

CHAPTER 23 JUDICIARY AND FUNDAMENTAL RIGHTS

Priority 23.1 Increasing the efficiency, efficacy and functionality of the judiciary

1 Schedule of legislative alignment

Table 23.1.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1	Recommendation No. R(94)12 of Committee of Ministers of the Council of Europe	Law on the Union of Judges and Prosecutors of Turkey ¹	Satisfying the common needs of members of the professions of judicature and prosecution, to facilitate their professional activities, and enabling the development of this profession in compliance with general interest.	Ministry of Justice	2009
2		Law Amending the Administrative Jurisdiction Law ²	Introducing new arrangements on matters regarding duty and authority, resolving certain technical problems in the application and shortening the trial process.	Ministry of Justice	2009
3		General Administrative Procedure Law ³	Introducing the obligation for the administration to specify the authority which the person subject to administrative action has the right apply to or file a court case, and the deadline for such application or filing.	Ministry of Justice	2009
4	Recommendation No. R(86)12 of the Council of Europe Recommendation No. R(81)7 of the Council of Europe Recommendation No. R(84)5 of the Council of Europe	Civil Procedure Law	Making the judicial system simpler, achieving the unity of terms; developing a logical, unsophisticated and simple system that is easy to follow and in compliance with the course of trials.	Ministry of Justice	2009

¹ Considered within the scope of political criteria.

² Considered within the scope of political criteria.

³ Considered within the scope of political criteria.

Table 23.1.1 (Continued)

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
5	Recommendation No. R(86)12 of the Council of Europe Recommendation No. R(98) of the Council of Europe Recommendation No. R(99)19 of the Council of Europe Reconciliation on Legal Issues No. R (2002) 10 of the Council of Europe	Law on Conciliation in Penal Procedures ⁴	Reducing of the workload in judiciary, resolution of disputes with minimum costs and satisfaction of the parties in a more peaceful and conciliatory manner outside the judicial system in accordance with the “restorative justice principle”. Within the framework of the judiciary reform, enabling possibility for the trials in a faster, simpler, effective way and with a minimum cost, and resolution of certain disputes through non-contentious jurisdiction, compromise, and conciliation instead of contentious jurisdiction	Ministry of Justice	2009
6	Recommendation No. R(86)12 of the Council of Europe Recommendation No. R(98) of the Council of Europe Recommendation No. R(99)19 of the Council of Europe, Reconciliation on Legal Issues No. R (2002) 10 of the Council of Europe	Law on Non-Contentious Jurisdiction and Alternative Ways of Dispute Resolution ⁵	Within the framework of judicial reform; enabling possibility for the trials in a faster, simpler, effective way and with a minimum cost, and resolution of certain disputes through non-contentious jurisdiction, compromise, and conciliation instead of contentious jurisdiction	Ministry of Justice	2009-2010
7		Law Amending the Law on Supreme Court ⁶	Reducing the workload of the Supreme Court by establishing courts of appeals.	Ministry of Justice	2009-2010
8	Regulations No. 4253/88, 2988/95, 2064/97 and 1267/1999	Law on Court of Audits ⁷	Ensuring contribution of external audit to the establishment of an accountable and transparent public financial management system in accordance with the Constitution and Code No. 5018	Court of Audits	2009

⁴ Considered within the scope of political criteria.

⁵ Considered within the scope of political criteria.

⁶ Considered within the scope of political criteria.

⁷It is also mentioned under “Priority 32.2. Adoption of the pending legislation for ensuring the operation of Court of Auditors to be in line with the standards and principles of the International Organisation of Supreme Audit Institutions (INTOSAI)”.

Table 23.1.1 (Continued)

No	Yürürlükteki AB mevzuatı	Taslak Türk mevzuatı	Kapsam	Sorumlu kurum	Yayın tarihi
9		Law on Enforcement and Execution of Punishment Judges	Conducting studies on the execution of convictions and enforcement judges	Ministry of Justice	2009-2010
10		Law on Establishment of Regional Appeal System in Administrative Judiciary	Taking parallelism in judicial procedures into account, restructuring the organization of courts and trial procedures in the administrative judiciary, which currently has enough judges, auxiliary staff, organization, premises and other equipment in order to implement regional appeal system in administrative judiciary.	Ministry of Justice	2010
11		Law on Judicial Data Processing Institution	Ensuring the credibility and accuracy of judiciary to the highest degree, and accelerating functioning of it by means of cooperation with the Constitutional Court, Court of Cassation, Council of State, Court of Jurisdictional Disputes, High Council for Judges and Prosecutors, Supreme Election Board, civil/criminal and administrative judiciary organs, central and administrative units of the Ministry of Justice, offices affiliated or attached to Ministry of Justice.	Ministry of Justice	2010

2 Schedule of required institutional building for legislative alignment and implementation

Table 23.1.2

No	Requirements	Year
(Ministry of Justice)		
1	Establishment of a Judicial Trainer Pool	2009
2	Establishment of Ombudsman	2009
3	Establishment of Department of Mediation under the Directorate General of Legal Affairs of the Ministry of Justice	2009
4	Establishment of Foreign Mission Offices of Liaison Judges in order to ensure trials having international course and effective cooperation with EU and other international organisations in the area of judiciary.	2009
5	Establishment of Judiciary Media Spokemanship	2009
6	Introduction of the cadre of “Judicial Service Expert” between judges, public prosecutors and auxiliary personnel in order to accelerate the functioning and efficiency of the judiciary by reducing the administrative burden of the judges and prosecutors.	2010
7	Establishment of Regional Courts of Appeal	2010
8	Enabling the Regional Administrative Courts to function in the position of courts of appeal by legal amendments giving the Regional Administrative Courts the authority of regional appeal in parallel with legislation with regard to Regional Courts of Appeal	2011
9	Establishment of Judicial Data Processing Institution	2010

3 Financial requirements and sources

Table 23.1.3.1

(Euro)

Requirements (Ministry of Justice) Ombudsman	Year	National budget	EU sources	Other	Total
I-Investment	2009	5,000			5,000
II- Legislative alignment and implementation					1,170,000
- Personnel					
- Education	2009		1,170,000		
- Consultancy					
- Translation					
- Other					
Total		5,000	1,170,000		1,175,000

Table 23.1.3.2

(Euro)

Requirements (Ministry of Justice) Department of Mediation	Year	National budget	EU sources	Other	Total
I-Investment	2009	75,000	225,000		300,000
II- Legislative alignment and implementation					
- Personnel					
- Education	2009	200,000	3,800,000		4,000,000
- Consultancy					
- Translation					
- Other					
Total		275,000	4,025,000		4,300,000

Table 23.1.3.3

(Euro)

Requirements (Ministry of Justice) Foreign Mission Offices of Liaison Judges	Year	National budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel	2009		250,000		250,000
- Education	2009	100,000	900,000		1,000,000
- Consultancy	2009		250,000		250,000
- Translation	2009		250,000		250,000
- Other	2009		250,000		250,000
Total		100,000	1,900,000		2,000,000

Table 23.1.3.4

(Euro)

Requirements (Ministry of Justice) Establishment of Judiciary Media Spokemanship and establishment of Judicial Trainer Pool	Year	National budget	EU sources	Other ⁸	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel	2009			200,000	200,000
- Education	2009			200,000	200,000
- Consultancy					
- Translation	2009			50,000	50,000
- Other	2009			50,000	50,000
Total				500,000	500,000

⁸ Financed under the scope of memorandum of understanding which was concluded on 22.10.2007 envisaging cooperation with Sweden in certain fields.

Table 23.1.3.5

(Euro)

Requirements (Ministry of Justice) Judicial Service Expert	Year	National budget	EU sources	Other ⁹	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel					
- Education	2009	250,000	4,750,000	250,000	5,000,000
- Consultancy					
- Translation	2009		250,000		250,000
- Other					
Total		250,000	5,000,000	250,000	5,500,000

Table 23.1.3.6

(Euro)

Requirements (Ministry of Justice) Regional Courts of Appeal	Year	National budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel					
- Education	2010	40,000	360,000		400,000
- Consultancy					
- Translation					
- Other					
Total		40,000	360,000		400,000

⁹ To be financed by Council of Europe.

Table 23.1.3.7

(Euro)

Requirements (Ministry of Justice) Transformation of Regional Administrative Courts as Courts of Appeal	Year	National budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel	2011		100,000		100,000
- Education	2011		300,000		300,000
- Consultancy					
- Translation	2011		100,000		100,000
- Other	2011		100,000		100,000
Total			600,000		600,000

Priority 23.2 Fight against Corruption

1 Schedule of legislative alignment

Table 23.2.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1		Amendment to the Law No. 5176 on Establishment of the Board of Ethics of the Public Officials and Amendment to Certain Laws	Removal of the defects stemming from the Law that came up in the implementation period of first four years (As brought up in GRECO and EU progress reports, non-ensuring of sufficient independence primarily in the issues of personnel and budget, non-examination of issues which were submitted to the judiciary etc.) Evaluation along with the Law on Ombudsman due to a parallelism in the task areas,	The Board of Ethics of the Public Officials	2009-2010

2 Schedule of required institutional building for legislative alignment and implementation

Table 23.2.2

No	Requirements	Year
(Ministry of Finance (Presidency of Inspection Board))		
1	Reconstructing and training studies in order to improve the capacity of the Inspection Board on the fight against corruption	2009-2010
(The Board of Ethics for Public Officials)		
2	Ensuring The Board of Ethics for Public Officials to have a budget and secretariat with a quality in consistent with its tasks	2009-2010
(Ministry of Interior (General Command of Gendarmerie))		
3	Within the scope of the implementation of Turkey's National Strategy on Combating Organised Crime and strengthening the fight against organised crime, drugs, trafficking in human beings, fraud, corruption and money-laundering, training of trainers in the area of fight against corruption	2009-2010

3 Financial requirements and sources

Table 23.2.3.1

(Euro)

Requirements (Ministry of Finance (Inspection Board))	Year	National budget	EU sources	Other	Total
I-Investment	2009-2010	150,000	450,000		600,000
II- Legislative alignment and implementation					
- Personnel					
- Education	2009-2010		400,000		400,000
- Consultancy	2009-2010		150,000		150,000
- Translation	2009-2010		50,000		50,000
- Other	2009-2010		400,000		400,000
Total		150,000	1,450,000		1,600,000

Table 23.2.3.2

(Euro)

Requirements (Ethics Board for Public Officials)	Year	National budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel					
- Education	2009-2010		500,000		500,000
- Consultancy					
- Translation					
- Other					
In order to improve ethics culture, supporting the works to be done by public institutions, universities and civil society	2009-2010	200,000	500,000		700,000
Total		200,000	1,000,000		1,200,000

Table 23.2.3.3

(Euro)

Requirements (Ministry of Interior (General Command of Gendarmerie))	Year	National budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel					
- Education	2009-2010		2,500,000		2,500,000
- Consultancy					
- Translation	2009-2010		500,000		500,000
- Other					
Total			3,000,000		3,000,000

Priority 23.3 Fundamental Rights

1 Schedule of legislative alignment

Table 23.3.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1	Directives No. 89/552/EEC and 2007/65/EC	Implementing Regulation on Radio and Television Broadcasts in Different Languages and Dialects Used Traditionally by Turkish Citizens in Their Daily Lives	In accordance with the Article 21 of the Law No. 2954 on Turkish Radio and Television amended with the Law No. 5767, rearrangement of the implementing regulation, regulating broadcasts in different languages and dialects used traditionally by Turkish citizens in their daily lives, in order for it to include both public and private broadcasters	Radio and Television Supreme Council	2010
2	European Convention on Human Rights Decisions of European Court of Human Rights United Nations Convention on the Elimination of All Forms of Discrimination against Women	Law Amending the Turkish Civil Law	Modernizing the procedures of identifying the blood tie between fathers and child born out of wedlock through recognition or judge decision	Ministry of Justice	2009
3	UN Convention on the Rights of the Child dated 20 November 1989	Implementing Regulation on Child and Youth Centres for Children Living and/or Working on the Streets	Regulating of the rules and procedures of Child and Youth Centres serving for children living and/or working on the streets and their families	Directorate General for Social Services and Child Protection	2009

Table 23.3.1 (Continued)

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
4	UN Convention on the Rights of the Child dated 20 November 1989	Implementing Regulation on Protection, Care and Rehabilitation Centre	Making regulations regarding the establishment, organisation and operation of Protection, Care and Social Rehabilitation Centres run with cooperation protocols and/or established with the aim of realisation of the necessary professional interventions to the children who benefit of care measures/protection decisions, who are pushed towards crime, who are under the risk of being pushed towards crime, who are released from penitentiary and being in need of protection and support, by meeting their basic needs, determining their physical, emotional and social needs; by ensuring their return to their families and close neighbourhoods, and to be ready for their next social service model.	Directorate General for Social Services and Child Protection	2009
5	UN Convention on the Rights of the Child dated 20 November 1989	Implementing Regulation on Care and Social Rehabilitation Centre	Making regulations regarding the establishment, organisation and operation of Care and Social Rehabilitation Centres, established for children victim of crime with the aim of meeting their basic needs, run according to cooperation protocols, realisation of the necessary professional interventions by determining their physical, emotional and social needs, ensuring their return to their families and close neighbourhoods and be ready for their next social service model.	Directorate General for Social Services and Child Protection	2009
6	UN Convention on the Rights of the Child dated 20 November 1989	Prime Ministry Circular on Working Rules and Procedures of Provincial Child Rights Children and Adult Committees	Regulation of issues required to be complied in order to solve the problems faced in implementation, removal of the different implementations and ensure unity in implementation through working rules and procedures of Provincial Child Rights Children and Adult Committees	Directorate General for Social Services and Child Protection	2009
7	Additional Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms regarding Prohibition of Discrimination on Any Grounds	Law Approving the Ratification of the Additional Protocol No.12 to the Convention for the Protection of Human Rights and Fundamental Freedoms regarding Prohibition of Discrimination on Any Grounds	Basing any kind of measures to be taken on objective and reasonable justification in order to ensure full and effective equality following the non-discrimination principle,	Ministry of Foreign Affairs Ministry of Justice	2011

2 Schedule of required institutional building for legislative alignment and implementation

Table 23.3.2

No	Requirements	Year
(Radio and Television Supreme Council)		
1	Training of the monitoring experts to be assigned for tracking the broadcast services in different languages and dialects used traditionally by Turkish citizens in daily lives in accordance with the Law No. 3984 and related implementing regulations	2009-2011

3 Financial requirements and sources

Table 23.3.3

(Euro)

Requirements (Radio and Television Supreme Council)	Year	National Budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel					
- Education	2009-2011	30,000			30,000
- Consultancy					
- Translation					
- Other					
Total		30,000			30,000

Priority 23.4 Legislation work on protection of personal data and the establishment of an independent data protection audit authority

1 Schedule of legislative alignment

Table 23.4.1

No	EU legislation in force	Draft Turkish legislation	Scope	Institution in charge	Publication date
1	Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Directive No. 95/46/EC	Law on the Protection of Personal Data	To protect the immunity, material and moral existence as well as fundamental rights and freedoms of individuals, with the condition of determining basic principals on matters concerning the collecting, the processing and the safeguarding of personal data	Ministry of Justice	2009
2	Directives No. 95/46/EC, 91/308/EEC	Law on Commercial Secrets, Bank Secrets and Customer Confidentiality	Regulating the principles and procedures on requesting, furnishing, using and protecting Commercial secrets, bank secrets and customer confidentiality of commercial enterprises and corporations, banks, insurance companies and intermediary institutions active in financial markets	Ministry of Justice	2009

2 Schedule of required institutional building for legislative alignment and implementation

Table 23.4.2

No	Requirements	Year
(Ministry of Justice)		
1	Establishment of Council of Protection of Personal Data	2009

3 Financial requirements and sources

Table 23.4.3

(Euro)

Requirements (Ministry of Justice)	Year	National Budget	EU sources	Other	Total
I-Investment					
II- Legislative alignment and implementation					
- Personnel	2009		250,000		250,000
- Education	2009	100,000	900,000		1,000,000
- Consultancy	2009		250,000		250,000
- Translation	2009		250,000		250,000
- Other	2009		250,000		250,000
Total		100,000	1,900,000		2,000,000