



Pro Bono Practices and Opportunities in Turkey¹

INTRODUCTION

As stipulated by Articles 5² and 36³ of the Turkish Constitution⁴, the State of the Republic of Turkey (“**Turkey**”) has a constitutional duty to establish an effective and accessible judicial system. In order to fulfil this duty, state-funded legal aid has been established, providing the highest proportion of assistance in legal matters and disputes compared to other means of aid such as voluntary pro bono work by attorneys. However, as underlined in the European Commission Turkey Progress Report (October 2014) “the scope and quality of legal aid is inadequate and there is no effective monitoring that it would help to remedy long-standing problems.”⁵

In addition to the state-funded legal aid provided to indigent persons and entities, independent lawyers, law firms and law schools have recently become active in increasing judicial accessibility by establishing pro bono institutions and practices. As explained in more detail below, although there have been positive steps towards this practice, many social and legal barriers remain preventing an effective increase in pro bono efforts in Turkey.

OVERVIEW OF THE LEGAL SYSTEM AND THE LEGAL PROFESSION

Constitution and Governing Laws

Pursuant to Article two of the Turkish Constitution (the “**Constitution**”), Turkey is a democratic, secular and social State governed by the rule of law. Article 36 of the Constitution and Article 6(1) of the European Convention on Human Rights (the “**ECHR**”)⁶ together guarantee the right of every individual to fair trial and the right to legal remedy either as a plaintiff or defendant. Also, Article 40(1) of the Constitution along with Article 13 of the ECHR provide the right to an effective remedy.

As part of its efforts to harmonize Turkish legislation with the laws of the European Union, in August 2009, Turkey adopted a “judicial reform strategy” that, among other things, covers issues related to the efficiency and effectiveness of the judiciary and the facilitation of access to justice.⁷ In order to facilitate access to justice, the reform strategy focuses on, among other things: (i) reviewing the legal aid system to

¹ This chapter was drafted with the support of Pekin & Pekin.

² Article 5- The fundamental aims and duties of the State are to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy, to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by rule of law; and to provide the conditions required for the development of the individual’s material and spiritual existence.

³ Article 36- (As amended on October 3, 2001; with Law No. 4709) Everyone has the right to litigate either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. No court shall refuse to hear a case within its jurisdiction.

⁴ Published in the Official Gazette dated November 9, 1982 and numbered 17863(bis).

⁵ The European Commission Turkey Progress Report (October 2014) available at http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-turkey-progress-report_en.pdf (last visited on September 4, 2015).

⁶ Turkey ratified the ECHR on May 18, 1954. Pursuant to article 90 of the Turkish Constitution, international agreements duly ratified by Turkey bear the force of law. In case of conflict between domestic laws and international agreements concerning fundamental rights and freedoms such as the ECHR, the terms of the relevant international agreement shall prevail.

⁷ Judicial Reform Strategy by the Ministry of Justice of the Republic of Turkey, available at <http://www.sgb.adalet.gov.tr/Yargi-Reformu-Stratejisi.pdf> (last visited on September 4, 2015).



enable effective access to justice; (ii) setting up standardized websites for courts; and (iii) standardizing interpretation services for people speaking local languages.

In April 2015, it was announced that the Judicial Reform Strategy was to be extended to include pro bono practice and legal clinics.⁸ This could indicate that the legal barriers towards pro bono may be lessened allowing lawyers and law students to provide free legal assistance to the public on a both voluntary and institutional basis. However, as of June 2015, no steps have yet been taken towards establishing the extended Judicial Reform Strategy.

The Courts

The Turkish judicial system is primarily composed of two courts of law: (i) the judicial courts, which have responsibility for civil and criminal matters; and (ii) the administrative courts. The civil courts are comprised of a number of different courts, each having authority over specific civil litigation matters, including the peace courts, commercial courts, labor courts, enforcement courts, family courts and cadastral courts. All other civil matters are litigated before the civil courts of first instance. The criminal courts consist of justices of peace⁹, juvenile courts, criminal courts of first instance (the primary courts), and high criminal courts, each with specific authority over certain criminal matters, depending on the crime. The highest court for both civil matters and criminal matters is the Court of Appeal.

The administrative courts include tax courts and administrative courts, which exist at the provincial level, with authority over tax and other administrative litigation matters. The highest administrative court in Turkey is the Turkish Council of State, equivalent to a supreme administrative court such as the *Conseil d'Etat* in France. The other supreme court is the Constitutional Court.

The Practice of Law

The Turkish Attorney's Act¹⁰ asserts the requirements of practicing law (including the provision of free legal assistance) as: (i) holding a Turkish citizenship; (ii) finishing a four year Turkish Law School or holding an equivalent degree from a foreign law school; (iii) completing the Attorneys' Internship; and (iv) having been registered to a local Bar (a "Bar").

Due to these requirements, the practice of law (including the provision of free legal assistance) by foreign lawyers is problematic. There is, however, no barrier preventing foreign law firms from advising on matters of foreign law or representing Turkish clients (including in pro bono cases) before international courts or taking on cases, for example, before the European Court of Justice, the European Court of Human Rights or the International Court of Justice.

As of December 31, 2014¹¹, there were 86,981 lawyers – including approximately 35,000 female attorneys – registered with the Turkish Union of Bars; representing an increase of 12,489 from December 31, 2011 and an increase of 26,271 or approximately 43% from December 31, 2007. Almost half of this increase is attributable to new qualifications with the Istanbul Bar, which had 33,349 members as of December 31, 2014. Eleven other cities in Turkey have over 1,000 practicing lawyers, but the number of lawyers practicing in the more rural areas of Turkey is significantly lower, down to 40 - 60 in some of the eastern and south-eastern cities of Turkey. Istanbul, Ankara (the capital of Turkey) and a few other big cities have attorneys practicing in relatively large or medium-scale law firms, solo practice is by far the preferred choice for lawyers across Turkey.

⁸ Judicial Reform Strategy by the Ministry of Justice of the Republic of Turkey, available at <http://www.sgb.adalet.gov.tr/yargi-reformu-stratejisi-sunum.pdf> (last visited on September 4, 2015).

⁹ Peace Courts were reorganized in 2014 as Justices of Peace with Law No. 6545 published in the Official Gazette dated June 28, 2014 and numbered 29044.

¹⁰ Law No. 1136 published in the Official Gazette dated March 19, 1969 and numbered 13168.

¹¹ As published on the Turkish Union of Bars (TBB)'s website available at <http://www.barobirlik.org.tr/Detay.aspx?ID=39218> (last visited on September 4, 2015).



LEGAL RESOURCES FOR INDIGENT PERSONS AND ENTITIES

State-funded legal aid in Turkey is regulated by the Code of Criminal Procedure, the Code of Civil Procedure and the Legal Aid Regulation which has been prepared by the Turkish Union of Bars¹². In 2015, approximately TL 60 million (approximately US\$22.22 million based on June 2015 exchange rates) was transferred to the Bars from the central government budget for legal aid¹³. This is an increase from approximately TL 30 million in 2011, when merely 30 million TL (approximately \$11.11 million based on June 2015 exchange rates) of the budget was actually spent.¹⁴ Bars provide free legal representation both in criminal and in civil matters, but the scope of representation, as well as the application and implementation procedures in respect of each type of legal aid, are governed by different sets of rules.

The Right to Legal Assistance

In Civil Proceedings

In Turkey, legal aid to plaintiffs and defendants in disputes of a civil or administrative nature is governed jointly by the Code of Civil Procedure (the “**Civil Procedure Code**”),¹⁵ the Attorney’s Act¹⁶ and the Legal Aid Regulation¹⁷ issued by the Union of Turkish Bar Associations.

The scope of civil legal aid covers all civil, administrative and commercial disputes, temporary protection requests, as well as execution proceedings and interim measures. Unlike criminal legal aid, the provision of civil legal aid is subject to two qualifications: (i) the applicant should have limited financial means; and (ii) the applicant should appear likely to succeed on the merits of the dispute, i.e., his or her case or claim is not frivolous. Under Turkish laws and regulations, foreigners can only benefit from civil legal aid services on the basis of reciprocity. In this respect, Turkey is party to the Hague Convention Regarding Civil Procedure dated March 1, 2004, under which Turkey is bound to provide legal aid to citizens of the countries which have ratified this convention.

The Civil Procedure Code extends legal aid to associations and foundations with public benefit status if such organizations have limited financial means. Pursuant to Article 176 of the Code of Lawyers, legal aid covers: (i) exemption from court fees; and (ii) free legal representation by an attorney appointed by the Bar. Under Articles 334-340 of the Civil Procedure Code, a request for exemption from court fees can be filed with the competent court verbally or in writing at any stage of the proceedings by the applicant in person or by his attorney. It is not compulsory for the court to respond to the applicant in writing. Accordingly, any applicant who requests such an exemption needs to follow up on the outcome of their request. If the request is rejected by the court, the Bar providing free legal representation services can still pay the court fees on behalf of the applicant through the funds allocated to it, if it so decides, by virtue of a board resolution. Article 45(2) of the Regulation relating to the Civil Procedure Code¹⁸ provides that in matters where a civil legal aid application has been made, no court fees or similar fees shall be payable until a decision has been made on whether or not the exemption is granted.

¹² Published in the Official Gazette dated March 30, 2004 and numbered 25481.

¹³ Turkish Union of Bars (TBB) Announcement 31.3.2015, Number: 2015/31 available at <http://www.barobirlik.org.tr/Detay.aspx?ID=51230> (last visited on September 4, 2015).

¹⁴ Turkish Union of Bars (TBB) Announcement 31.3.2011, Number: 2011/31 available at <http://www.barobirlik.org.tr/Print-7425&lightbox> (last visited on September 4, 2015). See Also H. A. Acikgul, Legal Aid System in Turkey in respect of the European Union Requirements and the Decisions of the ECHR 6 (unpublished, presented at the International Symposium on Judicial Reform on Apr. 3, 2012).

¹⁵ Published in the Official Gazette dated February 4, 2011 and numbered 27836.

¹⁶ Published in the Official Gazette dated April 7, 1969 and numbered 13168.

¹⁷ Published in the Official Gazette dated March 30, 2004 and numbered 25418.

¹⁸ Published in the Official Gazette dated April 3, 2012 and numbered 28253.



Requests for free legal representation, on the other hand, are made directly to the relevant legal aid bureaus that are established within the organization of the Bars (the “**Legal Aid Bureaus**”). The applicant must submit the documents proving his/her identity, cause and lack of financial means. If the request is rejected, the applicant can appeal verbally or in writing to the president of the relevant Bar, whose decision shall be final. The attorneys appointed by the Legal Aid Bureaus are paid on the basis of the fees set forth in the Lawyers’ Minimum Tariffs.¹⁹

More recently, some Bars have adopted policies to facilitate the provision of legal aid to women who have been victims of violence. Two of the biggest Bars in Turkey (the Istanbul and the Izmir Bars) are collaborating with the Women’s Rights Centers with a view to establishing centers providing legal aid services to women. These organizations work in conjunction with the Legal Aid Bureaus and provide legal aid through lawyers appointed from a list of lawyers specialized, and volunteered to assist, in cases focused on women rights’ issues.

In Criminal Proceedings

Criminal legal aid was introduced to Turkey in 1992 through amendments to the Code of Criminal Procedure.²⁰ In 2004, Turkey adopted a new Code of Criminal Procedure (as amended from time to time, the “**Criminal Procedure Code**”).²¹ Pursuant to Article 150 and onwards of the Criminal Procedure Code, any suspect or defendant who wishes to benefit from criminal legal aid qualifies for criminal legal aid, regardless of his or her financial status or the seriousness of the crime in question. Having Turkish nationality is not a requirement to receive criminal legal aid.²² Furthermore, mandatory criminal legal aid is in place for those suspects, defendants and victims of crimes who are mentally disabled, deaf mute, minor or, in the case of a suspect or a defendant, charged with a crime that may be punished with five years of imprisonment or more.²³

Bars have been entrusted with the task of providing criminal legal aid, and many Bars in Turkey have established Code of Criminal Procedure Practice Units (the “**CCPP Units**”) that are funded by the Turkish government. In addition, pursuant to Articles 234 and 239 of the Criminal Procedure Code, victims of crimes are also entitled to apply to the CCPP Units and request that the relevant Bar appoint a lawyer to represent them as an intervening party if the crime is a sexual offense or is punishable with five years of imprisonment or more. Furthermore, within the framework of the National Judiciary Network Project (“**UYAP**”), there is a public and free-of-charge specific information system called the “Citizen Portal” set up in Turkey to inform and help victims of crimes, and efforts are underway to ensure that citizens may examine their files in a comprehensive manner and be informed via mobile text messages (“**SMS**”) of any updates.²⁴

Despite the increase in funds allocated to services of CCPP Units, preliminary research²⁵ suggests that, in certain parts of Turkey, approximately nine out of ten defendants are not represented by a lawyer at any stage of the criminal justice process and that overall the CCPP representation rate is a mere 2.8%, meaning that only one in every 35 offenders benefits from CCPP services at any stage of the criminal

¹⁹ Published in the Official Gazette dated December 31, 2014 and numbered 29222.

²⁰ I. Elveris, G. Jahic and S. Kalem, Alone in Court-Room, Accessibility and Impact of the Criminal Legal Aid Before Istanbul Courts, Istanbul Bilgi University, Human Rights Law Research Center 1 (June 2007) (unpublished).

²¹ Published in the Official Gazette dated December 17, 2004 and numbered 25673.

²² U. Karan, Impact of Financial Obligations on Access to Justice In Turkey, Legal Aid and Pro Bono (January 2005) (unpublished).

²³ Criminal Procedure Code Articles 150, 234, 239.

²⁴ Scheme for Evaluating Judicial Systems 2007, European Commission for the Efficiency of Justice (CEPEJ), Turkey’s Responses, available at http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2010/2010_Turquie.pdf (last visited on September 4, 2015).

²⁵ Such research has been conducted by Idil Elveris, Seda Kalem and Galma Jahic from Bilgi University Faculty of Law and the results were also published in several bulletins (e.g. available at http://www.aksiyon.com.tr/dosyalar/ben-masumum-hakim-bey_516324) (last visited on September 4, 2015).



justice process. However, given that routine data on the provision and cost of legal aid is not kept, any finding based on this preliminary data is of questionable value. The key finding of this research is the strikingly low accessibility rate of Turkish people to the CCPP Units' services. Ironically, however, the results of the study also suggested worse final outcomes (in terms of conviction rates or duration of trial, for example) for defendants represented by a CCPP Unit lawyer compared to defendants who were represented by private lawyers, or even those who had no legal representation during trial.

Mandatory Assignments to Legal Aid Matters

Under the existing regime, neither the defendant himself nor his family can approach the Bar with a request for a lawyer. Only the police, the prosecutor or the court can ask the Bar to send a lawyer to assist the defendant. The majority of the Bars have a list of attorneys who have volunteered to assist defendants, but in more rural areas of Turkey where there are only a few attorneys registered with the Bar Turkish regulations require such attorneys to assume the task of participating in criminal legal aid schemes.

Pursuant to the Regulation Concerning the Principles and Procedure Regarding the Funds Payable to Attorneys under the Criminal Procedure Code,²⁶ the government funding process functions as follows: (i) the Ministry of Finance provides the funds to the Bars; (ii) the Bars process the required paperwork and submit the same to the relevant prosecutor's office for review; and (iii) upon approval of the latter, the Bars process the payments on the basis of a tariff jointly issued by the Ministry of Finance and the Ministry of Justice, which sets forth the amount of fees payable per case and per task. The tariff is revised on a yearly basis to be effective as of January 1st of each year.

The CCPP system adopted by the Istanbul Bar Association is said to be the most advanced in Turkey. Where a CCPP Unit is not established, Bars have instead set up commissions to provide legal aid services. These commissions differ from the CCPP Units in that the commissions often do not have their own independent budget or do not employ representatives on a full-time basis; instead, they have an on-call attorney appointed.

Unmet Needs and Access Analysis

The existing criminal and civil legal aid structure has been criticized for a number of important reasons.

Firstly, while some progress has been made in recent years to improve citizens' awareness of their rights to access to justice as a result of increased efforts by the Bars, public awareness of legal aid is still limited and problems still persist in rural areas for disadvantaged groups. A large proportion of prison inmates, including women and juveniles, have only limited access to legal aid.²⁷ Courts do not provide the relevant parties with forms or models of petitions, have no information desks, and in domestic violence cases, the documentation required in order to benefit from legal aid has, in practice, delayed protection of victims.²⁸ Financial resources allocated to legal aid are inadequate and lawyers' fees are very low,²⁹ which discourages lawyers from taking a larger role in legal aid cases.

Secondly, with respect to civil legal aid, attorneys appointed by the Legal Aid Bureaus to provide civil legal aid services are not subject to an exam, interview process or prior training on providing legal aid services. Attorneys working for the CCPP Units are required to undertake only a very short training program. The distribution of work among attorneys appointed by the Legal Aid Bureaus and CCPP Units

²⁶ Published in the Official Gazette dated March 02, 2007 and numbered 26450.

²⁷ Id.

²⁸ Id.

²⁹ Id.



is made irrespective of the attorney's performance.³⁰ Other than quarterly reporting requirements to the Union of Turkish Bars concerning the cases, there are no auditing or disciplinary procedures to control case development.³¹

Thirdly, although the CCPP Units and the Legal Aid Bureaus function side by side under the umbrella of the Bars, they do not have a coordinated approach, nor do they coordinate their work with the social services, the police or the NGOs.³²

Fourthly, Legal Aid Bureaus established with different Bars apply different criteria for providing civil legal aid, as there is no coordinating and supervisory body that standardizes the implementation process for all of the bureaus.³³ Furthermore, as discussed under "Barriers to Pro Bono Practice," the scope of civil legal aid is vaguely defined in Turkey and calls into question whether the lawmakers' intention was to limit the Bars' authority in this area to legal representation before the courts and other authorities or to entrust them with the task of providing free legal advice in Turkey.³⁴ As it is unfortunately the case for most other jurisdictions too, this is problematic because, under Turkish law, Bars have exclusive jurisdiction over provision of legal services which by law are entrusted in them. This exclusivity, if considered broadly, would effectively prevent persons other than licensed attorneys, such as legal clinic programs or NGOs, from giving legal advice, even pro bono (see below "Barriers to Pro Bono Practice").

Alternative Dispute Resolution

Pro bono services are not only possible in a court setting. It is also possible for licensed attorneys to represent their clients in mediation, which is a quite new dispute resolution method in Turkey.

The provisions of the Law on Mediation in Civil Disputes (Law No. 6325) ("**LMCD**")³⁵ entered into force one year following its publication in the Official Gazette, on June 22, 2013. The Regulation on the LMCD ("**Regulation**") was also published in the Official Gazette dated January 26, 2013 and numbered 28540 and has entered into force on the same date as the LMCD.

The LMCD regulates mediation in Turkish civil law for the first time. In that regard, Article one of the LMCD stipulates that mediation can be applied only in the resolution of private law conflicts, including those having a foreign element, arising from acts or transactions of interested parties who have the capacity to settle such conflicts.

According to the LMCD, a "mediator" must fulfil the following conditions: (a) be a Turkish citizen; (b) have graduated from a law faculty with at least five years of professional experience; (c) be fully capable; (d) have no criminal record; and (e) have completed a mediation training course and passed the written and practical exam administered by the Ministry of Justice. Anybody fulfilling these conditions may act as mediators by registering with the Mediators' Registry and may commence their services from the date of such registration.

³⁰ Roundtable Discussion On Legal Aid In Turkey: Policy Issues and Comparative Perspective, Report and Selected Papers and Report Delivered at a Roundtable Held in Istanbul, Turkey, on April 16, 2004, including The Agenda and List of Participants, Istanbul Bilgi University in Cooperation with Open Society Justice Institute, 2. See also Corey Stoughton, A Comparative Analysis of the Turkish and American Criminal Legal Aid Systems Vol. 6, No. 1, 1-16 ANKARA L. REV.

³¹ Id.

³² Id.

³³ I. Elveris, IR 708, Social Policy Final Paper: Access to Justice For the Poor in Turkey: Can legal clinics empower? 7 (unpublished).

³⁴ Id.

³⁵ Published in the Official Gazette dated June 22, 2012 and numbered 28331.



PRO BONO ASSISTANCE

Pro Bono Opportunities

Private Attorneys

Law Firm Pro Bono Programs

Although some law firms in Turkey offer pro bono practice opportunities, there is no tradition of institutional pro bono practice among the firms and opportunities vary depending on the firm and eligibility. Persons requiring legal assistance should firstly check whether the firm has pro bono practice and whether they are eligible. The difficulty of obtaining such assistance drives the public to seek State-funded legal aid that is widely available as opposed to pro bono work by law firms. Some law firms may prefer to participate into the networking scheme arranged by the Bilgi University Human Rights Law Center (“**Bilgi**”) whereas other law firms may wish to work independently and create their own pro bono chain.

Legal Department Pro Bono Programs

We are not aware of any established pro bono programs among in-house legal departments in Turkey. In-house lawyers in Turkey tend to work for a single client which is the corporation that employs them and do not take on pro bono clients independently.

Non-Governmental Organizations

Some NGOs employ lawyers to provide legal advice to the target audience of the NGO. For instance, the Association for Solidarity with Asylum Seekers and Migrants and the United Nations High Commissioner for Refugees (the “**UNHCR**”) organize educational meetings concerning refugees, migration, law on foreigners and international protection and publish articles on their website explaining the relevant legislation, in order to safeguard the rights and well-being of refugees.

Bar Association

Apart from State-funded legal aid, the Bar Association does not offer any separate voluntary pro bono programs.

University Legal Clinics and Law Students

Bilgi is the first university in Turkey to set up legal clinics based on the models used in law schools in the United States. Currently, Bilgi has two legal clinics, namely the daily life clinic and the private law clinic. In the private law clinic, they provide legal information rather than legal representation before courts because, legal complications aside, as a practical matter, litigation takes too long in Turkey.³⁶ In addition, more recently Anatolia University has set up legal clinics in Turkey focusing on different subject matters.³⁷

Historic Developments and Current State of Pro Bono

Institutional pro bono as a concept has not been a part of Turkish legal history unlike state-funded legal aid. Pro bono is an emerging field among Turkish attorneys and law firms. With the recent establishment of legal clinics by Turkish universities and the network established by Bilgi, pro bono practice has developed further in Turkey; however, both legal and social barriers are still a factor preventing further development in pro bono practice.

Social Barriers – Bilgi’s Experience

Bilgi’s experience with legal clinics and its pro bono initiative highlights some of the practical and social barriers to providing pro bono services in Turkey. For example, Idil Elveris, coordinator and lecturer at

³⁶ I. Elveris, *Educating and Supporting A Commitment To Public Service Lawyering*, (unpublished), Fourth International GAJE Conference, Cordoba-Argentina, November 2006, Promotion of Pro Bono Initiatives, Presentation Notes.

³⁷ A.T.Yuruk, *Law Clinics 8* (unpublished, presented at the International Symposium on Judicial Reform on April 3, 2012).



Bilgi, states that the NGOs were sceptical at first, almost suspicious, of their initiative to try to assist them. The initial scepticism of the NGOs vis-à-vis the intentions of Bilgi, as well as the law firms, pinpoints the lack of a strong cultural background and tradition of community work, volunteering and social trust among Turkish citizens.³⁸ The lack of public trust in the judicial system and the nature of loser pays regulations whether the case is pro bono or not are among other social barriers that affect pro bono in Turkey.

Legal Barriers – Monopoly of Bars

Generally speaking, the legal profession is subject to rigid regulation in Turkey. The scope of legal services, the provision of which requires an attorney's license, is defined rather broadly. Under Article 35 of the Code of Lawyers, *only* attorneys registered with a local Bar are entitled to “render legal opinions, appear before courts, arbitrators and other judiciary bodies, pursue matters before courts and to prepare all documents in relation thereto.” In addition, any task that is set forth in the Lawyers' Minimum Tariff can only be undertaken by attorneys and at the fees set forth in the Lawyers' Minimum Tariff. The tariff includes various tasks that not only relate to representation of clients before courts, arbitrators, execution officers or other judiciary bodies but also to the provision of “verbal or written legal advice,” as well as the drafting of certain agreements such as lease agreements, wills and some corporate documents.

Article 35 of the Code of Lawyers, together with the Lawyers' Minimum Tariff, delineates the scope of licensed services so broadly that many (including Bars) argue that the provision of any type of legal advice, whether or not it pertains to representation before judicial bodies, is under the exclusive competence of attorneys registered with the Bars. However, others argue that restricting the provision of legal advice to attorneys, and attorneys only, is not compatible with the freedom of thought and expression guaranteed under the Constitution.³⁹

Legal Barriers – Minimum Tariffs

Pursuant to Article 1 of the Lawyers' Minimum Tariff, attorneys cannot agree on fees lower than those set forth in the Minimum Tariff. However, Article 164 of the Code of Lawyers states that when a lawyer takes on a case pro bono (without any consideration), he needs to notify the board of directors of the relevant Bar accordingly. In addition, pursuant to an opinion rendered by the Disciplinary Committee of the Union of Turkish Bars dated September 23, 2000, numbered E. 2000/72, 2000/128, “accepting a case pro bono is different than accepting a case in exchange for a fee which is lower than those set forth in the Lawyers' Minimum Tariff. If the parliament's intention was to ban pro bono work, it would explicitly do so by inserting a provision in the law to that effect.” Accordingly, we believe that there is no legal barrier to attorneys providing pro bono assistance, including taking on a case pro bono, to the extent that they notify the Bars with which they are registered accordingly.

Legal Barriers – Ban On Advertising

Pursuant to Article 8 of the Regulation Regarding Ban On Advertising,⁴⁰ law firms, attorneys and trainees cannot carry out any advertising activities. In connection with their professional activities, they cannot make public statements as spokesmen for their client before the media, or on the Internet, about a case they have pursued or are pursuing unless the circumstances require otherwise. Moreover, they cannot make any statements before the media that can be construed as an advertisement. This ban on advertising makes it impossible for law firms to advertise their pro bono credentials.

Pro Bono Resources

Bilgi is the only institution to set up a pro bono network in Turkey which pairs up NGOs with law firms in Istanbul. The network makes a needs assessment of the NGOs to determine if the NGOs (or their constituents) need legal drafting, representation or pure legal advice. Bilgi's findings are then sent to the law firms in Istanbul. The law firms, in turn, choose the NGO they want to work with, as well as the type of legal assistance they wish to provide. The law firms are then introduced to the NGOs.

³⁸ I. Elveris, Brief Statement of Pro Bono Work in Turkey 2 (unpublished).

³⁹ I. Elveris, Current Provisions of Legal Profession and Associated Access to Justice Problems 7 (unpublished).

⁴⁰ Published in the Official Gazette dated November 21, 2003 and numbered 25296.



CONCLUSION

In conclusion, as also underlined within the European Commission Turkey Progress Report (October 2014), the scope and quality of legal aid remain inadequate and pro bono opportunities in Turkey are limited. Under applicable Turkish regulations, if a Turkish qualified attorney or a domestic law firm wishes to take on a case pro bono, a notification to the Bar to that effect is required. Otherwise, the relevant attorney or the domestic law firm, as the case may be, is deemed to have breached the requirement to provide licensed services based on the mandatory minimum tariffs. The ban on advertising further discourages attorneys from advertising their pro bono credentials. Persons who are not attorneys (such as NGOs and university legal clinics) are hesitant to give pro bono legal advice because Bars in Turkey have a legal monopoly over the provision of a wide range of legal services. Accordingly, pro bono work that can be undertaken by foreign law firms and NGOs is limited to taking on cases before international bodies, or otherwise liaising with domestic law firms and university legal clinics to assist them in their efforts to promote pro bono representation in Turkey.

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