

ACCESS TO STATE-FUNDED LEGAL AID SERVICES BY ASYLUM-SEEKERS AND MIGRANTS IN TURKEY: CHALLENGES AND OPPORTUNITIES

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This resource is produced by Refugee Rights Turkey (RRT) in the context of a project partnership with US-based Refugee Solidarity Network (RSN).



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PREFACE TO THE ENGLISH VERSION

This report was produced by Refugee Rights Turkey (RRT) in the course of a partnership framework with US-based Refugee Solidarity Network (RSN) on ways to strengthen the availability and quality of free-of-charge legal assistance and representation services for refugees and other vulnerable migrants in Turkey. Legal information and assistance is a key prerequisite to ensure refugees' and migrants' effective access to protection, rights and safeguards in their country of asylum. In countries like Turkey with existing state-funded legal aid traditions, legal aid can play an important role in enabling access to justice for refugees and other vulnerable migrants.

This English language version of the report provides an evaluation of the opportunities and challenges of Turkey's state-funded legal aid scheme administered by bar associations in helping address the vast amount of legal assistance needs of almost 4 million refugees. As such, the report is released with two international audiences in mind. The report may be of interest to international readers (including those representing governmental agencies), and international organizations or NGOs that are interested in understanding an important aspect of Turkey's refugee protection landscape. The report, its coverage of the challenges encountered in the inclusion of refugees and migrants in Turkey's legal aid framework, and the subsequent efforts to address them, may also be of relevance for international readers interested in exploring and gauging the potentials of the state-funded legal aid model as an access to justice multiplier in other national contexts beyond Turkey.

Turkey currently hosts over 3.6 million refugees from neighboring Syria in addition to another 300,000 asylum-seekers from other countries of origin including Afghanistan, Iraq and Iran. The country also deals with significant irregular migration flows mainly transiting Turkey in the direction of the EU. Migration and asylum procedures in Turkey are overseen by the Directorate General of Migration Management on the basis of a comprehensive new domestic law framework that came into force in 2014. While the overall supply of legal information and assistance to refugees and migrants in Turkey currently falls short of the population's needs, NGO service providers such as RRT as well as the state-funded legal aid scheme play important roles in facilitating access to such services, and ultimately to legal protection.

Refugee Rights Turkey (RRT) is a leading NGO legal assistance provider for refugees, asylum seekers and detained migrants in Turkey. The organization delivers a range of specialized legal information and representation services in connection with asylum and migration procedures and access to rights issues under Turkish law. RRT also offers a range of trainings and other expertise support services to lawyers and CSO legal practitioners across Turkey, and advocates for improve-

ments in Turkey's legislation and policies affecting refugees and migrants in line with international standards.

Refugee Solidarity Network (RSN), a non-profit organization based in New York, works to protect the rights of people uprooted from their homes and seeks to strengthen the communities where they seek safety. In partnership with advocates and local stakeholders around the world, RSN aims to develop capacities in refugee host countries outside the United States and advance legal frameworks that uphold human rights. RSN was founded upon the belief that the complexity of forced migration requires a flexible, collaborative response focused on achieving sustainable solutions.

Since 2015, RSN and RRT have been working in close partnership with the goals of expanding and strengthening RRT's legal services for refugees and migrants and of developing a comprehensive capacity-building program aiming to channel expertise and experience to lawyers and other legal professionals in Turkey on matters of refugee law, domestic asylum and migration procedures and remedies. RSN and RRT have also worked together to develop a comprehensive range of legal information materials for refugees made available in multiple languages and covering key aspects of the Turkish asylum system. Currently, work is ongoing for the development of two separate online information and dissemination platforms targeting refugee communities and lawyers respectively. In addition to advocacy and capacity-building efforts vis-à-vis the state-funded legal aid scheme in Turkey, RSN and RRT are also exploring the potentials of pro bono partnerships between NGO service providers and law firms in helping expand the supply of quality legal services available for refugees in Turkey.

While legal protection of refugees and development of legal aid services in Turkey is the immediate focus of the RSN-RRT cooperative framework, the two organizations also work together to contribute to similar efforts for the development of rights-based approaches and capacity-building efforts in other national contexts, particularly comparable countries in the Global South either hosting similarly large-scale refugee populations or dealing with otherwise complex migration flows.

In this light, the present English language version of this report does not only seek to share with international audiences the findings related to Turkey's state-funded legal aid mechanism and how it has thus far served protection-seekers, but to also convey a key aspect of Turkey's overall experience in developing a national refugee protection framework in the midst of a historic influx in recent years. It is considered that the Turkish experience bears relevance particularly for developing countries hosting large numbers of refugees that do not have well-established refugee protection frameworks or systems. In such settings, refugee arrivals are often met with international humanitarian support in the context of limited rights and services by national institutions. Throughout the evolution of the Syrian refugee

influx and the humanitarian response in Turkey, RSN and RRT have advocated for more attention and emphasis on long-term rights-based approaches as a critical complement to the myriad services emphasized by the initial response focusing on short-term humanitarian needs.

RSN and RRT hope that this situated assessment of Turkey's state-funded legal aid scheme can offer insights of value for policy makers, donors and rights advocates involved with refugee protection challenges not only in Turkey but also other national contexts in the developing world. Hopefully, the report can play a modest role in promoting South-South dialogue on refugee protection issues with a view to exploring effective, efficient, and sustainable access to justice solutions for refugees in host states struggling with limited resources and strains on existing institutional capabilities.

This report was produced in the context of a project jointly implemented by RSN and RRT and supported by the US State Department Bureau for Population Refugees and Migration (PRM). The two project partners would like to acknowledge PRM's strong support for this project and commitment to promoting long-term rights-based approaches as an integral aspect of humanitarian programming.

INTRODUCTION

Over the course of the last decade, Turkey has increasingly become a destination country for people seeking safety and protection. Currently there are almost 4 million persons, including Syrian nationals, seeking protection in the country. Turkey also continues to face large-scale irregular and mixed migration flows. In response, an ongoing series of reform efforts has established a new legal framework and continues to strengthen relevant administrative capacity.

The Law on Foreigners and International Protection¹ and other relevant legislation set forth certain rights and entitlements for protection-seekers and others subject to removal and administrative detention. In order to access these rights in practice, such individuals are in need of qualified and specialized legal assistance and representation. Since the majority of these individuals lack sufficient resources to cover attorney fees, the role of the state-funded free legal aid scheme (*Adli Yardım*) is particularly pressing and critical in this new environment.

As outlined in this report, both the Law on Foreigners and International Protection (“LFIP”) and other applicable legislation make repeated references to the possibility for foreign nationals to seek free legal assistance from the state-funded free legal aid scheme. Bar associations, the key responsible bodies for the provision of legal assistance under the legal aid scheme, have taken a number of important steps toward building their capacities and extending their services to indigent asylum seekers, refugees, and vulnerable migrants. However, it is observed that lingering gaps and challenges continue to hinder access to legal aid services by refugees, asylum seekers and vulnerable migrants.

This report aims to contribute to the policy discussions by the main stakeholders of the subject matter, namely the Union of Bar Associations, civil society organizations, international organizations such as United Nations High Commissariat for Refugees and International Organization for Migration and relevant governmental organizations including most notably the Directorate General for Migration Management and Ministry of Justice, that take place in various occasions and multiple levels to further improve current practices and opportunities targeting the amelioration of asylum seekers’ and refugees’ access to state-funded legal aid services.

To better understand the current state of the Turkish legal aid system as it relates to migrants and refugees, Refugee Rights Turkey carried out field research between June and December 2017 by visiting bar associations in 7 provinces accommodating large-scale removal centers and in Ankara. Desk research and additional consultations with relevant national and international stakeholders were undertaken in 2018 to supplement the first-hand interviews and monitor further developments.

1 Law on Foreigners and International Protection, 11/4/2013 dated Official Gazette (No: 28615).

This report presents analyses and findings garnered through an extensive research and consultation process. The findings highlight outstanding best practices, gaps, and challenges related to the legal aid system in Turkey. This study aims to contribute to Turkey's ongoing reform process and the realization of the objectives set forth in key strategy plans. The findings should prove useful for key stakeholders working to uphold fundamental rights and freedoms of refugees and migrants in Turkey.

METHODOLOGY AND A NOTE ON TERMINOLOGY

This report is based on desk and field research carried out between June 2017 and December 2017. The desk-based research consisted mainly of a survey of relevant Turkish legislation and a detailed analysis of internal data on referrals made by Refugee Rights Turkey to bar associations. The field research involved visits to Ankara, Edirne, Gaziantep, İstanbul, İzmir, Kayseri, Kırklareli and Van Bar Associations. During the field visits, Refugee Rights Turkey met with and interviewed representatives from bar associations including staff in the legal aid bureau. Additional desk research was also undertaken in 2018 to monitor further developments.

The term “legal aid” used throughout this report refers to the state-funded free legal assistance primarily established under the Code of Civil Procedures (No. 6100)², which directs the provision of attorney services under the Attorney Act (No.1136)³ to persons who cannot otherwise afford to pay attorney and associated court fees without putting a considerable financial duress on the individual or their family. Thus, this reference excludes mandatory and/or on-demand legal representative assignments made under the Criminal Procedures Code (No. 5271) to suspects or defendants as well as to victims who would not otherwise have access to an attorney over the course of investigations or criminal proceedings.

The term “asylum seeker” in this report refers to persons who seek or benefit from international protection in Turkey. Thus, the term includes both persons arriving from Syria and subject to the temporary protection regime as per Article 91 of LFIP, and persons arriving from other countries of origin and seeking or benefiting from the three types of international protection status as defined under Articles 61-63 of LFIP.

The report uses the term “migrant” to encompass a broad category of individuals who fall outside the international protection and temporary protection regimes, such as irregular migrants subject to removal and administrative detention, persons possessing humanitarian residence permits, victims of trafficking in persons, and stateless persons.

The Evolving Protection Regime and Legal Aid in Turkey

Over the course of the last decade, Turkey has increasingly become a pivotal country for migration and asylum. The country experienced an unprecedented surge in the number of persons seeking safety on its territory having fled war and persecution elsewhere, as well as of foreigners leaving their countries of origin for economic and other reasons. According to official government data, at the end of 2018 there were 3,611,834 persons registered under temporary protection—a regime specif-

2 Code of Civil Procedures, 4/2/2011 dated Official Gazette (No: 27836).

3 Attorney Act, 7/4/1969 dated Official Gazette (No: 13168).

ically established to respond to the large influx of individuals fleeing the ongoing unrest in Syria.⁴ At the same time, there are 368,230 individuals from other countries who are seeking international protection in Turkey.⁵ Thus, with almost 4 million individuals seeking safety in the country, Turkey has once again become the world's largest refugee host country for the fourth consecutive year,⁶ demonstrating the immense responsibility it has shouldered vis-à-vis asylum and migration.

Moreover, Turkey's role has not been solely confined to those seeking protection. For instance, latest official statistics also reveal an increase in the number of regular migrants applying for residence permits, as well as 251,794 "irregular migrants" reportedly apprehended by authorities.⁷

While these figures reflect the volume of asylum and migration in the country, there are ongoing efforts on the part of the Turkish government, especially in the last 5 years, to put into effect a comprehensive reform process to improve legislation and strengthen administrative capacity in this field. The adoption of the Foreigners and International Protection Law (No. 6458) was the first concrete outcome of this process.⁸ An important step towards harmonizing the country's legislation with international standards, the new law introduced several important procedural and substantive safeguards largely established by the case law of the European Court of Human Rights, and regulated issues that had long been neglected by policy-makers.

A major improvement among these important safeguards was the reiteration of the possibility for indigent migrants and refugees to seek free legal assistance from the state-funded legal aid scheme (*Adli Yardım*). In the ensuing period, similar provisions were also incorporated into the Temporary Protection Regulation⁹ and into the Regulation¹⁰ on Combating Human Trafficking and Protection of Victims.¹¹

In general, legal aid is one of the most important means for facilitating effective access to the right to seek a legal remedy and upholding the principle of equality

4 Directorate General of Migration Management, Age and Gender Breakdown of Registered Syrians (06.12.2018), http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713, [accessed on 13 December 2018].

5 <http://www.unhcr.org/tr/unhcr-turkiye-istatistikleri> (31.10.2018), [accessed on 13 December 2018].

6 UNHCR Global Trends: Forced Migration in 2017, p.3

7 Directorate General of Migration Management, Annual Breakdown of Apprehended Irregular Migrants (06.12.2018), http://www.goc.gov.tr/icerik3/duzensiz-goc_363_378_4710 and Annual Breakdown of Foreigners Residing in Turkey with a Residence Permit (06.12.2018), http://www.goc.gov.tr/icerik3/ikamet-izinleri_363_378_4709, [both accessed on 13 December 2018].

8 Within the context of the reform process, the Directorate General of Migration Management has been established and was entrusted with the mandate to manage all migration-related affairs in Turkey. In addition, new large-scale removal centers were built either from the funding received from the European Union or from national budget. Finally, in order to increase the capacity of the new Directorate, a number of projects were carried out in cooperation with international and regional institutions. For a more detailed information, please refer to 2016 Activity Report, Directorate General of Migration Management.

9 Temporary Protection Regulation, 22.10.2014 dated Official Gazette (No: 29153).

10 Regulation on Combatting Human Trafficking and Protection of Victims, 17/03/2016 dated Official Gazette (No: 29656).

11 Temporary Protection Regulation, Article 59: "This is without prejudice to the legal aid provisions of the Attorney Act No. 1136 dated 19.3.1969."; Regulation on Combatting Human Trafficking and Protection of Victims, Article 28/2(d): "Victim Support Programme offered to victims as a minimum and within the bounds of existing means covers (...) access to legal aid and provision of information and services related to the legal rights of victims."

before the law. This safeguard is also particularly important for vulnerable groups including refugees, asylum-seekers, migrants, irregular migrants, stateless persons, and victims of human trafficking in their quest to seek justice and legal remedies for their rights enshrined both in the Constitution of the Republic of Turkey and in international and regional human rights instruments of which Turkey is a State Party.¹² It is in this spirit that there is a growing consensus in the international community that “the provision of legal aid should no longer be regarded as a charity to indigent persons but as an obligation of the community as a whole” and that “facilitating the availability of legal advice as a supplement to legal aid for persons in an economically weak position is of equal importance in the elimination of obstacles to access to justice.”¹³

Accordingly, multiple provisions of the new LFIP highlighting the role of the state funded legal aid scheme serve to strengthen Turkey’s compliance with international norms and standards.¹⁴ UNHCR’s Executive Committee (EXCOM), [as early as 1977 concluded] that a person seeking asylum should be able to receive, *inter alia*, the necessary guidance about the procedure to be followed.¹⁵ Similarly, the Council of Europe Committee of Ministers, at which Turkey also has a seat, adopted a resolution recommending that member states “accord, under the same conditions as to nationals, legal aid in civil, commercial and administrative matters, irrespective of the nature of the tribunal exercising jurisdiction, a. to natural persons being nationals of any member state; b. to all other natural persons who have their habitual residence in the territory of the state where the proceedings take place.”¹⁶ The Parliamentary Assembly, another body of the Council of Europe, also made a direct reference to the above mentioned EXCOM Conclusion of UNHCR and recommended member states to ensure, *inter alia*, the right of all asylum seekers to “communicate with and seek advice from their lawyer or appropriate non-governmental organizations” and “to have the benefit of legal assistance throughout the procedure” as a minimum standard.¹⁷

12 For a detailed review of literature: Seda Kalem Berk, *Türkiye’de Adalete Erişim, Türkiye’de “Adalete Erişim”: Göstergeler ve Öneriler*, 2011, İstanbul, TESEV Yayınları. For an international perspective: *Türkiye’de Adli Yardım: Karşılaştırmalı İnceleme ve Politikalar*, Derleyen: İdil Elveriş, İstanbul Bilgi Üniversitesi Yayınları, İstanbul, 2005 and SILA Project, *Türkiye’de Adalete Erişim için Adli Yardım Uygulamalarının Geliştirilmesine Destek Projesi: Adli Yardım “Ortak Sorunlar, Ortak Çözümler” Konferansı Sonuç Raporu*, Antalya, 10-11 December 2016, <http://silaprojesi.org/upload/resimler/b2de22c067.pdf>, [accessed on 8 August 2018].

13 Council of Europe Committee of Ministers, Resolution 78 (8) on Legal Aid and Advice, 1978, <https://rm.coe.int/16804e2bb2>, [accessed on 12 August 2017]

14 In addition, UN Convention on the Rights of the Child (art. 12, art. 37), UN Convention on the Elimination of All Forms of Racial Discrimination (art. 5), and UN Convention Relating to the Status of Refugees (art.16) contains provisions on legal aid and legal representation.

15 UN High Commissioner for Refugees (UNHCR), Determination of Refugee Status No. 8 (XXVIII) – 1977, UN High Commissioner for Refugees (UNHCR), Determination of Refugee Status No. 8 (XXVIII) - 1977, 12 October 1977, No. 8 (XXVIII) - 1977, <http://www.refworld.org/docid/3ae68c6e4.html>, [accessed on: 8 August 2017].

16 Council of Europe Committee of Ministers, Resolution 76 (5) on Legal Aid in Civil, Commercial and Administrative Matters, 1976, <https://rm.coe.int/16804f2e51>, [accessed on 12 August 2017]

17 Parliamentary Assembly of the Council of Europe (PACE), Report on the Protection and Reinforcement of Human Rights of Refugees and Asylum Seekers in Europe, ADOC7783, 26 March 1997, Paragraph 26, <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=7701&lang=EN>, [accessed on 8 August 2017]. For PACE’s recommendation please refer to: Parliamentary Assembly of the Council of Europe (PACE), Recom-

Moreover, the LFIP's legal aid provisions are also in line with Turkey's broader justice sector reform process. In this vein, strengthening access to justice is identified among the key objectives in Turkey's Judicial Reform Strategy, a critical blueprint brought into force by the Council of Ministers on 8 April 2015.¹⁸ Turkish authorities have also emphasized that Turkey's understanding of the term *access to justice* is in line with the definition provided by the European Commission for the Efficiency of Justice (CEPEJ) and covers "all legal and organizational factors which affects the accessibility and the effectiveness of judicial services."¹⁹ Within the context of this strategy document, Turkish policy makers identified 'facilitation of tools to benefit from attorney services and exemption from litigation costs' as an indicator and included refugees as a target group.²⁰ In the *Strategic Plan: 2015-2019*²¹ adopted for the implementation of Judicial Reform Strategy and shared with the public on 15 July 2015, the Ministry of Justice included refugees among disadvantaged groups²² and incorporated refugees under the second strategic objective²³ entitled "improving access to justice and practices for victims and disadvantaged groups."

Legal Aid in Turkey under the Law on Foreigners and International Protection and Relevant Legislation

The LFIP reiterates the possibility of seeking free legal assistance under the state-funded legal aid scheme for all acts and procedures related to an international protection application and in challenging administrative detention decisions.²⁴ The implementation regulation of the law further requires authorities to inform both international protection applicants and international protection status holders in writing about the possibility to both seek legal assistance provided under the legal aid scheme, and to obtain advice from civil society organizations.²⁵

mentation 1327, 1997, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15361&lang=en>, [accessed on 8 August 2017]. For the other recommendation containing a similar provision and according as a minimum the right to access legal aid to asylum-seekers please refer to: Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1236, 1994, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=15270&lang=en>, [accessed on 8 August 2017].

18 Republic of Turkey Ministry of Justice, Department of Strategy Development, *Yargı Reformu Stratejisi [Judicial Reform Strategy]*, April 2015, http://www.sgb.adalet.gov.tr/yargi_reformu_stratejisi.pdf, [accessed on 8 August 2017].

19 *Ibid.*, p. 91.

20 *Ibid.*

21 Republic of Turkey Ministry of Justice, *Adalet Bakanlığı Stratejik Planı: 2015-2019 [Ministry of Justice Strategic Plan: 2015-2019]*, July 2015, <http://www.adalet.gov.tr/Bakanlik/StratejikPlan/Stratejik-Plan-2015-2019.pdf>, [accessed on 8 August 2017].

22 *Ibid.*, p. 4.

23 *Ibid.*, p. 84 and following pages.

24 Law on Foreigners and International Protection, art. 81/2 and art. 57/7.

25 Regulation on the Implementation of the Law on Foreigners and International Protection, art. 103.

Firstly, such provisions which confirm that international protection seekers as well as individuals with irregular status in Turkey can benefit from state-funded legal aid services are perfectly in line with the main rationale of the legal aid which seeks to facilitate disadvantaged individuals' access to justice. Persons seeking safety in another country often experience many significant challenges including language barriers, traumatization, and loss of social networks hindering their effective access to available protection mechanisms, legal remedies, and justice. Moreover, as erroneous decisions may potentially lead to irreparable damages and consequences, such as being subject to return to a country where the person shall be at risk of torture and ill-treatment, such a safeguard is highly critical in preventing such outcomes.²⁶ In addition, both local and international experiences have demonstrated the existence of mixed flows: among groups of individuals that may seem to be irregular migrants without protection claims, there are indeed many individuals who were forced to leave their countries of origin for war and persecution and are thus in need of international protection. For instance, the overwhelming majority of apprehended irregular migrants in Turkey in 2017 and 2018 were nationals of war-torn countries such as Syria, Afghanistan, and Iraq.²⁷ Thus, the incorporation of such a critical safeguard in the Law on Foreigners and International Protection is highly felicitous also in regards to persons who ended up in an irregular status for not having had the chance to lodge international protection application despite having strong refugee claims or for lacking sufficient information on such a possibility.

Provisions reaffirming the possibility to seek free legal assistance from the state-funded legal aid scheme in the Law on Foreigners and International Protection make a direct reference to the Attorney Act (No. 1136). Under the Attorney Act, the provision of legal aid primarily covers the assignment of an attorney and the associated legal fees rendered through bar associations.²⁸ Turkey's Union of Bar Associations has also adopted the 'Legal Aid Regulation'²⁹ which sets detailed regulations on the provision of legal aid under the scheme.³⁰

The Legal Aid Regulation defines the object of legal aid as overcoming barriers to the right to legal remedies and ensuring equality in the enjoyment of fundamental rights and freedoms and this objective is in line with the spirit of legal aid as established under relevant international standards and norms. In parallel to provisions of the Civil Procedures Code and the Attorney Act, the regulation further stipulates that the scope of the legal aid includes free legal representation to be provided by

26 See also: European Council on Refugees and Exiles (ECRE), 'Survey on Legal Aid for Asylum Seekers in Europe', October 2010, p.6.

27 Directorate General of Migration Management, Number of Apprehended Irregular Migrants (06.12.2018), http://www.goc.gov.tr/icerik3/duzensiz-goc_363_378_4710.

28 Attorney Act, art. 176 and art. 177.

29 Legal Aid Regulation of Turkey's Union of Bar Associations, 30.03.2014 dated Official Gazette (No: 25418).

30 In addition to that regulation, a number of bar associations adopted internal circulars where they establish detailed principles and methods applying to the provision of services defined within the scope of the Legal Aid Regulation.

an attorney assigned by the bar and covering adjudicatory fees for requestors who do not have sufficient financial means.³¹

As previously stated, legal aid is rendered by bar associations. To this end, all bar associations are required to establish a legal aid bureau at their headquarters by the board of directors' decision.³² However, in order to extend the availability of legal aid services, bar associations may also designate legal aid service representatives or establish legal aid bureaus in jurisdictional areas outside the location of the bar association when more than five attorneys are available. According to the regulation, assignments under the legal aid scheme should be based on the principle of equality, and statements made by lawyers on specific areas of expertise should be considered while making the assignments.

The legal aid scheme in Turkey is primarily based on request and the system relies on an assessment which is called "legitimacy of request". That is, as a rule the requestor is required to approach the legal aid service or representative and submit his/her request in writing. To facilitate this phase, many bar associations have produced petition templates. The requestor is also expected to present information and relevant documents which will be used to determine their eligibility for the legal aid service.

This determination has two components: the first is the assessment of financial eligibility. Under this procedure, the requestor is required to provide documents which will enable the legal aid service to carry out an assessment with respect to the requestor's financial resources. Known as a 'means test,'³³ this component allows the requestor to show that she cannot, either partially or completely, afford to cover attorney and other adjudicatory fees without putting a considerable financial duress on himself or herself, or family. In practice, bar associations enjoy a wide discretion in determining evidence of means to be used for this test. Required documents include a lease contract, monthly pay slips, a copy of the record of real estate deeds or other land titles demonstrating that the requestor does not own property, a copy of vehicle title establishing that the requestor is not a legal owner of a vehicle, a poverty certificate issued by the mukhtar (government administrator for a neighborhood), or social security records. It is important to note that the key objective of the means test is not to establish whether the requestor is in an absolute indigence.³⁴ Should the documents presented be reasonably sufficient to establish the requestor's lack of necessary financial means, authorities will consider that the means test is met.³⁵

31 Legal Aid Regulation of Turkey's Union of Bar Associations, art. 1.

32 Attorney Act, art. 177 and Legal Aid Regulation of Turkey's Union of Bar Associations, art. 4.

33 Oğuz Atalay, Pekcanitez, *Medeni Usul Hukuku [Civil Procedural Law]*, On İki Levha Yayınları, 15. Edition, İstanbul 2017, p. 2418.

34 Ibid; Ahmet Cemal Ruhi, *Adli Yardım, Tebligat ve İstinabe [Legal Aid, Notification and Rogatory]*, Seçkin Yayıncılık, 2. Edition, Ankara, 2016, p.43.

35 Mehmet Akbal, *Medeni Yargılama Hukukunda Adli Yardım [Legal Aid in Civil Procedures]*, Türkiye Barolar Birliği Dergisi, No 94, May-June 2011, p. 154.

The second component is a ‘merits test,’³⁶ also known as a ‘substantive claim test’³⁷ or ‘prospect of success test,’³⁸ where the legal aid service makes an assessment based on the legal and factual merits to determine whether there is a ground to reasonably consider a successful outcome for which the grant of legal assistance is sought.³⁹ It is therefore imperative to emphasize that seeking a threshold higher than moderate or better than now would pose an additional and significant barrier hindering access to legal aid⁴⁰ and that such an approach has not been found acceptable either by the European Court of Human Rights⁴¹ or by the Constitutional Court of Turkey.⁴²

With the most recent amendments, requestors whose legal aid requests are rejected by bar associations are provided with the opportunity to appeal against this decision, a mechanism required by Article 40 of the Constitution⁴³. Thus, the requestor has the right to appeal against the negative decision, verbally or in writing, within ten days of being notified of the denial. Appeals should be made to the president of the bar association, and the president is required to finalize the appeal process within seven days—this decision is final. Moreover, the Regulation states that pending appeals which had not been finalized within the required time frame shall be considered rejected.⁴⁴

However, a successful request brings additional responsibilities both on the requestor and the attorney who shall be assigned by the bar. The requestor is required to sign a letter of declaration by which they accept that should they be granted any material benefit in the final instance, the requestor shall give a fixed part of this sum to the bar and that in the case of a malicious or frivolous claim, the requestor shall be obliged to pay all the expenses, including attorney’s fees and adjudicatory fees, incurred as a result of the individual’s application. Upon the signing of this letter, the requestor is also required to approach the attorney assigned by the bar together with the assignment letter issued by the bar to furnish relevant documents in support of his/her claim and give a power of attorney. Should the requestor fail to comply with these requirements, the assigned attorney shall be deemed to be discharged from his/her obligation to provide legal representation. It is also important to recall that fees required to give a power of attorney may also be covered under the legal aid scheme.⁴⁵

36 Ruhi; Adli Yardım, Tebligat ve İstinabe, p. 47.

37 Atalay, Pekcanitez, Usul, p. 2419.

38 Ruhi, Adli Yardım, Tebligat ve İstinabe, p. 46.

39 The Constitutional Court of Turkey, Decision No: No: 2013/7322, 20.3.2014, paragraph 29.

40 Atalay, Pekcanitez Usul, op. cit.

41 European Court of Human Rights, *Aerts vs. Belgium*, Application No: 25357/94, para. 60.

42 The Constitutional Court of Turkey, Decision No: 2013/7322, 20/3/2014, para 29. See also: Constitutional Court of Turkey, Mehmet Şerif Decision, Application No: 2012/1181, 17/9/2013, para 23.

43 According to second clause of this article, “the state is required to indicate available legal remedies, the name of competent authorities, and time caps on all proceedings state.”

44 Attorney Act, art. 178 and Legal Aid Regulation of Turkey’s Union of Bar Associations, art. 5.

45 Attorney Act, art. 179 and Legal Aid Regulation of Turkey’s Union of Bar Associations, art. 6.

The assigned attorney shall be considered to have entered into the obligation to provide attorney services upon the receipt of the assignment letter together with all other relevant documents, power of attorney, and an advance for obligatory costs. If the requestor is not able to afford adjudicatory costs, the attorney should request the grant of legal aid *in forma pauperis*. Moreover, the relevant legislation entrusts bar associations the authority to cover all adjudicatory fees under the legal aid scheme for cases where it can be clearly established that the requestor does not have sufficient financial means to afford these costs and there is a strong prospect of success.⁴⁶ All of these considerations must be made at the time of appointment.

As stated above, the attorney's obligation to provide legal representation shall cease to exist if the requestor fails to fulfill his/her responsibilities. However, pursuant to the regulation, the attorney is still under the obligation to notify the bar about the situation without delay.⁴⁷ If the assigned attorney declines to accept his duty without a rightful justification, he/she shall be required to pay the amount indicated in the legal aid remuneration tariff to the bar association within 15 days following the receipt of the assignment letter. It is important to note that even in such cases, the attorney is under the obligation to abide by all duties and responsibilities stipulated under the Attorney Act (No. 1136). Duties and responsibilities set forth under the Attorney Act include carrying out his/her duties with care, accuracy, and integrity,⁴⁸ preservation of client confidential information,⁴⁹ safekeeping documents and files,⁵⁰ and following the commissioned job through to its completion in accordance with statutory provisions and regardless of the absence of a written contract.⁵¹ For the exchange of services provided, the attorney is remunerated according to remuneration rates as established and updated by the bar association. With the most recent amendment to the Legal Aid Regulation, the attorney also has the right to be reimbursed for return travel costs for the cases requiring hearing before the Court of Cassation, Regional Courts of Justice or Regional Administrative Courts as well as before courts in Ankara and other regional courts. However, in cases of termination without a good cause or abdication of responsibility, the attorney is required to pay twice the remuneration rate back to the bar association.⁵²

The funding of the legal aid scheme mainly comes from the Ministry of Finance and is distributed to individual bar associations by Turkey's Union of Bar Associations.⁵³ However, there are also other (albeit minor) sources. These include donations, fees to be refunded by attorneys in abstention, and payments received from

46 Legal Aid Regulation of Turkey's Union of Bar Associations, art. 6.

47 This provision is in line with the article 37 of the Attorney Act No: 1136 stipulating the obligation to notify the rejection decision to the requestor without delay. Furthermore, article 41 of the same law contains another provision reiterating this obligation.

48 Attorney Act, art. 34.

49 Attorney Act, art. 36.

50 Attorney Act, art. 39 and art.52.

51 Attorney Act, art. 171 and Legal Aid Regulation of Turkey's Union of Bar Associations, art. 6.

52 Attorney Act, art. 180 and Legal Aid Regulation of Turkey's Union of Bar Associations, art. 7.

53 Attorney Act, art. 180.

the requestors in accordance with the letter of declaration signed at the outset.⁵⁴ After earmarking 10% of the total allocation transferred by the Ministry of Finance to the legal aid revenues equalization reserve fund, the remainder is re-allocated to respective bar associations by Turkey's Union of Bar Associations in accordance with a scoring system. Under this system, bar associations are assigned a 'legal aid allocation score'. To this end, each bar association is given 5 (five) basic points, and 1 (one) extra point is given for every 50 (fifty) lawyers registered with the bar, and 1 (one) extra point for every 5000 (five thousand) individuals residing in that province.⁵⁵ Thus, the scoring system is primarily based on the number of registered lawyers and the population size of the location. The final legal aid fund that shall be transferred to a bar association is calculated by multiplication of three elements: total funds allocated to the Turkey's Union of Bar Association, a fixed multiple of 0.90, and legal aid allocation score of the bar association. This figure is then divided into the overall legal aid allocation scores of all bar associations:⁵⁶

54 Attorney Act, art. 180 and Legal Aid Regulation of Turkey's Union of Bar Associations, art. 8.

55 Legal Aid Regulation of Turkey's Union of Bar Associations, art. 10.

56 Legal Aid Regulation of Turkey's Union of Bar Associations, art. 10.

ASYLUM SEEKERS' AND MIGRANTS' ACCESS TO LEGAL AID: FINDINGS AND EVALUATIONS

1. Awareness and Institutionalization at the Level of Bar Associations

Most of the bar associations visited for this study either have established a separate commission or board on refugee rights, or actively incorporated refugee and migrant rights into the work of the Human Rights Center or Human Rights Commission. There is no question that this is an important and welcoming indicator demonstrating an increased awareness on the part of bar associations.

Several respondents shared that these commissions or boards working in the field of refugee and migrant rights also invite members of other affinity groups within the bar association, including Women's Rights Commission and Children's Rights Commission, to their activities and are in the process of establishing coordination and referral mechanisms among these commissions. However, many respondents qualified this positive development by noting that such referrals are mostly made ad-hoc and one-off, revealing the need to set up a system to facilitate coordination. Respondents further stated that a significant proportion of lawyers working in these commissions are also undertaking active roles in other commissions; and thus, believed that this active interest has the potential to be used as an opportunity for extending services offered to refugee and migrant communities.

Similarly, most of the bar associations stated that coordination activities are not solely confined to referrals made between different commissions under the bar associations. Many interviewees shared that they carry out trainings and seminars in collaboration with civil society stakeholders, including Refugee Rights Turkey, and international organizations such as the United Nations High Commission for Refugees and International Organization for Migration. Additionally, some respondents noted they maintain contact with local civil society organizations, and as in the case of Ankara Bar Association, carry out joint projects with other institutions.

In addition to these efforts aiming to establish local coordination, several interviewees stated that they have also reached out to other bar associations to facilitate refugees' access to the legal aid scheme and to provide support and information. Interviewees reported that particularly in provinces lacking significant or visible refugee or migrant communities, bar associations lacked the desired level of knowledge and awareness in refugee and migrant rights. Some of these bar associations even excluded refugees or migrants from the legal aid scheme. However, several interviewees stated that in such cases, they had contacted the legal aid services of these bar associations to ensure individual refugees or migrants' access to the legal aid system.

Alongside these efforts, Turkey's Union of Bar Association has also undertaken several significant steps towards strengthening the involvement and engagement of bar associations in protecting refugee and migrant rights. For instance, by the end of 2015, the Human Rights Centre of the Turkish Union of Bar Associations established a sub-working group on 'Refugee Rights' with the participation of representatives from Ankara, Diyarbakir, Edirne, Gaziantep, Hatay, İstanbul, İzmir, Şanlıurfa, and Van Bar Associations.⁵⁷ In addition, there have been other positive steps including activities under the framework of The European Programme for Human Rights Education for Legal Professionals (HELP)⁵⁸ and Support to the Improvement of Legal Aid Practices for Access to Justice for All in Turkey (SILA)⁵⁹ Project. Turkey's Union of Bar Associations also signed a Memorandum of Understanding with UNHCR on 20 June 2016⁶⁰, with the aim of strengthening collaboration between the two organizations. Finally, in December 2017, Turkey's Union of Bar Associations and UNHCR have jointly initiated a free interpretation hotline in Arabic and Farsi for lawyers and bar staff. This hotline aims to provide free interpretation services to lawyers experiencing communication challenges with clients due to language barriers.⁶¹

2. Recognition and Accessibility of Legal Aid Services

Most of the bar association representatives visited in connection with this study stated that the overwhelming majority of legal aid appointments under the legal aid scheme arise from referrals made by civil society organizations and emphasized the important role of civic stakeholders in the functioning of the legal aid system. Respondents explained that referrals made by civil society organizations have been a valuable impetus towards extending legal aid scheme to persons seeking international protection, and in some cases, have directly become a source of inspiration or motivation for bar associations to take additional steps in contributing to refugee protection in Turkey.

Despite this source of legal aid clients, most of the bar associations RRT met shared that the total number of legal aid applications directly lodged by migrants and ref-

57 For further information on the working group and its activities: <http://insanhaklari.barobirlik.org.tr/MulteciHaklariGrubu.html>, [accessed on 8 August 2018].

58 <https://www.coe.int/tr/web/help-country/home-turkey>, [accessed on 8 August 2018]. One of the free of charge online courses offered since May 2016 under the scope of this program is named "Asylum Law and the European Convention on Human Rights".

59 For a more detailed information on the project: <http://www.silaprojesi.org/>, [accessed on 8 August 2018].

60 Türkiye Barolar Birliği [*Turkey Union of Bar Associations*], "Türkiye Barolar Birliği ve Birleşmiş Milletler Mülteciler İçin Birlikte Çalışacak" [*Turkey Union of Bar Associations and United Nations Shall Work Together for Refugees*], 20 June 2016, <http://www.barobirlik.org.tr/Detay70467.tbb>, [accessed on 8 August 2018].

61 Türkiye Barolar Birliği, [*Turkey Union of Bar Associations*], "Türkiye Barolar Birliği ve Birleşmiş Milletlerden Ter-cüme Destek Hattı", 21 Aralık 2018, [*Interpretation Hotline Initiated by Turkey Union of Bar Associations and United Nations*], <https://www.barobirlik.org.tr/Haberler/turkiye-barolar-birligi-ve-birlesmis-milletlerden-ter-cume-destek-hatti-79769>, [accessed on 8 August 2018].

ugees or their family members are still low. Our respondents underlined the lack of awareness among refugee and migrant communities about the state-funded legal aid scheme and the lack of permanent interpretation assistance due to resource constraints as major issues hampering greater service delivery. Therefore, several respondents suggested that civil society organizations could help increase awareness of legal aid by incorporating information on the legal aid mechanism offered by bar associations into their information materials or raising awareness of such legal aid through counselling sessions targeting refugee and migrant populations.

Most respondents also shared that due to a lack of permanent interpretation assistance at bar associations and financial constraints, they have not been able to establish a regular or systematic outreach mechanism to maintain sustainable contact with refugee and migrant communities. However, several respondents stated that they had successfully taken some steps to address this problem. Several bar associations have taken measures to enhance bar associations' engagement with refugee and migrant communities. These include dissemination of multi-lingual leaflets on the availability of legal aid at the premises of the Provincial Directorate of Migration Management (Gaziantep Bar Association), carrying out visits to community centers including those operated by Turkish Red Crescent to explain the legal aid scheme (İzmir Bar Association), and establishing mission visits to neighborhoods with high refugee and migrant concentrations (Ankara Bar Association).

Similarly, some bar representatives stated that on several occasions, they carried out mission and fact-finding visits following media reports on incidents relating to refugees and migrants. A common point raised by bar representatives was that there is a pressing need for bar associations to develop a more proactive approach in extending their services to refugees, asylum seekers, and other vulnerable communities but that the lack of sufficient resources and interpretation services is one of the most fundamental barriers before the adoption of such an approach.

3. Legal Aid Appointments

Representatives from bar associations which had already established a specifically designated commission or board for refugee and migrant rights, or those carrying out such activities under the Human Rights Center, shared that the legal aid appointments are generally granted upon referrals made by these bodies. Most respondents stated that although they may receive legal aid applications via phone, the general rule for making an appointment is lodging an application in person. Respondents, however, added that exceptions to this rule are made for applicants reaching bar associations from removal centers and other places of detention.

As the Law on Foreigners and International Protection (No 6458) diverts from the general limitation periods⁶² in initiating a legal action before an administrative court and envisions much shorter time limits⁶³, the ability and capacity of bar associations in making expedited appointments becomes a highly critical issue. As reported in previous sections, many bar associations have either adopted a ‘Legal Aid Regulation’ or ‘resolution’ with a view to set a more detailed regulation of legal aid services offered under the state funded legal aid scheme. An important mechanism incorporated into these documents is the expedited appointment procedure. That is, if there is a reasonable ground to believe that there is a serious risk of involuntary loss of a right or an irreparable damage, bar associations are entitled to make expedited appointments. Legal aid regulations of several bar associations⁶⁴ have explicitly included this procedure for cases relating to child abuse and violence against women. Bar associations, including İzmir, Van and Edirne Bar Associations, which had not expressly included expedited appointment procedure in their legal aid regulations, have also shared that in practice, they apply this procedure particularly for applicants held under detention in removal centers.

Moreover, following the adoption of the Law on Foreigners and International Protection (No. 6458), some bar associations amended their legal aid regulations⁶⁵ and incorporated legal aid applications relating to Law No. 6458 under cases eligible for the expedited appointment procedure. As previously stated, an erroneous decision in the refugee context may potentially lead to irreparable damages and consequences such as being subject to return to a country where the person shall be at risk of torture and ill-treatment. Moreover, shorter time limitations for exercising the right to a legal remedy under the Law on Foreigners and International Protection (No. 6458) run the risk of involuntary loss of this right. These considerations alone highlight the critical importance of the expedited appointment procedure. However, Refugee Rights Turkey observes that there are still many bar associations which had neither included this procedure in their regulations nor use it in practice. Thus,

62 Article 7 of the Code of Administrative Procedures (No: 2577) states that unless otherwise stated in other acts, the standard time limit to initiate an action before an administrative court is 60 days.

63 As per Article 53 of the Law on Foreigners and International Protection (No: 6458), a person has the right to appeal against a removal order within 15 days following the date of notification. On the other hand, Article 80 states that “notwithstanding the judicial appeal mechanism provided under Article 68 [*“administrative detention of international protection applicants”*], the concerned person, his/ her legal representative or lawyer may appeal against the decisions made pursuant to Articles 72 [*“inadmissible application”*] and 79 [*“accelerated procedure”*] within fifteen days following the notification of the decision, and within thirty days following the notification of other administrative decisions and actions before the competent administrative court.” Italics added by Refugee Rights Turkey.

64 See, among others, Ankara Bar Association’s Internal Circular on Legal Aid, Antalya Bar Association’s Internal Circular on Legal Aid, Gaziantep Bar Association’s Internal Circular on Legal Aid, Kırklareli Bar Association’s Internal Circular on Legal Aid and Muğla Bar Association’s Internal Circular on Legal Aid.

65 For instance, Ankara Bar Association’s Internal Circular on Legal Aid, Article 22: “All legal aid appointments relating to the Law on Foreigners and International Protection shall be made, as per Article 21 of this Circular, under expedited procedure.” Antalya Bar Association’s Internal Circular on Legal Aid, Article 11: “Appointments made pursuant to the article 81/f.2 of the Law on Foreigners and International Protection and legal aid applications concerning child abuse and violence against woman shall be made under expedited procedure.” Kırklareli Bar Association’s Internal Circular on Legal Aid, Article 9: “Pursuant to the article 9/A of the Circular, appointments relating to the Law on Foreigners and International Protection shall be made under expedited procedure.”

in order to ensure uniform implementation with regard to legal aid appointments, there is a pressing need to introduce an amendment to the Legal Aid Regulation.

Another major obstacle to accessing the legal aid scheme is that both means testing and merits testing are applied very stringently, and therefore constitute a *de facto* barrier impeding refugees' and vulnerable migrants' access to justice. Although all bar associations consulted for this report have expressly stated that they have organized the provision of legal aid to refugees and vulnerable migrants in a manner that facilitates greater access—such as reducing the number of documents required for means testing or granting exemptions to particularly those detained in removal centers—it is safe to argue that there is still a concerning pattern in which many refugees and vulnerable migrants are wrongly refused and thus deprived of an essential procedural safeguard. Turkey's Union of Bar Associations has also identified the problem of some bar associations 'dismissing legal aid applications by citing failures in presenting required documents or meeting conditions'⁶⁶ and made the following poignant observation: "Although legal aid can be granted for civil and administrative matters, it has been observed that the common problem of lacking a legal residence, reluctance of mukhtars in registering these individuals due to various reasons, difficulties in presenting documents required by bar associations and courts for legal aid, and other bureaucratic barriers necessitate a need for a substantial review of legislation on the provision of legal assistance. Although many bar associations have resolved these problems in practice, the lack of adequate financial resources still constitutes a major problem. Some bar associations continue to reject legal aid applications by citing failures to present required documents."⁶⁷

Refugee Rights Turkey is of the opinion that a reasonable solution could be means testing based on a presumption that especially refugees and foreigners subject to deportation proceedings do not have sufficient resources to afford paid legal aid or assistance, unless there is a clear evidence to the contrary. A similar presumption is currently included in the legal aid regulations of Ankara and Kırklareli Bar Associations, and all bar representatives consulted for this report confirmed that they apply this presumption in practice. The best practice in this regard would therefore be "presuming that a person subject to international protection law meets the merits test unless the context clearly indicates otherwise" and that "in cases where the applicant personally submits an application or where there is a notice made by a third party, if the applicant is unable to present required documents stipulated in the regulation due to his/her actual state, it is possible to make an appointment without these documents."⁶⁸ Turkey's Union of Bar Associations have also proposed to add

66 Türkiye Barolar Birliği İnsan Hakları Merkezi [Turkey Union of Bar Associations, Human Rights Centre], *Sığınmacılar ve Mülteciler Raporu* [Report on Asylum Seekers and Refugees], Atty. Uğur Altun and Atty. Özge Görel, February 2016, Ankara, p. 36.

67 Türkiye Barolar Birliği İnsan Hakları Merkezi, *Sığınmacılar ve Mülteciler Raporu*, p. 53.

68 Ankara Bar Association's Internal Circular on Legal Aid, Article 22, Kırklareli Bar Association's Internal Circular on Legal Aid, Article 9.

the following provision to Article 5 of the Legal Aid Regulation: “Asylum seekers, refugees, persons whose asylum claims are adjudicated or whose asylum applications are denied by competent authorities are exempt from presenting documents such as residence certificate, poverty certification, identity or passport.”⁶⁹

4. Access to Legal Aid from Removal Centers or Other Places of Detention

After many years of authorities using immigration detention without clear legal grounding, the Law No. 6458 on Foreigners and International Protection has conclusively deemed such practice as ‘administrative detention’ under the law. The law also introduced a number of critical procedural safeguards related to immigration detention, all largely established in line with the case law of the ECtHR,⁷⁰ including a reiteration of the possibility for economically weak migrants and refugees under administrative detention to seek free legal assistance from the state-funded legal aid scheme.⁷¹ As the right to liberty and security is enshrined in the Constitution of the Republic of Turkey⁷² and in other key international instruments to which Turkey is a party,⁷³ the inclusion of this provision in the LFIP for persons under immigration detention is welcome for the possibility it bears on the actualization of these rights in practice.

Despite these positive developments, persons under administrative detention continue to experience significant challenges in their ability to access legal aid. The first worrying matter concerns detainees’ ability to access legal aid bureaus. Under the new legislation, individuals may be placed under detention not only in removal centers, but also in airport or other transit zones, border gates, and in some occasions in police or gendarmerie stations. Such facilities contain no formal means by which detainees can contact legal aid. It is therefore of an utmost importance to set up a mechanism and/or modalities which would facilitate the access of detainees in these facilities or premises to the legal aid scheme. Given such limitations, it is particularly important that bar associations swiftly respond to notifications and/or referrals made by relatives of detainees or civil society organizations.

The majority of respondents consulted for this report stated that they have acted on and mobilized their resources upon receiving communications through a range of channels. For example, digital referrals through phone, e-mail or social media, or referrals made by civil society organizations and other institutions. In some occa-

69 Türkiye Barolar Birliği İnsan Hakları Merkezi, *Sığınmacılar ve Mülteciler Raporu*, p. 54.

70 For a discussion on administrative detention under the framework of Turkey’s migration legislation and current challenges: Refugee Rights Turkey, “An Urgent Need: Judicial Review of Conditions in Immigration Detention under Turkey’s new Legal Framework”, January 2017.

71 Law on Foreigners and International Protection, art. 57/7.

72 The Constitution of the Republic of Turkey, art. 19.

73 International Covenant on Civil and Political Rights, art. 9 and European Convention on Human Rights, art. 5.

sions, referrals have even occurred through media reports, particularly in situations where the person concerned is under the risk of an imminent deportation. In such cases bar associations applied the expedited appointment procedure and gave priority to applications made from removal centers or other places of detention.

A best practice in this regard would be the inclusion of a provision to the legal aid regulations of bar associations which expressly states that making an application in person may not be required for persons detained for immigration purposes. Turkey's Union of Bar Associations also made a similar recommendation: "In cases where it is not possible for persons detained to reach Legal Aid Bureau either directly or in person, h/she may communicate his/her legal aid application via phone, mail or e-mail or with the assistance of his/her attorney or legal representative... For persons who do not possess a valid identity card, passport or any other identification document, the bar association may rely on the official registration of the competent authority where the person is under detention".⁷⁴

Despite these constructive measures, some bar associations continue to require applicants under administrative detention to present their legal aid applications in writing. Such requirements manifestly constitute a formidable challenge for a significant number of detainees. In addition, several bar associations shared that they are not enforcing the requirement of making a legal aid application in writing themselves, rather the authorities of detention facilities or premises are enforcing this requirement.

Another common challenge consistently raised by respondents is the lack of interpretation assistance available for lawyers and beneficiaries. All bar associations RRT met emphasized the significant role played by interpretation assistance in ensuring access to legal aid. At the same time, respondents stated that due to resource constraints they are not able to recruit a permanent and/or part-time interpreter and therefore remain highly dependent on civil society organizations to assist in this regard. Respondents have further shared that there is virtually no access to the recent free interpretation hotline initiated by Turkey Union of Bar Association and UNHCR, as lawyers are not allowed to use their mobile phones in removal centers and there is no phone line in premises designated as 'lawyer-client meeting room' in these centers. Several respondents recommended an allocation of a specific budget for interpretation and translation services under the legal aid scheme. Another recommendation was that although Article 180 of the Attorney Act includes the term 'other costs' under eligible costs to be made by legal aid bureaus, it would be advantageous to make a clear reference to 'interpretation costs' and ensure legal aid bureaus to cover these expenses without any hesitation. A third proposal was the establishment of an 'interpreters list' like the one set

74 Türkiye Barolar Birliđi İnsan Hakları Merkezi, *Sığınmacılar ve Mülteciler Raporu*, p.55.

in place pursuant to the Code of Criminal Procedures and relevant legislation,⁷⁵ or paving the way for legal aid bureaus to draw on this list.

Respondents identified issues in granting power of attorney as another major challenge⁷⁶ to accessing legal aid. Several respondents shared positive examples of flexibility in granting power of attorney, including government officials recognizing legal aid assignment letters as a valid document enabling access to a removal center, and removal center authorities translating legal aid applications of detainees into Turkish and forwarding these requests to the attention of bar associations. However, the overwhelming majority of bar associations cited challenges in granting power of attorney among the key barriers they identified in access to legal aid. Several respondents added that in some removal centers, authorities require detainees to give the full name of attorneys in writing, whereas a failure to submit such a petition results in denial of the lawyer's access to the removal center.

Our respondents also shared that notwithstanding provisions in the Law on Foreigners and International Protection (No. 6458)⁷⁷ and relevant legislation⁷⁸ which guarantee detainees' right to access to a lawyer, in practice, attorneys face numerous challenges. These include direct denial of access to the removal center, limitations on the number of detainees who can receive a lawyer's visit, long delays in admissions to the removal center, barring of lawyers even from reading files of detainees who are under detention with a 'restriction code', lack of a publicly available document regulating rules and modalities of access to a removal center, and arbitrariness in granting access.

In regard to these challenges, an important ruling⁷⁹ of the European Court of Human Rights ('ECtHR') can be recalled where the ECtHR found a violation of Article 34 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In the case of *D.B. v. Turkey*, the court found that the applicant's denial to meet his lawyer because the lawyer failed to submit to the national authorities a 'notary recorded power of attorney proving that he was the applicant's representative' was a breach of Art. 34. In its assessment, the ECtHR underlined that 'the effective representation of the applicant before the Court was seriously hampered.'

75 Regulation Governing the Administration of Interpreter Lists Pursuant to the Law on Criminal Procedure, 05.03.2013 dated Official Gazette (No: 28578).

76 For a comprehensive discussion on problems related to the granting of a power of attorney: Refugee Rights Turkey, "Barriers to the Right to Effective Legal Remedy: The Problem Faced by Refugees in Turkey in Granting Power of Attorney", February 2016.

77 Law on Foreigners and International Protection, art. 59/1(b).

78 Regulation on the Implementation, Management, Operation, Management Outsourcing and Inspection of the Reception and Accommodation Centres, art. 11/1(h): "Duties of the Centre Administration are as follows: ... Coordinate efforts to enable residents to have access to/meet their relatives, a notary, their legal representatives, their attorney, their visitors, the representatives of their Consulate and UNHCR officials." 22.04.2014 dated Official Gazette (No: 28980).

79 *D.B. v. Turkey*, Application No: 33526/08, 13 July 2010, § 67.

A recent ruling delivered by Ankara First Administrative Court⁸⁰ can be of important guidance in this regard. The case was initiated by the İzmir Bar Association after a lawyer was denied the ability to accompany his client to his residence permit application, as he was not able to present a notarized power of attorney at the time of application. In its decision, the Ankara First Administrative Court initially highlighted that “compared to nationals, persons falling within the ambit of Law No. 6458 are in a more disadvantageous position in accessing legal remedies” and emphasized that “a power of attorney is not a condition for validity, but merely a condition for proof”. Thus, Ankara First Administrative Court found that “[denying the lawyer to accompany his client] for his failure to present a notarized power of attorney has resulted in the limitation of the right to legal remedy and thus cannot be deemed lawful.”⁸¹

5. Quality of Legal Aid

As previously stated, the comprehensive reform process has radically overhauled the migration and asylum management system in Turkey by introducing a number of critical procedural and substantive safeguards. Thus, both this recent legislation and incorporation of many new legal concepts and policies into the domestic legal framework in Turkey require legal practitioners to further develop their knowledge and skills. However, the provision stating that “attorneys’ declared fields of specialization shall be taken into consideration in making [legal aid] assignments” in the Legal Aid Regulation is far from being an objective criterion that would ensure a certain level of expertise is attained.

The majority of respondents consulted for this report stated that they had taken several important steps towards improving the knowledge and expertise of their members in the field of foreigners and asylum law. For instance, the increased number of refugee law trainings and seminars organized in collaboration with civil society organizations and other actors like UNHCR is a welcoming indicator in this regard. Similarly, many respondents shared that they had already produced “special assignment lists” under the legal aid scheme. Other respondents also communicated that they introduced special conditions for the assignment of lawyers to cases that are directly related to the new Law on Foreigners and International Protection. These special conditions include a scoring system, and the requirement to successfully complete refugee law trainings and/or seminars.

Despite these important steps, a common problem consistently raised by respondents was the request to withdraw from legal aid assignments due to challenges in access to interpretation services, access to removal centers, and a lack of sufficient knowledge and experience. Respondents recalled that the Legal Aid Regula-

80 Ankara 1st Administrative Court, Docket No: 2016/2121, Decision No: 2017/86, 25.01.2017.

81 Op. cit.

tion expressly requires a lawyer who declines to accept his duty—without a rightful justification—to pay the amount indicated in the legal aid remuneration tariff to the bar association. However, respondents often find the reasons cited in requests to withdraw from such assignments rightful, and therefore argued that such a sanction is not necessarily appropriate or efficient in all cases. At the same time respondents stated that the duty to follow a commissioned job through to its completion in accordance with statutory provisions, a key duty under the Attorney’s Act, has not been always honored. Therefore, they called for more rigorous monitoring and other measures, including disciplinary sanctions, in such cases. Respondents consulted for this report expressed that as both requests to withdraw and the failure to honor the duty to follow the commissioned job through completion create significant challenges for the bar association and the beneficiary, they often struggle to make an expedited assignment in these cases to avoid a potential loss of this right.

As a response to the aforementioned problems, the majority of respondents emphasized that in order to achieve and maintain a certain degree of expertise, there is a pressing need for additional trainings, periodic specialization seminars, and a mechanism which would allow legal practitioners to follow recent developments in legislation and case law. Similarly, due to the fact that a significant proportion of migrant and refugee population is considered vulnerable, respondents underlined the need to develop further cooperation with other stakeholders who are experienced working with these groups. Respondents also suggested the establishment of a mechanism that could supply support and advice to legal practitioners.

6. Financing for Legal Aid

Respondents consistently cited the lack of sufficient funding and resources as major impediments to extending legal aid services to the refugees and vulnerable migrants. As stated in the previous sections of this report, this problem contributes to a lack of a regular contact with the refugee and migrant community, and thus is one of the root causes behind bar associations’ limited outreach to these populations. Moreover, although both the Attorney’s Act⁸² and the Legal Aid Regulation⁸³ expressly stipulate necessary travel expenses incurred over the provision of legal aid services as eligible costs, many respondents shared that due to limited resources, they could not even cover these costs. This problem becomes particularly acute in cases concerning detained individuals as removal centers and other places of detention are often located in remote areas.

Several respondents stated that the scoring system used to determine the legal aid allocation to bar associations is itself a major impediment, as the allocation is

82 Attorney Act, art. 180.

83 Legal Aid Regulation of Turkey’s Union of Bar Associations, art. 9.

solely based on the total number of lawyers registered with the bar and individuals residing in the province. The current official data on migration and asylum figures indeed support this claim and indicate that the total number of refugees and migrants in a province is not necessarily directly proportional with the number of lawyers registered with the bar in a province and its population. This problem becomes even more critical in provinces with low populations that are hosting high number of protection seekers and/or detainees. For instance, official 2018 statistics reveal that the majority of irregular movements take place in provinces such as Edirne, Kırklareli and Hatay, all with a relatively low population density and with a fewer registered lawyers.⁸⁴ Similarly, official 2018 statistics indicate that provinces like Gaziantep, Hatay, Kilis and Şanlıurfa account for a remarkably high ratios of Syrian refugee population. As a way of illustration, the number of Syrian refugees relative to the province's population is 20.88% in Gaziantep, 28.05% in Hatay, 22.94% in Şanlıurfa, and even 88.88% in Kilis.⁸⁵ Yet, in some of these provinces, the total population and the number of lawyers registered with the local bar significantly lag behind.

Moreover, provinces with larger population and thus with a higher number of lawyers registered in bar associations are not necessarily immune from funding and resource challenges. For instance, metropolitan provinces such as Ankara, Erzurum, İstanbul, İzmir, Kayseri, and Van host large scale removal centers where the need to access to legal aid is critical.⁸⁶ As there are also significant refugee and migrant concentration in these provinces, the number of vulnerable individuals⁸⁷ among this population is inherently higher.

84 Directorate General of Migration Management, Irregular Migrants Apprehended in 2018 – By Province, http://www.goc.gov.tr/icerik3/duzensiz-goc_363_378_4710, [accessed on 13 December 2018].

85 Directorate General of Migration Management, Syrian Nationals under Temporary Protection – By Province, http://www.goc.gov.tr/icerik3/gecici-koruma_363_378_4713, [accessed on 28 December 2017].

86 According to official figures provided by the Directorate General of Migration Management figures, there are 23 Removal Centres in 20 different provinces in Turkey with a total capacity of 15.216 persons. For instance, while the capacity of the removal centre in Van is 1142, Erzurum's capacity is 1500 and the capacity of removal centers located in İzmir, in Gaziantep and in Kayseri is 750 each. General Directorate of Migration Management, Removal Centres, http://www.goc.gov.tr/icerik3/geri-gonderme-merkezleri_363_378_10094, [accessed on 13 December 2018].

87 Law on Foreigners and International Protection, Article 3/1: 'In the implementation of this Law, the following definitions shall apply: (...) (I) Person with special needs: out of those applicants and international protection beneficiaries, an unaccompanied minor; a disabled person; an elderly person; a pregnant woman; a single mother or a single father with an accompanying child; or a person who has been subjected to torture, rape or other serious psychological, physical or sexual violence (...). Article three paragraph (I) of Temporary Protection Regulation uses the exact same terminology and refers to "person with special needs". Furthermore, both Law on Foreigners and International Protection and the Temporary Protection Regulation stipulate that individuals belonging to this specific group would be given priority with respect to procedures and actions: Law on Foreigners and International Protection, Art. 67 and Art. 95 and Temporary Protection Regulation, Art.48 and also Art. 20 and Art. 23.

All of these figures suggest that a new system which duly accounts for the number of asylum seekers and migrants in a province when making budgetary allocations for the legal aid services to be offered by the bar association in the province is pressing. Refugee Rights Turkey further believes that in order to ensure refugees' and migrants' effective access to justice, a major objective of the Judicial Reform Strategy, a dedicated budget should be put in place.

Another concern raised by respondents was on the fairness of remuneration. Several respondents stated dealing with the new system introduced by the Law on Foreigners and International Protection and associated legislation is much more complicated. Such cases require an in-depth analysis of country of origin information and case law, and that heavy time pressure is a defining characteristic of such work. Therefore, they believe the remuneration tariff should be revised to be more equitable with the amount of work required.

Conclusion and Recommendations

In line with the findings on gaps and challenges as summarized above, Refugee Rights Turkey makes the following recommendations in connection with effective access of asylum seekers and vulnerable migrants to legal aid services.

For Bar associations and Turkey's Union of Bar Associations

- The ongoing work and activities of bar associations seeking to extend legal aid services to disadvantaged groups, including refugees and vulnerable migrants is a positive indicator that must be continued.
- Relevant working groups, commissions, centers, or similar entities under bar associations must establish systems to facilitate coordination and referrals.
- A similar coordination and referral system must be established between civil society organizations and bar associations.
- To increase awareness among disadvantaged groups of the legal aid scheme, information materials in various languages should be drafted and widely distributed across Turkey, including removal centers and Provincial Directorates of Migration Management.
- Turkey's Union of Bar Associations should continue to engage with multiple actors, and encourage bar associations to expand their services to refugees and migrants in Turkey.
- Internal circulars of all bar associations and/or the Legal Aid Regulation itself

should include expedited procedures for all proceedings related to the Law on Foreigners and International Protection, particularly applications made by individuals under administrative detention in removal centers. .

- Trainings on refugee law and the domestic laws pertaining to foreigners should be organized to increase knowledge and skills of lawyers working under the legal aid scheme, and to achieve a minimum standard in the provision of services. These trainings should be complemented by additional and periodic specialization seminars and mechanisms which would inform legal professionals on recent developments in legislation, policies, and jurisprudence.
- An objective criterion that would ensure the attainment of a certain level of expertise among legal aid lawyers should be introduced.
- In addition to measures aiming to enhance the quality of legal aid services afforded to asylum seekers, refugees, and migrants, stakeholders should establish a support mechanism for lawyers which would provide country of origin information and counselling on the case-law. Such a mechanism should either be organized under Turkey Union of Bar Associations or by expert civic actors in cooperation with the Turkey Union of Bar Associations.
- All complaints and notifications on the failures in honoring duties and responsibilities as defined under the Attorney Act must be investigated promptly, thoroughly, and impartially. When necessary, appropriate sanctions must be imposed.
- Unless there is clear evidence to the contrary, all refugees and migrants seeking to benefit from the legal aid scheme must be presumed to pass the means test, and this principle must be introduced to the internal circulars of bar associations and/or Legal Aid Regulation.
- If the applicant is unable to present required documents for the means test due to his/her actual state, it should be possible to make an appointment without document and this principle must be introduced to the internal circulars of bar associations and/or Legal Aid Regulation.
- Merits testing should not be applied in such manner that would impede or otherwise interfere with the right to access to legal aid scheme and to justice.
- In cases where it is not possible for persons detained to reach bar associations in person, he/she should enjoy the opportunity to communicate his/her legal aid application via other means and in any case, legal aid appointments should be made upon the application of detainee's relatives, legal representative or notification of civil society organizations.
- Refugees and migrants, including those under administrative or any form of detention, should be able to communicate their legal aid applications via phone, mail and other appropriate means.

- Refugees and migrants benefiting from the legal aid scheme should enjoy the opportunity to provide feedback on the quality of the service received, and these inputs must be taken into account in measures aiming to increase the efficiency of the legal aid system.

For the Directorate General of Migration Management and Ministry of Justice

- Relevant bodies should adopt and circulate a new regulation or communique which explicitly asserts the official nature of all forms of identity documents issued under the Law on Foreigners and International Protection and the Temporary Protection Regulation.
- The validity of all forms of identity documents issued under the Law on Foreigners and International Protection and the Temporary Protection Regulation must be extended to encompass all provinces of Turkey.
- All persons making an application for international protection, including those under administrative detention and those detained at border crossing points and airport transit zones, must be provided with an “international protection registration document” without delay.
- All individuals under temporary protection must be provided temporary protection identity documents without delay.
- The existence of a legal aid assignment letter must be considered as an indication of a contract of mandate.
- To ensure access to an independent and impartial interpretation service, a similar ‘interpreters list,’ like the one set in place pursuant to the Code of Criminal Procedures, must be established. Or, amendments must be introduced with a view to enabling legal aid bureaus to draw on the available list.
- Regular trainings targeting interpreters must be organized in cooperation with civil society organizations that have expertise in this field.
- The lawyer’s full and unhindered access to the client’s file must be guaranteed and any regulation inconsistent with the provisions of the Attorney Act must be repealed.
- A publicly available document regulating rules and modalities of access to a removal center and ensuring the full exercise of attorney rights and duties must be adopted and widely circulated.
- All documents regulating or relating to fundamental rights and freedoms must be publicly available.
- Legal aid services for refugees and migrants must be adequately resourced and supported.

- A new system which accounts for the number of refugees and migrants in a particular province must be established for the allocation of legal aid funds.
- A dedicated budget must be allocated to bar associations in order to ensure the access of refugees and migrants to the legal aid scheme.
- The remuneration tariff should be revised to ensure equity.

For Civil society organizations

- Civil society organizations should carry out awareness raising activities on the availability of the legal aid scheme.
- Civil society organizations should continue to refer refugees and migrants, particularly those with special needs, to bar associations.

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