aid</td>
</tr>
<tr>
<td>2. Introduction of ADR in the Turkish legal practice</td>
<td>Length of the civil trials shortened (10%) by the end of 2008. (see annex 12 for the relevant statistics)</td>
</tr>
<tr>
<td></td>
<td>The average caseload of the civil courts decreased (10%) by the end of 2008 (see annex 12)</td>
</tr>
<tr>
<td></td>
<td>Application of ADR in 10% of legal disputes (2007)</td>
</tr>
<tr>
<td>3. Improvement of fairness in criminal proceedings</td>
<td>Increased public confidence of fair trial</td>
</tr>
<tr>
<td></td>
<td>Positive opinion of the EC</td>
</tr>
<tr>
<td>4. Strengthening the technical capacity of the MoJ</td>
<td>Length of monitoring the performance of the judiciary decreased from 1 year to 2 months (2007), judicial statistics delivered in 2 months instead of 1 year</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Activities</th>
<th>Means</th>
<th>Costs</th>
<th>Assumptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conduct a research study to identify the gaps and needs of the legal aid system by the LAC with the help of TA (5 months)</td>
<td>TA [done by the members of the UTBA and selected bar associations]</td>
<td>150,000</td>
<td></td>
</tr>
<tr>
<td>1.2 Public awareness activities</td>
<td>TA</td>
<td>170,000</td>
<td></td>
</tr>
<tr>
<td>1.2.1 Develop information materials</td>
<td>TA</td>
<td>120,000</td>
<td></td>
</tr>
<tr>
<td>1.2.2 Develop and broadcast 2 TV programmes</td>
<td>TA</td>
<td>30,000</td>
<td></td>
</tr>
<tr>
<td>1.2.3 Improve web-site of the UTBA</td>
<td>TA</td>
<td>20,000</td>
<td></td>
</tr>
<tr>
<td>1.3 training for lawyers</td>
<td>TA</td>
<td>355,000</td>
<td></td>
</tr>
<tr>
<td>-------------------------</td>
<td>----</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>1.3.1 develop and implement 8 two-days training of trainers seminars in 2 years for 800 lawyers</td>
<td>TA</td>
<td>270,000</td>
<td>Lawyers will be able to absorb the training</td>
</tr>
<tr>
<td>1.3.2 2-days international symposium on legal aid for 300 legal professionals</td>
<td>TA</td>
<td>85,000</td>
<td>Staff and lawyers will be released and available for training</td>
</tr>
<tr>
<td>2.1 Public awareness activities on ADR</td>
<td>TA</td>
<td>75.00</td>
<td>ADR formally (legislation, etc.) introduced into the Turkish legal system by June 2006</td>
</tr>
<tr>
<td>2.1.1 Develop and disseminate 30,000 CDs on ADR demo</td>
<td>TA</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>2.1.2 Prepare and disseminate 5000 posters</td>
<td>TA</td>
<td>25,000</td>
<td></td>
</tr>
<tr>
<td>2.2 Training for lawyers</td>
<td>TA</td>
<td>580,000</td>
<td></td>
</tr>
<tr>
<td>2.2.1 Develop and implement 7 two –days training of trainers seminars for 1000 lawyers</td>
<td>TA</td>
<td>260,000</td>
<td>Lawyers’ willingness and adaptation to ADR systems into practice in addition to court solution.</td>
</tr>
<tr>
<td>2.2.2 Organise 3 three-days international symposiums in TR for in total 900 legal professional</td>
<td>TA</td>
<td>270,000</td>
<td>Staff and lawyers will be released and available for training</td>
</tr>
<tr>
<td>2.2.3 Organise and implement study visits for the Commission of the MOJ (12) and (2) lawyers of the Ankara Bar Association for 15 days to Germany and the Netherlands</td>
<td>TA</td>
<td>50,000</td>
<td>Beneficiary’s own resources allocated for study visit</td>
</tr>
<tr>
<td>3.1 Procure and install recording systems at all Heavy Penal Court Rooms</td>
<td>Supply contract for 225 recording systems</td>
<td>1,900,000</td>
<td>Detailed Technical specifications will be ready before June 2006</td>
</tr>
<tr>
<td>4.1 Procure the infrastructure equipment in Annex 4-a and install at DGJRS</td>
<td>Procurement done according to procurement in Annex 4-a</td>
<td>1,360,000</td>
<td>IT Department remains committed ownership on ongoing activities.</td>
</tr>
<tr>
<td>4.2 MoJ staff trained on using the infrastructure</td>
<td>TA</td>
<td>75,000</td>
<td>Staff of the DGJRS ready to accept the new infrastructure</td>
</tr>
<tr>
<td>4.2.1 Organise study visits for 9 staff for 7 days</td>
<td>TA</td>
<td>25,000</td>
<td>Beneficiary’s own resources allocated for training</td>
</tr>
<tr>
<td>4.2.2 Conduct training on IT issues for 15 DGJRS staff for 3 months</td>
<td>TA</td>
<td>50,000</td>
<td>Beneficiary’s own resources allocated for training</td>
</tr>
<tr>
<td>5.1. Conduct a nationwide survey to measure the success of the project</td>
<td>TA</td>
<td>30,000</td>
<td></td>
</tr>
</tbody>
</table>

Pre-conditions
ANNEX 2: Implementation chart in standard format

<table>
<thead>
<tr>
<th>IMPLEMENTATION CHART</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-project 1: IB</td>
<td>D</td>
<td>D</td>
<td>D</td>
<td>D</td>
</tr>
<tr>
<td>Sub-project 2:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Supplies</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
</tbody>
</table>

Design: D  
Tendering and contracting: C  
Implementation and Payments: I
### ANNEX 3: Contracting and disbursement schedule by quarter for full duration of programme (in million euro)

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-project 1: IB</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.140</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.140</td>
</tr>
<tr>
<td>Sub-project 2: supplies</td>
<td>-</td>
<td>-</td>
<td>3.260</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.260</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th></th>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-project 1: IB</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.250</td>
<td>0.150</td>
<td>0.150</td>
<td>0.150</td>
<td>0.150</td>
<td>0.150</td>
<td>0.140</td>
</tr>
<tr>
<td>Sub-project 2: supplies</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>1.500</td>
<td>1.500</td>
<td>-</td>
<td>0.260</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.260</td>
</tr>
</tbody>
</table>
**ANNEX 4: Reference list of feasibility/pre-feasibility studies**

a) Technical Specification and Indicative Budget For Strengthening the capacity of Judicial Records And Statistics Department

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-</td>
<td>2 Servers</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>200,000x2=400,000 Euro</td>
</tr>
<tr>
<td></td>
<td>4x64 bit Risc 750 MHz Processor (Max=8)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8 Mb L2 cache</td>
<td></td>
</tr>
<tr>
<td></td>
<td>8Gb RAM (Max 32 Gb)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2x18 Gb System Disk</td>
<td></td>
</tr>
<tr>
<td></td>
<td>300Gb Disk briz</td>
<td></td>
</tr>
<tr>
<td></td>
<td>UNIX operating system</td>
<td></td>
</tr>
<tr>
<td>2-</td>
<td>Statistical Database Management System</td>
<td>100,000 Euro</td>
</tr>
<tr>
<td>3-</td>
<td>Statistical Application Software</td>
<td>200,000 Euro</td>
</tr>
<tr>
<td>4-</td>
<td>Statistical Reporting Software</td>
<td>100,000 Euro</td>
</tr>
<tr>
<td>5-</td>
<td>Statistical Analysis Software</td>
<td>200,000 Euro</td>
</tr>
<tr>
<td>6-</td>
<td>Desktop Publishing(DTP) Hardware and Software</td>
<td>300,000 Euro</td>
</tr>
<tr>
<td></td>
<td>(DTP packages are used to produce high quality documents without going to a professional printer. DTP can be used to produce pages that combine text and pictures for leaflets,</td>
<td></td>
</tr>
</tbody>
</table>
posters or books.)

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>AMOUNT</th>
<th>UNIT PRICE IN EURO</th>
</tr>
</thead>
<tbody>
<tr>
<td>7- 30 Notebook PCs</td>
<td>60,000</td>
<td>20 Euro/PC</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>1,360,000 Euro</td>
</tr>
</tbody>
</table>

b) Technical specification for audio and visual recording equipment in 225 heavy penal courthouses

(Indicative)

Audio recording in court houses

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>AMOUNT</th>
<th>UNIT PRICE IN EURO</th>
</tr>
</thead>
<tbody>
<tr>
<td>MICROPHONES</td>
<td>1125</td>
<td>39,0625 Euro</td>
</tr>
<tr>
<td>MICROPHONE PROTECTION</td>
<td>675</td>
<td>13,28125 Euro</td>
</tr>
<tr>
<td>HEADPHONES</td>
<td>450</td>
<td>16,9921875 Euro</td>
</tr>
<tr>
<td>USB PEDAL</td>
<td>450</td>
<td>70,3125 Euro</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>43,495,3125</strong></td>
<td><strong>8,964,84375</strong> Euro</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PRODUCT</th>
<th>AMOUNT</th>
<th>UNIT PRICE IN EURO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Infrastructure, spare parts, transportation, Reporter desk (LAN supported voice catcher system and enter price licence) Installation and trainings</td>
<td>225</td>
<td>1,484,375 Euro</td>
</tr>
<tr>
<td>REPORTER DECK</td>
<td>225</td>
<td>4,839,0625 Euro</td>
</tr>
<tr>
<td>INSTALLATION AND TRAININGS</td>
<td>225</td>
<td>1,666,40625 Euro</td>
</tr>
</tbody>
</table>

28
The total cost of 225 audio and visual recording equipment including microphones, the necessary softwares and hardwares and enter price licence is **1,900,000 Euro** (instalment payment included)

**ANNEX 5 : Reference list of relevant laws and regulations (compulsory)**

1-Constitution of Republic of Turkey  
2-Turkish Criminal Procedure Code  
3-Turkish Penal Code  
4-Advocateship Law

**ANNEX 6: Reference list of strategic plans and studies (compulsory)**

There is no strategic plan or study relevant to the project.
ANNEX 7: Relevant Paragraphs From The Second Advisory Report On The Functioning Of The Turkish Judiciary Prepared For The EU Commission

I- Effective implementation of ADR systems in Turkey

“...During the course of the Advisory Visit we received several complaints to the effect that a substantial number of the cases presently before the civil courts in Turkey involve very minor disputes between individuals or between individuals and the administration. Examples of such cases included rental disputes and objections of students against marks awarded in university examinations. It appears that the reason why such cases are taken to court is the absence of any form of alternative dispute resolution mechanism for private law disputes in Turkey....

We recommend that, in accordance with Objective 1 of Recommendation No. R (86) 12 of the Council of Europe on Measures to Prevent and Reduce the Excessive Workload in the Courts, necessary amendments be made to procedural rules and legislation so as to facilitate the settlement of private law disputes involving individuals and public bodies in conciliation committees or similar institution. As a compliment to the establishment of such institutions, we recommend that lawyers be trained in basic alternative dispute resolution methods and techniques”....

II- Recording systems in the courthouses

“Recording Of Witness Evidence And Submissions Of Counsel”

“...We recommended that all court proceedings be sound-recorded so that an accurate record of all evidence, argument and submissions on behalf of both the prosecution and defence is made.

Turkish courts still have no mechanism for recording verbatim the evidence of witnesses or the submissions of counsel. The only facility available is a court stenographer who, using a computer, generates an account of what is said in the courtroom. Different procedures also continue to be adopted for recording the evidence, argument and submissions of the defence and prosecution respectively. Defence lawyers are barred from dictating their submissions directly into the court record. Instead, they must rely upon the judge to summarise the testimony of witnesses, the statements of their clients and their own arguments and submissions. The court stenographer only records the summary that the judge dictates to her. In contrast, the court stenographer enters evidence and submissions on behalf of the prosecution directly into the court record, verbatim, without waiting for a summary from the judge.

The Ministry of justice has agreed to take the recommendation regarding the sound recording of court proceedings into account during work on the amendment of the Criminal Procedure Code. We are given to understand that the required technical infrastructure will be established within the framework of the EU supported project entitled “Access to Justice”. The Ministry of Justice estimates that the necessary measures will be introduced in 2006.
We welcome the initiative of the Ministry of Justice in line with the recommendation. Pending the introduction of sound recording of court proceedings in practice, the recommendation is maintained and repeated.”

ANNEX 8: The current capacity and performance of the DGJRS

In order to execute its responsibilities, the General Directorate started his computer based initiative in 1982 with an application software written by our personnel on an UNISYS A-9 mainframe by using DMS II COBOL database.

With time, owing to the insufficient capacity of A-9 system and high operation cost of dispersed database, the first revision on the mainframe occurred in 1994 by an access to central database with A-11 Mainframe.

Because of the technical improvements of this era, speed and quality increase in communication, differential development of database softwares, high amount of quality and capacity of information requested by UYAP, capability and capacity of the hierarchic database and its software became inefficient. Thus, transition of old database to relational database became a necessity. Therefore, the second great revision on mainframe was started in year 2001. For this reason:

1- To renew the mainframe hardware, SUN 6800 UNIX file server was purchased in December 2001. In the project of Modernization of Justice carried out together with EU in 2001, another server which would be working parallel with the first one to serve uninterruptedly as a backup at a possible disorder, its software and parallel working apparatus were demanded and accepted by EU. In order to renew the hardware of mainframe, one of the application servers was purchased in the year 2002. Data storage unit was purchased in 2003 through budget opportunities.

2- Instead of the old application software which did not meet the needs in some situations, new application software was developed on Oracle 9i database using Oracle tools in 2002 by Havelsan Company. Both systems and software have been running synchronously since January 2003.

3- Out of 201 locations, connection of 49 of them (consisting 60 % of work load) to the new system was accomplished at the end of 2003.

4- Obtaining the result of the criminal record query at the new software and the new system takes 2 sec. on monitor and 8 sec. on paper in the country.

5- An average of 60,000 records are queried at 201 locations from a total of 690 monitors using both old and new systems everyday.

With the proposal of the first project put forward within 2004 supplementary program of EU, to purchase an application server that will supposed to be necessary in about 2006, (since 100% of the country end points has been connected to the new system) and to meet the needs of the personnel of the Judicial Record IT Department in terms of education, equipment and know-how are aimed. Realization of this stage of the project is directly related to speed of access to justice and priority in timeline of the project, such as; provided that the budget of General Directorate of Judicial Records and Statistics makes it possible to a sufficient allocation, about 20 additional locations will be connected to the system in 2004. However,
without an addition of second application server to the mainframe, 200 additional connections which will be an anticipated demand of UYAP towards the end of the year 2005, will not be achieved. With the addition of second application server, increase of the judicial capacity which will normally be obtained not earlier than 2007, will be enabled.

The second working area of our General Directorate is compilation, collection and evaluation of judicial statistics. The current situation on judicial statistics is as follows:

1. Judicial statistics are collected from a total of 8322 units. Of all units, 853 are Office of Chief Public Prosecutors, 2896 are Criminal Courts, 3358 are Civil Courts, 131 are Administrative Courts and 1084 are Enforcement Offices. 22 survey forms are sent to those units at the end of each year. Each unit fills out these forms till the end of January and sends them by post to our General Directorate. After necessary checking and corrections, data input personnel enters them into digital environment manually. Reports are prepared until the middle of July.

2. This information is sent regularly to the State Statistics Institute, Personnel General Directorate, European Union General Directorate and it is published annually under the name of ‘Judicial Statistics Yearbook’. The information can also be reached through our web site at www.adli-sicil.gov.tr by researchers.

3. In order to follow the implementation in EU membership process, statistics related to certain laws have been collected in every three months as of the beginning of 2003 with 4 survey forms. At the end of second month following every collection period, they are ready to be used.

4. The department is not only in need of an independent database on which these statistics are developed, a server with high security, providing intensive and quick access and an application software enabling the statistics to be easily compiled and evaluated, but also of training and hardware of the statistical personnel to develop parallel statistical application with EU.

ANNEX 9: Justification for the procurement of supplies of the DGJRS

- Application server for the Judicial Record Mainframe

Judicial Record Unit is responsible for obtaining and processing the data concerning the criminal records of all citizens and providing them to judiciary as well as all interested individuals. Without this service, trials can not be concluded due to its substantial relevance to the criminal and civil justice. Another possible scenario is that trials cannot be concluded in a reasonable time and in a fair way if this service is not provided to courts swiftly and thoroughly. In the final analysis, citizens can get a swift and fair judgment provided that this unit serves properly and rapidly.

In order to make this service work proper and swift which will lead to an improvement in the citizens access to justice, purchase of an application server is crucial for the success of this project.
(A main frame A 11 and DMS II Cobel database operates currently database of the judicial record unit. And its capacity is not sufficient for meeting the increasing need and demand of the citizens in the said frame.)

- Notebooks for the expert-staff of IT unit and judicial records and statistics unit (30 Units)

These notebooks will be allocated to the mobile-expert staff of the department under MoJ's well-established strict internal regulations which impose a legal obligation on the relevant staff to use this equipment only for official purposes in order to improve their capacity of doing area work throughout the country. With the help of these notebooks, they will be able to contact easier and faster with the center and it will be faster to exchange data among expert staff working on the area.

Furthermore, these notebooks will be employed for repairing any failure of the system in the district and developing software project.

- An Unix Server for the collection and evaluation of judicial statistics on a web based application

By putting an independent web server into the place, statistics will be collected and evaluated rapidly and accurately and it will be open to researchers, public institutions and EU organs as well as all individuals who are interested in. This practice will ensure a transparency in terms of the functioning of the judiciary. And one can argue that transparency is the key to access to justice.

- A database which runs on UNIX server, statistical reporting software and statistical analyzing software for the collection and evaluation of judicial statistics.

Those purchases are the indispensable part of the project aiming to improve the capacity of judicial statistics unit which will provide transparency and monitoring with regard to the functioning of the judiciary.

It is important to note that the MoJ considers the purchase of all these servers, hard wares and soft wares as a package which must be provided as a whole in order to obtain the expected result of improving the capacity of the statistics unit.

ANNEX 10 : The provisions of the Criminal Procedure Code concerning the use of visual and sound recording systems in the court houses

Recording the testimony of the witnesses

Article 52-
3)… The visuals or sounds may be recorded while the witnesses testify. However, this recording is obligatory, where the witnesses are;

a) minor-victims
b) those who can not be made available in the hearings and whose testimony is material to the case…

Hearing the witnesses in the absence of those who are entitled to be present during a witness hearing

Article 58-
3) …Judge may permit witnesses to testify in the absence of those who are entitled to appear before the court if it is likely that their presence can cause a serious danger for the witnesses…During this hearing, visual and sound recording shall be done.

Recording the suspect or accused
Article 81-
1)…Recording sounds and visuals of the suspect or accused where it is necessary to identify his identity shall be done under the decision of the prosecutor or judge…

Recording visuals of the corps
Article 87-
5) …During the autopsy and post mortem examination visuals of the corpse shall be recorded….

Monitoring and recording the suspect or accused in the public sphere and his office
Article 140-
If there is a strong doubt that the offences listed in this article has been committed and there is no other way of obtaining evidence, the activities of the suspect or accused in the public sphere and his office may be monitored and visuals or sounds may be recorded.

Hearing the experts and witnesses through the visual and sound communication technology
Article 180-
5)…If there is a suitable infrastructure, judge shall hear the expert or the witnesses via sound and visual recording system….

Questioning the suspect or accused by using visual and sound communication technology
Article 196-
4)…If there is such a technical opportunity, the court shall question a suspect or an accused by using visual and sound communication technology…

ANNEX 11: Alternative Dispute Resolution within the framework of Better Access To Justice Project
(Prepared by Dr. Mustafa Özbek)

1. Access to justice and necessity of ADR in Turkish law

An effective access to justice is one of the fundamental conditions for the establishment of the Rule of Law. A right of access to judicial protection meant essentially the aggrieved individual’s formal right to litigate or defend a claim. Effective access to justice has increasingly been movement these barriers have been gradually overcome\(^{10}\), accepted as a basic social right in modern societies. There are some barriers to effective access to justice; however, within the access to justice

The rights of access to justice and to a fair trial are guaranteed under Article 6 of the European Convention on Human Rights. Efficiency and fairness of criminal and administrative justice are prerequisites for a democratic society. Article 6 of the European Convention on Human Rights encompasses the ideal that promptness and fairness. If justice must be prompt without being unjust, it must be efficient. This article recognizes that justice that is not available within a “reasonable time”\(^\text{11}\) is inaccessible justice for many people\(^\text{12}\). Moreover, access to justice is not just access to judicial system, but it includes access to adequate dispute resolution process for people\(^\text{13}\). Thus, there is a special place for alternative dispute resolution processes in access to justice. Because, the establishment of alternative means of dispute resolution could serve to significantly reduce the number of minor disputes before the civil courts and thereby lead to an increase in overall efficiency. So, effective implementation of alternative means of dispute resolution explicitly eases the citizens’ access to justice\(^\text{14}\).

Lately, there is a sense of crisis in the administration of civil justice. The administration of civil justice is falling to meet the needs of the community\(^\text{15}\). The existing system of civil procedure in Turkey is troubled by excessive costs, delay, and complexity.

Over the past several decades, the average time required for civil cases to get into court has lengthened, adding to the cost and uncertainty of the litigation process. Court dockets are loaded, so civil litigation can easily be put off for years. On the other hand, disputes can be negotiated quickly if both parties are interested in doing so. Even if a party is on the losing side of mater, often there is value in knowing what cost must be borne, rather than having a liability of uncertain size hanging around for years.

Since most of disputes are resolved under the rule of law but outside of the courtroom, it is important to know the settlement process as it is to understand the trial process. Different formats may be used to resolve disputes outside of court. Judges often encourage parties to resolve disputes before trial and have ordered the use of alternatives to traditional litigation to reduce the time spent in court\(^\text{16}\).

Alternative dispute resolution (ADR) describes those dispute resolution processes which exist as alternatives to traditional litigation. The term ADR refers to a range of process designed to aid parties in resolving their disputes without the need for a formal judicial proceeding. The

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\(^\text{11}\) For the analysis of the principles established by the European Court of Human Rights concerning the notion of time and how its “reasonableness” see Council of Europe, *The length of civil and criminal proceedings in the case-law of the European Court of Human Rights* (Human Rights Files No. 16, 1999).

\(^\text{12}\) Cappelletti, Garth p. 190.

\(^\text{13}\) European Committee on Legal Co-operation, *23rd Conference of European Ministers of Justice, Cost-Effective Measures Taken By States To Increase The Efficiency of Justice*, London 2000, p. 9.


most common methods of ADR are negotiation, mediation (or conciliation), mini trial, early neural evaluation, settlement week, case evaluation, med-arb, and arbitration\textsuperscript{17}.

ADR processes are not necessarily confined to reduction of the number of pending trials, but are used as an instrument of social reconciliation as well, by operating on the reconstruction of relations. ADR can enhance public satisfaction with justice system and reduce the negative effects of the adversarial system\textsuperscript{18}.

2. What have been done about ADR in Turkish law?

The practice of ADR in Turkey is limited. There are direct interested provisions about ADR in the Turkish law system such as Advocateship Law, Code of Criminal Procedure, Code of Labor, and Code of Consumer Protection.

A) Advocateship Law

There are two main provisions on ADR in the Turkish Law and both of these regulations’ effectiveness started newly. The first statutory provision that supports ADR is in the Code of Lawyer. According to the article 35/A of the Code of Lawyer if the client claims for conciliation, an attorney may invite the opposite sides to conciliation when the case or the trial is not commenced. If the parties reach an agreement at the end of the conciliation, the statute provides that the parties and the attorneys will execute a written agreement disposing of the dispute. The agreement called “conciliation minute” signed by clients and their attorneys. Conciliation minute is enforceable in the same manner as any other final judgment\textsuperscript{19}.

B) Criminal Procedural Code

The second provision is in the new Code of Criminal Procedure and in the Penal Code which will come into force on April 1, 2005. Article 253 of the Code of Criminal Procedure and article 73 of the Penal Code, contain provisions about victim-offender mediation in a criminal case, depend on a decision by the prosecution or the judge. Only offences which can be prosecuted by the public prosecutor only upon complaint of the injured party are suitable for mediation.

It is a requirement for mediation that the accused and the victim accept the main facts of the case. The accused must accept to compensate fully or to a large extent for material or immaterial damages to the victim.

Mediation is available both during preliminary or final proceedings. Mediation in a proceeding can only take place if the parties freely consent. The parties are able to withdraw their consent at any time during the mediation. It is essential to ensure that both parties understand the process and implications.


\textsuperscript{18}European Committee on Legal Co-operation p. 28.

\textsuperscript{19}Özbek p. 418.
After agreeing to mediation, the parties will appoint a lawyer as mediator. If they do not select the mediator, the public prosecutor or the judge will contact the local bar association to appoint the mediator. To be a mediator one must be an attorney who has been a member of the local bar\(^{20}\).

Mediator must complete mediation maximum in thirty days form the time of appointing. An extension of the thirty-day limitation may only be granted by the prosecutor once. The limitation period suspends during the mediation\(^{21}\).

Mediation discussions are confidential and may not be disclosed subsequently, except with the agreement of the parties. If the case is referred back to the proceeding as mediation is unsuccessful, an acceptance of some facts or even “confession of guilt” by the accused in the context of mediation can not be used as evidence in subsequent criminal proceedings on the same manner\(^{22}\).

After the mediation process is concluded, the mediator will report to the relevant public prosecutor on his or her interventions in ten days.

If mediation is successful in bringing about an agreement between the parties, and the damages compensated, and the costs of mediation to be paid by the accused the public prosecutor order not to prosecute\(^{23}\).

When the court refers a criminal case to mediation, the same procedure is followed. When the case has been mediated, the court order for the discontinuance of the proceedings\(^{24}\). In this code reference has been made to Recommendation no. R(99)19 of the Council of Europe Committee of Ministers on mediation in penal matters\(^{25}\).

C) Draft Administrative Procedure Act

Finally, a Draft Administrative Procedure Act is under consideration at the Ministry of Justice. This code envisages the introduction of Alternative Dispute Resolution mechanisms in settling administrative disputes\(^{26}\). Chapter 8 of the Draft Act deals with alternative means for resolving disputes between administrative authorities and private parties. There are the following alternative processes: internal reviews, negotiated settlement, and mediation (or conciliation). In this draft code reference has been made to Recommendation no. Rec(2001)9 of the Council of Europe Committee of Ministers on alternatives to litigation between administrative authorities and private parties\(^{27}\).

ADR will be recognized in Turkish judicial system as having a fundamental role to play in the resolution of civil, commercial and criminal disputes. Because lawyers who work on trials or

\(^{20}\) Code of Criminal Procedure 253(4).

\(^{21}\) Code of Criminal Procedure 253(5).

\(^{22}\) Code of Criminal Procedure 253(6).

\(^{23}\) Code of Criminal Procedure 253(8).

\(^{24}\) Code of Criminal Procedure 254.


\(^{26}\) See generally Mustafa Özbek, İdari Uyuşmazlıkların Çözümünde Yargılama Dışı Usuller (II) (Turkey Bar Association Journal 2005, Vol. 57, p. 82-134).

those who encounter enormous difficulties in litigation expect the ADR to be extended to all civil cases. Nowadays, the Code of Civil Procedure does not provide necessary authority to use ADR. However, a broad authority for using ADR processes in all civil actions must be given in the Code of Civil Procedure. It is clear that in all fields of civil dispute resolution ADR will play a central and rather important role in the near future.

3. What should be done for ADR in Turkish judicial system?

In Turkish Judicial System ADR should be promoted by legislative and operational initiatives. In the light of Turkish constitutional requirements, our legislation should be reviewed with regard to ADR. To this end the following steps will be initiated:

A) Preparing the Legislation on ADR

The implementation of ADR in Turkey remains too limited. For overcoming this problem, the application of ADR should be prompted and there should be a public support for ADR services. Relevant statutes should provide ADR processes and in appropriate actions using mediation should be facilitated. Mediation should be set up in civil and commercial matters, penal matters, administrative matters, and family matters and should be available to all.

The most familiar example of ADR is mediation in civil law and family law. In civil law, Code of Civil Procedure should be changed and it should stipulate to recourse to ADR either before or during the case. Reference should be made to Recommendation no. R(2002)10 of the Council of Europe Committee of Ministers on mediation in civil matters. Also, in family law, Code of Family Courts should be changed. Reference should be made to Recommendation no. R(2002)10 of the Council of Europe Committee of Ministers on family mediation.

The relevant measures for the selection, responsibilities, training and qualification of mediators will be taken.

B) Information on ADR Processes

General information on ADR processes especially on mediation will be provided for the public, and persons involved in civil and criminal disputes by Turkey Bar Association. Both Bar Associations and Ministry of Justice should work to presenting ADR in collaborating. ADR is not sufficiently understood or properly used in Turkey.

However, it is clear that people prefer to resolve their disputes amicably rather than to bring their disputes before the courts. In order to improve knowledge and understanding of ADR, Turkey Bar Association will promote ADR processes, especially for court-based mediation, to inform the public and persons with civil disputes, e.g. through information programmes, written materials, web pages, and the media. The posters that will promote the awareness and application of ADR shall be placed to courthouses and lawyers’ offices.

These campaigns will try to get the message across to disputants that there are various dispute resolution processes other than court adjudication and they should consult their lawyer for unknown opportunities. This information will also include references to the costs and efficiency of mediation. Moreover, it will be ensured that lawyers and the judicial or other administrative authorities understand the mediation process and can provide accurate information to parties who may wish to use it30.

C) Court-Based ADR Programs

Court-based ADR Programs (court-annexed ADR) should be developed31. Civil Procedural Code must give courts substantial authority to use ADR. Courts must be authorized by Code of Civil Procedure the use of ADR processes in all civil actions. Courts must implement ADR processes and begin providing ADR services. Appropriate cases should be referred to ADR. The referral should be able to made sua sponte or at the request of one of the parties. Besides out-of-court mediation, court-based mediation also should be used. Mediation does not lose its influence just because proceedings have been initiated. Here the purpose of mediation is no longer to avoid bringing the matter before a court, but to bring the case to a conclusion without a trial and, to prevent subsequent disputes among the parties32.

Well functioning court-based ADR programs will be established and guidelines for ensuring fair and effective court-based ADR programs will be determined.

A new approach that could ease the growing demands on courts throughout the country will be formed. This concept called in Anglo-American Law as “multi-door courthouse” or “multi option ADR”. In this idea there is one large courthouse with multiple dispute resolution doors or programs. Cases could be diagnosed and referred through the appropriate door for resolution. The programs could be located inside33 or outside of the courthouse34.

Turkey Bar Association will identify some experimental program sites in Turkey. The goals of the multi-door experiment are to provide easy access to justice, to establish networks that would reduce citizen frustration, and to develop programs to fill service gaps, by making available more options.

Intake and Referral step will be establish to describe a process of case analysis that identifies various ways in which the case might be resolved. During an intake interview, factors about the case and the parties will be discussed with client. Factors generally are

30 Council of Europe, Mediation in Civil Matters p. 21.
33 Neural meetings rooms can be set up inside the courthouses or Bar Associations in order to urge lawyers to take consider mediation. Thus they can gather at a neutral place.
the nature of the case; its complexity; the number of parties; the relationship of the parties; any disparity in bargaining power; the history of the negotiations; and the relative size of the claim. Following this assessment, the intake specialist and the client jointly determine the most appropriate steps to be taken in an effort to resolve the dispute. Intake step is also used to describe a screening process to determine if a case is appropriate for a specific program like family mediation.

D) Technical Assistance and Study Visit

An ADR Committee will be set up by the Turkey Bar Association. This Committee which encompasses ADR specialists will visit some of the European Union member states in order to research on ADR initiatives. This study visit will focus on how to develop court-based ADR systems and how to implement statutory provisions about ADR into Code of Civil Procedure. The study visit to European Union will assist experts on what should be achieved in Turkey in the future. In this way, the application of ADR in European Union and know-how of ADR at European level will be transferred to Turkey. After this study visit, ADR Committee will provide technical assistance to attorneys, judicial officers, legislators, and academicians on this matter. ADR Committee will promote co-operation between the Turkey Bar Association and European Union in the future.

E) Training of Lawyers and Organizing Symposiums

States should take measures to promote the development of appropriate standards for the training and qualification of mediators. Lawyers to become mediators will be trained periodically. Training programs range from 40-hour courses in mediation to two-hour in-service trainings or round table discussions. To this end training teams encompass ADR specialists will be established. The training agendas will be determined by using lectures, demonstrations, role-play and other exercises, discussions, video tapes and some written assignments.

The training on ADR will focus on the following branches:

General principles and practice of basic out-of-court dispute resolution methods like mediation or arbitration,
Court-based ADR,
Negotiation techniques,
Civil and commercial mediation,
Family mediation,
Employment mediation and conciliation,
Victim-offender mediation and reparation,
Online dispute resolution.

The training on court-based ADR will focus on the following topics:
Using of ADR,
Selecting cases appropriate for ADR,
c. Matching the ADR process to the case,
Deciding on party consent, client attendance, and degree of party participation,
Selecting the neutral,
Necessary qualifications and standards to appoint a neutral,
Ethical principles for ADR neutrals, establishing a code of conduct for neutrals,
Compensating the neutral,
Confidentiality of ADR communications,
Referring of the case to ADR and elements of the judge’s referral order,
Managing cases in the ADR process,
Teaching of the general principles and practice of court-based ADR processes.

These training courses on ADR and negotiating skills will examine ADR processes being used in comparative law. The training courses will involve separately since the contents and specialties are totally different for arbitration and mediation. The lawyers that will be educated shall have the option on selecting mediation or arbitration or other process. The national codes connected with ADR and Acquis Communautaire will be the legislative backdrop for examining the policy, practice and procedure of ADR. Comparative definition, components and skills within the broader taxonomy of dispute resolution will be explored. Demonstrations and simulations will be utilized to assist with the understanding of how ADR is adjunct to the Common Law Tradition. Negotiation skills, historical foundations, and cross cultural aspects of dispute resolution will be considered.

The promotion of ADR has been a feature of numerous activities organized by the European Union and the Council of Europe for a long time. For this reason, lawyers will be trained about the acquis of the European Union like the proposal for a directive on mediation, European Code of Conduct for mediators or Green Paper on ADR in civil and commercial law. Also, they will be informed on the various recommendations adopted by the Council of Europe in the field of justice.

In addition to basic training with its strong emphasis on interactive skills development, the Turkey Bar Association and local Bars should offer neutrals Continuing Neutral Education Seminars throughout the country to further enhance their skills and knowledge. Turkey Bar Association will organize short term (each three-day) sessions. These sessions will take place in seven different regions of Turkey in seven different cities firstly. The cities here the sessions will take part will be chosen by Turkey Bar Association and special importance shall be given the places where the caseload is heavy. Two local and four international experts will be in these sessions and is aimed to train nearly total number of one thousand lawyers with these information studies.

An international symposium shall be organized for awareness raising on ADR for both public and private sector. The symposium will take place in Ankara or Istanbul. It will be three-day symposium and international and local experts will join in it. It is aimed to have three-hundred people (attorneys, judges, private and public sector) at this conference. Developments on ADR in European Union, negotiation skills, court-based ADR and

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40 For this activities see. Committee of Experts on Efficiency of Justice p. 6.
different ADR methods will take part in this activity. The contributions at symposium shall be published for dissemination for ensuring further sustainability of project.

In addition interim seminars, a comprehensive in-service training on ADR will be held within the Turkey Bar Association. Continual training for trainers and neutrals is the responsibility of ADR Committee. There will be a long-standing training program for trainers in Turkey Bar Association. Also, law schools will be invited to join in ADR activities. They will be encouraged to teach negotiation and related skills. It will be recommended that alternative methods of dispute resolution be included in a school’s professional skills curriculum and curriculum of the Justice Academy.

ANNEX 12: Average caseload and length of the trials in Turkish courts

**Annually Total and Average Workload of Courts (Between 2002-.2003)**

**- Generally**

In 2003, totally 4,846,612 cases dealt by the 6,120 functioning courts (except administrative courts) throughout Turkey with the average workload of 792. In 2002, 5,912 courts dealt with 5,099,552 cases with the average of 863 cases.

According to these figures in 2003 the average workload of the courts decreased %8 percent as the result of increasing of the number of courts and decreasing of the filed cases. In comparison with 2001 the workload decreased %13 in 2003.

In 2002, total number of 288,995 cases dealt by 130 Administrative Courts and in 2003 same number of courts dealt with 300,362 cases. Therefore, the workload per court increased from 2223 to 2313 in 2003.

**Criminal Courts**

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41 For further elaboration on the current state of the ADR teaching and the widespread adoption of ADR in the American law schools see Symposium: Dispute Resolution in the Law School Curriculum: Opportunities and Challenges, Part I (Florida Law Review 1998/4, Vol. 50, p. 583-760)

42 Data related to 2004 and 2005 are still being processed by the DGJRS.
The number of cases that the criminal courts dealt in 2002 was 3,116,632 whereas this number decreased to 2,820,058 in 2003. The number of the criminal courts increased from 2,695 to 2,762 in 2003. As the result of these facts average number of the cases per court decreased to 1,021 whereas it was 1,156 in 2002. According to these figures the average workload of the criminal courts decreased %12 in comparison with 2002 and %20 with 2001.

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</table>

Civil courts

In 2002 the civil courts dealt with 1,982,920 cases whereas the number increased to 2,026,554 in 2003. However as a result of increasing the number of courts from 3,217 to 3,358 in 2003, the average workload decreased from 616 to 604. These figures show the %2 decrease of workload in 2003.

<table>
<thead>
<tr>
<th>AVERAGE TRIAL PERIODS IN CIVIL COURTS (DAYS)</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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<tbody>
<tr>
<td>Commercial Courts</td>
<td>372</td>
<td>383</td>
<td>434</td>
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<tr>
<td>General Civil Courts of First instance</td>
<td>241</td>
<td>241</td>
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<td>240</td>
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<tr>
<td>Civil Courts Of Peace</td>
<td>75</td>
<td>71</td>
<td>65</td>
<td>64</td>
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<tr>
<td>Labour Courts</td>
<td>274</td>
<td>284</td>
<td>312</td>
<td>322</td>
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<td>Land Registration Courts</td>
<td>590</td>
<td>551</td>
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<td>450</td>
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<td>Civil Courts Of Enforcement</td>
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<td>111</td>
<td>114</td>
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<td>Consumer Courts</td>
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<td>Family Courts</td>
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<td>TURKEY</td>
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