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Enhancement of Participatory Democracy in Turkey:  
Monitoring Gender Equality Project Phase II

# Gender Equality in Access to Justice

Mapping and Monitoring Study

## Extended Summary

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Nadire Özdemir

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**Prof. Dr. Gülriz Uygur**

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## Acronyms

<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>CEİD</b>	Gender Equality Monitoring Association
<b>CEPEJ</b>	European Commission for the Efficiency of Justice
<b>CMK</b>	Code of Criminal Procedure
<b>Comp.</b>	Compiled by
<b>CSO</b>	Civil Society Organization
<b>EcHR</b>	European Court of Human Rights
<b>ECHR</b>	European Convention on Human Rights
<b>Ed(s)</b>	Editor(s)
<b>EU</b>	European Union
<b>GREVIO</b>	Group of Experts on Action against Violence against Women and Domestic Violence
<b>HMK</b>	Code of Civil Procedure
<b>IASC</b>	Inter-Agency Standing Committee
<b>İHOP</b>	Human Rights Joint Platform
<b>İSTANBUL CONVENTION</b>	Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence
<b>KADEM</b>	Women and Democracy Association
<b>KAGİDER</b>	Women Entrepreneurs Association of Turkey
<b>KAHDEM</b>	Centre for Legal Support to Women
<b>Kaos GL</b>	Kaos Gay and Lesbian Cultural Studies and Solidarity Association
<b>KEFEK</b>	Committee on Equal Opportunities for Women and Men
<b>KSGM</b>	General Directorate on the Status of Women
<b>LGBTI+</b>	Lesbian, Gay, Bisexual, Trans, Intersexual +
<b>MDG</b>	Millennium Development Goals
<b>MÜDEM</b>	Refugee Support Centre
<b>OHCHR</b>	United Nations Human Rights Office of the High Commissioner
<b>OXFAM</b>	Oxford Committee for Famine Relief
<b>Prep.</b>	Prepared by
<b>p.</b>	Page
<b>pp.</b>	Pages
<b>ŞÖNİM</b>	Violence Prevention and Monitoring Centres
<b>TBB</b>	Union of Turkish Bar Associations
<b>TCK</b>	Turkish Penal Code
<b>TESEV</b>	Turkish Economic and Social Studies Foundation
<b>TMK</b>	Turkish Civil Code
<b>Trans.</b>	Translated by
<b>TÜBAKKOM</b>	Union of Turkish Bar Associations Women's Law Committee



<b>TÜİK</b>	Turkish Statistical Institute
<b>TÜSİAD</b>	Turkish Industry and Business Association
<b>UN</b>	United Nations
<b>USA</b>	United States of America
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNDP</b>	United Nations Development Programme
<b>UNESCO</b>	United Nations Educational, Scientific and Cultural Organization
<b>UYAP</b>	National Judiciary Informatics System
<b>WFP</b>	(UN) World Food Programme
<b>WHO</b>	The World Health Organization

## I. INTRODUCTION

The principle of equality is recognized in our legislation including the Constitution in the first place. Article 10 in the Constitution refers to what is known as formal and substantive equality. While formal equality means equal treatment and having equal rights, substantive equality is related to having means to exercise these rights, which is the actual realization of rights. At present, it is quite difficult to say that these constitutional provisions are actually carried into effect.

Law and access to justice are among the major institutions where the principle of equality is not materialized. One of the leading causes of inequality in access to justice is related to gender. In other words, gender inequality makes it difficult or impossible to materialize access to justice. In our country, the major obstacle to access to justice is the structural inequality inherent in the given system that continuously reproduce gender roles. The present report seeks to expose this unequal structure with respect to access to justice and to develop criteria that will serve to building a common understanding necessary for the solution of the problem.

The report will identify problems in access to justice with respect to gender in three major areas as legislation, institutions and enforcement. In line with this, the objective is to engage in a national-level mapping and to develop major standards for a common understanding in ensuring access to justice through indicators geared to the elimination of inequality. There is absolute need for these indicators and standards related to gender equality for ensuring access to justice at national level. Presently, it is impossible to speak about the existence of standards encompassing gender equality with its full dimensions apart from the issue of violence against women. This work, therefore, is of critical importance in developing a common understanding for relevant agencies and civil society organizations. This common understanding will help organizations working in gender issues in their efforts to eliminate existing barriers to access to justice, to ensure that transformation is realized on the basis of equality and guide these organizations in developing policies to mainstream access to justice with an eye on gender equality.

Presently there are gaps in information necessary to assess the situation in access to justice in gender terms. In this context, the report to be prepared will close these gaps and provide information about national and international efforts to bring about change. In Turkey, while the most significant progress in the context of access to justice took place in the field of violence against women, there are also tendencies of retrogression as a result of propaganda against the Istanbul Convention. The report will also have its value as a guide in countering such tendencies.

The study will first start with the definition of the term access to justice together with its gender-sensitive meaning. After focusing on logical implications of the term with reference to gender sensitivity, relevant legislation, institutions and agencies will be specified, information will be given about studies made on the issue, and the report will be completed after a situation analysis that will follow the development of indicators.

On the basis of the definition of access to justice, the mapping work will cover the following areas from a gender perspective: The meaning of the term access to justice and its relationship with gender; norms related to access to justice from a

gender perspective; examples of good practice in gender-related access to justice at national and international levels; and legislation survey and examination. In this examination, the basis will be the criteria related to access to justice from gender equality perspective. Fundamental questions in this examination will be whether relevant rules reflect an approach marked by gender prejudice; whether there is neutrality with respect to gender or whether norms and rules are geared to ensuring gender equality. To give an example, the absence of any legal norm related to gender identity or the legal norm in the Civil Code related to family name reflect a gender-prejudiced approach. The legal legislation will be examined under two headings as international and national. In the first one international legislation relating to access to justice will be examined in its general provisions and evaluated from a gender-sensitive perspective. In the second heading, national legislation will be addressed in relation to its gender dimensions and again evaluated through a gender-sensitive approach.

In addition to these, there will also be an analysis at the level of public institutions. This analysis will cover arrangements by and related documents of relevant institutions including ministries in the first place. For example, while addressing the national action plan on preventing violence against women, what is said about access to justice will be examined, and reports of the institutions concerned on access to justice will also be covered with reference to gender. institutional analysis of relevant public institutions will be made (i.e. General Directorate on Women's Status, Department for Rights of Victims, Human Rights and Equality Institution of Turkey, KEFEK).

At the next level, civil society organizations will be examined. This will start with the Union of Turkish Bar Associations (TBB) and individual bar associations. For example, the work of the TBB on access to justice will be evaluated through a gender-sensitive approach. Then follows the examination of civil society organizations like Women's Solidarity Foundation or associations like Mor Çatı (Purple Roof) who are engaged work on access to justice from gender perspective.

With respect to gender again, indicators will be developed on access to justice by relevant groups including women in the first place. Finally, the present state of access to justice in Turkey will be exposed within the framework of relevant norms, project reports and reports by other related organizations.

While mapping gender inequality in access to justice, the report will underline that firstly guidelines and policies related to women's access to justice will be examined while specifying that this examination will be made in line with the principle of intersectionality. Basing on studies on access to justice by LGBTI+ individuals, this topic too will be covered.

## II. CONCEPT OF ACCESS TO JUSTICE, ITS HISTORY AND GENDER EQUALITY

### A. CONCEPT OF ACCESS TO JUSTICE

#### 1. Justice and Equity

Today, justice is understood a meeting the requirements of human rights and in this context it is addressed in connection with such fundamental concepts human dignity, human rights, equality and equity. While there may be different approaches to the concept justice, these approaches still have their common points as equality in the recognition of rights and consideration of social justice in providing means for the actual exercise of recognized rights. Noting the insufficiency of societies in responding to or exposing structural injustice, Iris Marion Young developed the concept of structural injustice where fundamental institutions in society as well as their discourses and deeds continuously reproduce injustice<sup>1</sup>. The existence of unequal hegemonic power relations in the structure cause constant reproduction of injustice. Ignoring these unequal relations and behaving on the assumption of equality further deepen unequal relations. Hence, the requirements of justice must be considered within the framework of structural injustice.

While talking about access to justice, another concept we frequently come across is procedural justice. Justice in procedural sense is related to the fairness of decision-making procedure and focus is on the procedure itself rather than the decision taken. Procedure is important in the sense that it gives people opportunity to influence the outcome of the decision<sup>2</sup>. In this context, procedural justice requires the presence of procedures though which people can have their voices heard. In fact, the requirements of procedural justice find expression in Article 6 of the European Convention on Human Rights (ECHR). Meanwhile, there is also focus on interactional justice besides procedural one. This type of justice requires the materialization of procedure and outcome by observing that human beings are entities with their dignity. Informing people about the procedure and decision may give them the feeling that they are treated equitably<sup>3</sup>.

Requirements of social justice must be considered in procedural justice as well. For example, ensuring access to justice on the basis of equality as required by the principle of equality before the law is important. In this sense, equal access to justice is the requirement of procedural justice. It is because social and economic inequalities prevent some groups' access to justice. Demands for the elimination of this barriers is also what social justice requires<sup>4</sup>. Hence, procedural justice too is in connection with the requirements of social justice.

<sup>1</sup> For a study Iris M. Young's concept of structural injustice, see Nadire Özdemir, "Iris Marion Young Teorisine Genel Bir Bakış: Yapısal Adaletsizlik ve Adaletsizlikten Sorumluluğa İlişkin Sosyal Bağlantı Modeli", TBB Dergisi 146 (2020), pp. 247-267.

<sup>2</sup> Laura Klaming, Ivo Giesen, "Access to Justice: The Quality of the Procedure", To reach the article: [https://paperp.ssrn.com/sol3/paperp.cfm?abstract\\_id=1091105](https://paperp.ssrn.com/sol3/paperp.cfm?abstract_id=1091105). (Retrieved: 07.05.2020).

<sup>3</sup> Klaming/Giesen, p. 8.

<sup>4</sup> Deborah L. Rhode, *Access to Justice*, New York: Oxford University Press, 2004, pp. 5-6.

Still another concept in relation to access to justice is fairness. There are different definitions of fairness. In legal literature, when there is stress on the need for the decision of the judge to be fair for reaching a fair outcome what is meant is the meaning of fairness for the decision maker. Fairness in this sense too has its two meanings. In the first meaning, it is related to taking similar decisions in similar situations and to activities of decision makers, independent of their individual characteristics, to inform citizens about general and abstract legal norms. With its second meaning, fairness requires decision makers to concentrate on specific situations and to resolve legal disputes by taking into account the circumstances of a single case<sup>5</sup>.

The other meaning of fairness under ECHR Article 6 which will be discussed here is related more to the procedural form of the process of trial. What comes to the fore at this point is that parties to any legal dispute must have equal opportunities<sup>6</sup>. The principle of equality of arms in criminal proceedings, for example, is related to fairness in this sense. The principle of fairness in the context of the right to a fair trial specifies the material and procedural dimension of fairness. In the former, benefits and harms must be distributed equally and fairly, and it must be ensured that individuals and groups are not exposed to any unfair prejudice, discrimination and stigmatization. In the procedural dimension, the point is to provide the ability to contest and seek effective redress against decisions taken. Hence, decisions must be accountable and explicable<sup>7</sup>.

## 2. Meaning of the Concept of Access to Justice

Access to justice is generally understood merely as access to trial or to courts. In broader sense, however, it is defined from ensuring conditions for having one's voice heard to meeting the other requirements fairness and justice. It is stated that access to justice is used in its narrower sense as related to access to legal aid<sup>8</sup>. With reference to the European Commission, the CEPEJ defines access to justice in a way to encompass all legal and institutional resources (i.e. legal aid, court fees, information, etc.) that determine access to judicial services and effectiveness of these services. When cyber justice is concerned, access to justice is considered with reference to the means of reaching these resources (information about rights, court processes, and relevant case law)<sup>9</sup>. Apart from these, it is stated that access to justice has two components at the levels of the European Union Law and the Council of Europe which are the right to a fair trial and right to effective remedy under the ECHR to be discussed below<sup>10</sup>.

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<sup>5</sup> Cass R. Sunstein, "Two Conceptions of Procedural Fairness", *Social Research*, Fairness: Its Role in Our Lives, Vol. 73, No. 2, (Summer 2006), p. 619.

<sup>6</sup> Sarah J Summers, *Fair Trials: The European Criminal Procedural Tradition and the European Court of Human Rights*, Portland: Hart Publishing, 2007.

<sup>7</sup> European Commission, *Ethics Guidelines for Trustworthy AI*, 2019, pp.12-13. For access: <https://dspace.ceid.org.tr/xmlui/handle/1/1653>

<sup>8</sup> Francesco Francioni, "The Rights of Access to Justice under Customary International Law", in *Access to Justice as a Human Right*, pp. 1-56, Ed. Francesco Francioni, Oxford: Oxford University Press, 2007, pp. 64-65.

<sup>9</sup> European Commission. (2020). *European Commission for the Efficiency of Justice* (CEPEJ 2020, Rev1, p. 5. <https://dspace.ceid.org.tr/xmlui/handle/1/1654>

<sup>10</sup> European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law relating to Access to Justice*, p. 20., <https://dspace.ceid.org.tr/xmlui/handle/1/1655>

The existing hegemonic groups in society face no serious problem in access to justice and they have their means to settle their judicial disputes with their own power relations. The situation of disadvantaged groups, on the other hand, is generally known as “gap in access to justice”. This gap turns out to be wider particularly in countries where social and economic inequalities are deeper. In such cases, the very right itself which is the major instrument of disadvantaged groups in seeking their rights may be lost<sup>11</sup>.

In some cases, access to justice is discussed only with reference to the state of law and separation of powers it entails by limiting the term to the judicial protection of individuals and trial by independent and impartial courts<sup>12</sup>. There is of course a relationship between the state of law and access to justice. The most fundamental component in this relationship is the right to a fair trial. As one of the requirements of this right, trial by impartial and independent courts is the primary condition for fairness. The principles of natural justice related to the state of law (independent and impartial courts, natural judge, equality of arms) are associated with the fairness of the process. In addition, not only courts but administrative and legislative organs too have their say in access to justice. In this sense, state of law also requires instruments to prevent possible negative outcomes by ensuring the lawful conduct of authorities. However, as can be inferred from what has been said above, it is not sufficient to discuss the issue only within the framework of state of law. These principles alone is not sufficient to ensure fairness in judicial process and access to education in its broader sense also requires discussion of the issue in a different dimension as well. Indeed, the social justice dimension of the issue as it comes to the fore in this report points out that it would fall short if the issue is discussed only with reference to state of law.

This work focuses on access to justice in its broader sense and will stress that in its relation to gender the concept must be understood in a way to meet human rights standards. Meanwhile, since the main subject of the present work is to evaluate the state of access to justice with respect to gender, the definition that is to be adopted must be aware of or pointing out to obstacles to gender equality. It is already known that one important obstacle to access to justice in gender inequality. Thus, there is need to go beyond saying just “access to justice” and strengthen the expression by using the term “effective access to justice.” In this term too, it would not be sufficient to define it in connection with human rights only. This definition is not conducive to reflecting problems of gender inequality. In other words, the definition must encompass experiences of different groups such as women, LGBTI+ individuals and so on. In reaching such a definition the present work will capitalize on gender-related criteria and indicators developed by such institutions as the European Commission and United Nations. For example, the United Nations Committee on the Elimination of Discrimination against Women identified six points in the context of access to justice as justiciability, availability, accessibility, good-quality, accountability, and provision of remedies. These points require laying down what is needed for access to justice by considering factors that prevent women’s

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<sup>11</sup> Vera Shikhelman, “Access to Justice in the United Nations Human Rights Committee”, *Michigan Journal of International Law* 39 (2017), p. 7.

<sup>12</sup> Francioni, p. 67.

access to justice not only within the legal system but also out of it<sup>13</sup>. Considering the poverty and other disadvantaged positions of women, the UNDP suggests a fair, effective, accountable and accessible definition of access to justice for the settlement of disputes and protection of rights. In this definition, access to justice is not only accessing judicial institutions; it also entails women's influential role in the process of setting relevant rules<sup>14</sup>.

In this context, access to justice must be understood as effective access for all segments of society. This understanding, in turn, requires not only effective legal aid but also an effective system where the needs of applicants are understood and responded to<sup>15</sup>.

The concept of effective access to justice as upheld here in this study denotes a process that precedes access to judicial institutions, covers the process of trial and verdict while also observing obstacles that are related to the distribution of resources, recognition and participation within the framework gender-related structural injustice created by patriarchy. The approach to access to justice adopted here does not concentrate on the process starting from mere information supply to persons about their rights; instead describes the process itself and concentrates on outcomes while laying down standards of access to justice in the context of gender equality.

### 3. Access to Justice, Human Rights and Gender Equality

Access to justice is discussed as a fundamental constitutional right and requirement of state of law in its connection with social justice covering such different but interrelated areas as human rights and theories of law and politics. Here, we have before us the right to access to justice in its connection with the protection of human rights. In other words, the recognition of access to justice as a right is associated with the implementation of human rights. In fact, the literature draws attention, in this context, to the difference of access to justice as a right from other rights and holds that it must be understood in its dependence to other rights. Access to justice, in this sense, is associated with the possibility of guaranteeing human rights through an effective judicial system<sup>16</sup>.

Given this relationship with fundamental human rights and other rights, access to justice emerges as the basic guarantee for other rights and, when these rights are in jeopardy or violated, it becomes the main instrument in protecting human rights. Nevertheless, this approach cannot be said to remove the importance of access to justice *per se* when legal protection is concerned.

In relationship between access to justice and human rights, it is a must to expose gender-related obstacles as well. History is a witness to cases where abstract understanding of human rights has ignored gender-related problems and adopted a blind approach to these problems. In this vein, the naming of the Convention on

<sup>13</sup> Shazia Choudhry, *Women's Access to Justice: A Guide for Legal Practitioners*, <https://dspace.ceid.org.tr/xmlui/handle/1/1652>

<sup>14</sup> UNDP, *Toolkit: Women's Access to Justice*, [https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access\\_to\\_justiceandruleoflaw/toolkit-women-s-access-to-justice.html](https://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/toolkit-women-s-access-to-justice.html) (Retrieved: 27.03.2020).

<sup>15</sup> Asher Flynn, Jacqueline Hodgson, "Access to Justice and Legal Aid: A Mismatch Concepts in the Contemporary Australian and British Legal Landscapes", in *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need* pp. 1-22, Ed. Asher Flynn, Jacqueline Hodgson, Oxford: Hart Publishing, 2017, p. 6.

<sup>16</sup> Francioni, p. 64.



the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>17</sup> as women's human rights document is geared to remedying the insufficiency mentioned above. Given this, what needs to be done is to evaluate international human rights documents from gender perspective. As will be stated below, an example to this approach is the interpretation of the principle of non-discrimination enshrined in European Convention on Human Rights together with the CEDAW by the European Court of Human Rights

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## B. BRIEF HISTORY

This part gives a brief historical background of access to justice and information about international treaties concerning the issue.

### 1. Emergence of the Concept of Access to Justice

We can trace back the historical emergence of access to justice not under this term but with the right to a fair trial. When the right to a fair trial is associated with the idea of limiting arbitrary intervention to citizens by political power by introducing some procedural norms, the date of relevant legal documents goes as far back as the Magna Carta Libertatum in 1215<sup>18</sup>. Apart from this, when we take the right to a fair trial in its connection with the concept of the state of law we reach the early 19<sup>th</sup> century. Legal arrangements related to citizens' access to the process of trial were given effect as the equal rights approach, that is the equal rights of citizens regardless of language, faith and sex, and the principle of equality before the law gradually became more and more common. Then, however, there were debates that these legal reforms would not be sufficient and that reforms were mostly for middle and upper classes<sup>19</sup>.

There was frequent discussion on the insufficiency of reforms given effect when it comes to economically poor sections of population and, in the early 1960s, the concept "access to justice" was started to be used with focus on the participation of impoverished groups to judicial processes. We see legal aid mechanisms introduced in the to ensure the representation of impoverished groups in judiciary processes. It was stressed that the state has the duty of ensuring this participation with these mechanisms<sup>20</sup>. It can be seen clearly here that access to justice is related not only to the state of law but also to social state.

Legal aid mechanisms emerged at different dates in history. England and Germany are the first countries that made arrangements in this field and legal aid mechanisms phased in in 1919 and 1949 in these countries. We can see these mechanisms introduced in the US in 1965 and in Sweden in 1979<sup>21</sup>. Discussion on access to justice not only in the context of impoverished groups but also other neglected groups started after 1965.

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<sup>17</sup> For full text, see <https://dspace.ceid.org.tr/xmlui/handle/1/611>

<sup>18</sup> Ola Johan Settem, *Applications of the 'Fair Hearing' Norm in ECHR Article 6(1) to Civil Proceedings*, Cham: Springer 2016, pp. 8-9.

<sup>19</sup> Sutatip Yuthayotin, *Access to Justice in Transnational B2C E-Commerce*, Cham: Springer, 2015, pp. 39-40.

<sup>20</sup> Yuthayotin, p. 40.

<sup>21</sup> Yuthayotin, p. 41.

In Turkey, the historical background of legal aid goes back to the Ottoman State. The Attorney's Act dated 1969 mentions legal aid. It was in 2004 that an arrangement related to legal aid covering all bar associations in Turkey was given effect by the Union of Turkish Bar Associations with its Regulation on Legal Aid. Article 1 in this Regulation says: *"The objective of legal aid is to make sure that those who cannot afford attorney fees and court expenses can benefit from attorney services in overcoming obstacles to individuals' freedom to claim their rights and bring equality in exercise of the freedom to claim rights."* Apart from this general provision, each bar association has its specific instructions regarding legal aid.

The term "access to justice" has been used in legal documents mostly starting with the 2000s. Earlier, international documents of the 20<sup>th</sup> century such as the Universal Declaration of Human Rights or the European Convention on Human Rights mentioned the rights to fair trial and effective appeal instead, which are related to access to justice, without any direct reference to the term itself.

In Turkey, the freedom to claim rights is recognized at constitutional level. Article 36 in the 1982 Constitution states the following under the heading "Freedom to claim rights" while also using the term "right to a fair trial": *"Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures. No court shall refuse to hear a case within its jurisdiction."*

Article 38 in the Constitution lays down the requirements of fair trial in criminal proceedings. By saying *"recourse to judicial review shall be available against all action of the administration"*, Article 125 guarantees individuals' access to justice. Article 9 is about independent and impartial courts as sine qua non of a fair trial. Article 138 provides in detail for the independence of courts. Article 139 is about security of tenure of judges and public prosecutors in ensuring the independence and impartiality of court. Article 140 in the Constitution states that the principles of independence and security of tenure shall govern all acts concerning judges and public procedures including their qualifications, appointment, investigation and prosecution on account of offences committed in connection with their duties, which is geared to protecting them against any external intervention. Finally, Article 141 covers other requirements of fair trial such as openness, quickness, minimum cost and written justification.

Apart from these articles, the Constitution also lays down some other principles in relation to access to justice including state of law, social state, equality and legal judge.

## **2. Major International Treaties on Access to Justice**

Within the framework of international human rights law, the right to access justice is used in the sense of safeguarding individuals' access to courts to protect their rights. The right to a fair trial comes to the fore in this sense in international instruments. The right to a fair trial is an issue related to the judiciary process and access to justice cannot be realized in case this right is not safeguarded. The right

to a fair trial denotes elements that ensure a fair decision in the judiciary process<sup>22</sup>. The right to a fair trial is the fundamental guarantee in protecting state of law and human rights and included in international documents as a human right.

Articles 8 and 10 in the United Nations Universal Declaration of Human Rights state, as a fundamental principle, that everyone is entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him. It is stated that Articles 6 and 13 should be taken together for a broader concept of access to justice<sup>23</sup>. The European Union and the Council of Europe too, in general, address access to justice in the context of two components as the right to a fair trial and effective access<sup>24</sup>. The European Convention on Human Rights addresses Article 6 in relation to the right to a fair trial. This article sets forth that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a *fair* and public hearing within a reasonable time by an independent and impartial tribunal established by law."

Article 13 in the Convention is the basis of the right to effective remedy:

*Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.*

Similarly, the International Covenant on Civil and Political Rights states that all are equal before courts, and in case of any criminal charge or legal dispute relating to rights and obligations, everyone has the right to stand before a competent, independent and impartial tribunal established by law for a fair and public hearing without any unnecessary delay.

This presence of the right to a fair trial in international documents exposes the role of access to justice in the realization of human rights and in a way confirms that human rights cannot be realized without ensuring access to justice. This does not mean, however, that access to justice is the only guarantee for human rights.

In addition to the right to a fair trial and together with it, the principle of equality before the law is also at the base of access to justice. Article 14 in the European Convention on Human Rights is about the prohibition of discrimination fundamental rights: *The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*<sup>25</sup>

At the United Nations level, the term access to justice can be found in the 1998 *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*. At the same level again,

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<sup>22</sup> Sibel İnceoğlu, *Adil Yargılanma Hakkı Anayasa Mahkemesine Bireysel Başvuru El Kitapları Serisi - 4*, p. 1, <https://dSPACE.ceid.org.tr/xmlui/handle/1/1708>

<sup>23</sup> European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to access to justice*, <https://dSPACE.ceid.org.tr/xmlui/handle/1/1655> p.17.

<sup>24</sup> *Handbook on European law relating to access to justice*, p. 20 <https://dSPACE.ceid.org.tr/xmlui/handle/1/1655>

<sup>25</sup> Since this principle guarantees access to justice without any discrimination it constitutes the fundamental condition for procedural justice. This study, on the other hand, addresses the principle of equality not only in procedural but also in substantial terms and evaluation of outcomes will therefore be made in the context of relevant understanding of equality.

Article 13 in the 2006 Convention on the Rights of Persons with Disabilities is headed "Access to Justice."

Article 14 in the UN Covenant on Civil and Political Rights on the right to a fair trial also states that all persons should be *equal* before the courts and tribunals.

As one of the major guarantees of access to justice, legal aid plays an important role in ensuring access to justice for disadvantaged groups. It is observed that international documents related to legal aid originate mostly from the United Nations and access to justice is addressed in this context. As far as the European Commission is concerned, the CEPEJ has since 1981 been issuing recommendations such as *Recommendation Rec(81)7 on measures facilitating access to justice* in relation to the effectiveness of access to justice.

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### C. GENDER EQUALITY IN ACCESS TO JUSTICE

It was stressed above that disadvantaged groups in society are particularly important when the issue is access to justice. The existing structural inequality further deepens the unequal status of these groups and totally precludes access to justice for some. Given this, it can be said in practice, the principle of equality before the law finds little or even no realization at all for these groups. Among factors leading to structural injustice, we find a problem related to gender as a major one. The principle of equality in its formal sense, that is the understanding that all have equal rights does not suffice to solve these problems. The Council of Europe's *Gender Equality Strategy* covering the period 2018-2023 states that women and men are far from being in equal status pointing out to gender gaps and structural barriers. It is said that these structural barriers tie up women and men to their traditional roles and prevent women's exercise of their rights. It is underlined that progress is too slow in eliminating sexism especially in such areas as women's political participation, access to justice, elimination of harmful stereotypes (i.e. weakness of women, their role as mere caretakers, fathers and husbands as their 'owners' or their dressing styles and attitudes 'turning on' men in the case of sexual offences). It is also stressed that violence against women is the greatest barrier to gender equality.<sup>26</sup>

Harmful stereotypes and prejudices constitute a huge barrier to the realization of human rights. The United Nations High Commissioner for Human Rights has its studies on this issue. The report *Gender Stereotyping as a Human Rights Violation* underlines that there is yet no awareness of the fact that such stereotypes are obstructive to human rights. The report defines gender stereotyping as preconceived ideas that assign women and men characteristic roles determined and limited by their sex<sup>27</sup>. The report uses the term gender stereotyping in reference to these preconceived ideas. As explained above, this term means attributing a woman or a man some roles and characteristics just on the basis of their sex<sup>28</sup>. In fact

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<sup>26</sup> Council of Europe, *Council of Europe Gender Equality Strategy 2018-2023*, 2018, p. 5, <https://dspace.ceid.org.tr/xmlui/handle/1/1075>

<sup>27</sup> OHCHR, *Gender Stereotyping as a Human Rights Violation*, 2014, p. 8 <https://dspace.ceid.org.tr/xmlui/handle/1/1658>

<sup>28</sup> *Gender Stereotyping*, p. 9.

these stereotypes may be used in other areas as well besides sex and family-working life. Stereotypes related to sex are the most commonly known ones. Examples include women's weakness, men's aggressiveness, women's passivity and men's competitive character. Having their influence on judicial decisions, these stereotypes may lead to the violence of the right to a fair trial. As stated in the report, for example, the CEDAW Committee maintains that judges in the case *Karen Tayag Vertido v. The Philippines* based their decision on stereotypes.<sup>29</sup> Further, stereotypes may also instigate violence and prevent access to justice. An example is the status of women with disabilities; their risk of being exposed to violence is higher. In case of persons with disabilities, their communication with the police may be problematic and their testimony as witnesses may not be considered reliable. Persons with mental disabilities are considered by courts as persons who are not able to exercise control over themselves. At this point, it is the responsibility of states to stand against harmful and false gender stereotypes. According to the report, harmful gender stereotyping as generalizations about the roles and characteristics of men and women, prevents them to develop their capacities, maintain and further their career, and make choices about their life and future plans. False gender stereotyping, on the other hand, is related to roles and characteristics attributed to a man and women merely because of their gender which ends up with violation of human rights and fundamental freedoms<sup>30</sup>. Relevant conventions including CEDAW in the first place impose states the duty of combating such stereotypes.

The principle of equality appears in international conventions as well. It is therefore clear under these conventions that access to justice must be in accordance with the principle of equality, for example with gender equality. However, these conventions have neutral understanding of equality. Nevertheless, there is now progress in interpreting this understanding of equality in the light of gender. For example, while there is a neutral norm of equality in the European Convention on Human Rights, decisions by the European Court of Human Rights broadens the causes gender-based discrimination as covered by Article 14. The most important decision known in this context is on the Opuz case in which the court stated that violence against women is among the causes of gender-based discrimination. In paragraph 185 it is said, "*In this connection, when considering the definition and scope of discrimination against women, in addition to the more general meaning of discrimination as determined in its case-law, the Court has to have regard to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women*" and on the basis of relevant international provisions including CEDAW in the first place it is explicitly stated in paragraph 191 that the "*State's failure to protect women against domestic violence breaches their right to equal protection of the law.*"<sup>31</sup>

In access to justice, distancing away from neutral understanding of equality and addressing the concept in its relation to gender can be started with CEDAW. Equal legal mechanisms covered by some articles of the Convention are related to access to justice. Article 2/c, for example, mentions "*establishing legal protection of the rights of women on an equal basis with men and ensuring through competent*

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<sup>29</sup> *Gender Stereotyping*, p. 12 ; *Karen Tayag Vertido v. The Philippines*, UN Doc. CEDAW/C/46/D/18/2008 (22 September 2010).

<sup>30</sup> *Gender Stereotyping*, pp. 17-19.

<sup>31</sup> Opuz-Türkiye, Application no. 33401/02, 9 June 2009. <https://dspace.ceid.org.tr/xmlui/handle/1/1659>



*national tribunals and other public institutions the effective protection of women against any act of discrimination."* Also, Article 15 providing for equality before the law is related to access to justice and the article has significant emphases on legal capacity. As stated by the CEDAW Committee in its note "*Access to Justice - Concept Note for Half Day General Discussion*", Articles 2 and 15 are fundamental in ensuring women's right to access justice<sup>32</sup>. More importantly, the general recommendation by the Committee on women's access to justice states that access to justice is the basis of all rights specified by the CEDAW<sup>33</sup>. This recommendation also underlines that the word "women" in all articles must be understood as including girls as well. Reports and recommendations (i.e. Recommendation no. 35) by the CEDAW are important in terms of seeing obstacles to access to justice and developing solutions to these obstacles.

The European Social Charter was revised in 1996 to prohibit gender-based discrimination. In Article 1, the Council of Europe Convention on Action against Trafficking in Human Beings explicitly states the determination to prevent and combat trafficking in human beings while guaranteeing gender equality, protect the rights of the victims of trafficking and to ensure effective investigation and prosecution. The convention is therefore important in mainstreaming gender in access to justice

**The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention) is a fundamental instrument with respect to access to justice by women/girls including refugees in the context of violence which addresses violence in its relation to gender. It can be said that the Convention introduces a schema for gender mainstreaming in the context of preventing violence. As required by the Convention the four major duties of the state, which are the development of new policies, prevention, protection-empowerment of victims, and prosecution of perpetrators are the building stones of women's access to justice. Women's access to justice in this sense requires a series of measures starting from policy development to judicial proceedings and after. In this respect, the Istanbul Convention is a major instrument in ensuring access to justice in its broader sense. It points out to the -necessity of adopting legal measures including informing women about their rights and facilitating their access to services of rehabilitation after the case of violence. The Istanbul Convention will be the bases of indicators to be developed in the present study. The GREVIO established for the enforcement of the convention and its reports are important in exposing present obstacles to access to justice by women victims of violence.

An important international document in the context of access to justice is the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*<sup>34</sup>. The principle 6 of this document has its emphasis on gender. It stressed that when legal aid is concerned, states cannot discriminate on any status including gender. The principle 10 specifically mentions women among groups for whom gender sensitivity must be shown and underlines that special measures must be

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<sup>32</sup> CEDAW Commission, *Access to Justice - Concept Note for Half Day General Discussion*, <https://dspace.ceid.org.tr/xmlui/handle/1/1660>, p. 3.

<sup>33</sup> CEDAW Commission, General Recommendation No: 33, On Women's Access to Justice, 23 July 2015, <https://dspace.ceid.org.tr/xmlui/handle/1/1661>

<sup>34</sup> United Nations Office on Drugs and Crime, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 2013, <https://dspace.ceid.org.tr/xmlui/handle/1/1662>

adopted concerning legal aid to these groups. In item 9, the same document provides for details in ensuring women's access to legal aid.

The Council of Europe Committee of Ministers recommendations have gender emphasis in the context of access to justice. In its recommendation on legal protection against gender discrimination, the Committee states that cases related to gender discrimination must be resolved as quickly as possible, without cost, and when necessary, with legal aid free of any fee<sup>35</sup>. Another recommendation again related to women victims of violence stresses some points on necessary instruments that a legal system must provide in combating violence against women<sup>36</sup>.

Further, the report<sup>37</sup> of the UN General Assembly on extreme poverty and human rights has its emphases on women's access to justice. The report draws attention to women as a group affected by structural discrimination with its social sanctions making women hesitant in taking due course such as not resorting to legal ways while victimized by domestic or sexual violence, being in discomfort while acting along without a male acquaintance, and consequent insufficiency in using mechanisms of access to justice<sup>38</sup>. The report is important also in terms of specifying various difficulties that women face in access to justice.

Article 6 in the Convention on the Rights of Persons with Disabilities provides, in general, for women with disabilities.

Gender-related arrangements related to refugees at international level started with the 1990s. As an international instrument, the Istanbul Convention has its provisions relating to this issue. Articles 60 and 61 in the Istanbul Convention envisages gender-sensitive access to justice by women refugee victims of violence. In Article 61 it is stated that "Parties shall take the necessary legislative or other measures to ensure that victims of violence against women who are in need of protection, regardless of their status or residence, shall not be returned under any circumstances to any country where their life would be at risk or where they might be subjected to torture or inhuman or degrading treatment or punishment."

Legal instruments mentioned so far show that access to justice in terms of gender equality is addressed with reference to women. The same approach can be seen also in the documents of the Council of Europe. In its *Gender Equality Strategy* covering the period 2018-2023 the Council covers women, men, and female and male children while defining gender equality<sup>39</sup>. Though using the terms gender identity or sexual orientation, document addresses these too in their relation to women. It also mentions the principle of intersectionality, drawing attention to women(s exposure to multiple discrimination. It is stated that women are affected the most by intersectional discrimination with such factors as age, disability, gender identity and sexual orientation<sup>40</sup>. In other words, the document addresses other groups in the context of women. The documents by the Council of Europe on access

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<sup>35</sup> Council of Europe Committee of Ministers, Recommendation No. R (85) 2, *On Legal Protection Against Sex Discrimination*, <https://dspace.ceid.org.tr/xmlui/handle/1/1663>

<sup>36</sup> Council of Europe Committee of Ministers, Recommendation No. (2002)5, *On the Protection of Women Against Violence*, [https://search.coe.int/cm/Pages/result\\_detail.aspx?ObjectID=09000016805e2612](https://search.coe.int/cm/Pages/result_detail.aspx?ObjectID=09000016805e2612), (Retrieved: 18.3.2020).

<sup>37</sup> UN General Assembly, *Report of the Special Rapporteur on extreme poverty and human rights*, 9 August 2012, <https://dspace.ceid.org.tr/xmlui/handle/1/1856>

<sup>38</sup> *Report of the Special Rapporteur on extreme poverty and human rights*, p. 7 paragraph 21-22-23.

<sup>39</sup> *Council of Europe Gender Equality Strategy 2018-2023*, p. 5.

<sup>40</sup> *Council of Europe Gender Equality Strategy 2018-2023*, p. 11.



to justice to be examined in this study are mostly related to women's access to justice.

Consequently, there is an apparent problem concerning LGBTI+ individuals as far as gender equality-related legal texts are concerned. It is observed, in relation to access to justice, that LGBTI+ individuals are excluded and not given place in improvements related to access to justice. This is a clear indicator that structural problems related to gender still persist.

## III. GENDER EQUALITY BASED NORMS AND STANDARDS IN ACCESS TO JUSTICE

### A. LISTING OF HUMAN RIGHTS DOCUMENTS RELATED TO THE THEMATIC AREA

Documents examined in the present report are as follows:

#### Global Documents

- Universal Declaration of Human Rights
- UN Covenant on Civil and Political Rights
- UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and CEDAW Committee Recommendations
- Convention on the Rights of Persons with Disabilities
- Decisions by the UN Human Rights Council
- Bangalore Principles of Judicial Conduct and Commentary to the Principles

#### Regional Documents:

- European Convention on Human Rights and decisions by the European Court of Human Rights
- Istanbul Convention and GREVIO Reports
- European Social Charter
- Council of Europe Convention on Action against Trafficking in Human Beings

#### The Council of Europe works related to access to justice in gender context to be used in this part

- a) Compilation of Case Law of the European Court of Human Rights on Gender Equality Issues (*August 2019*)
- b) Women's Access to Justice: A Guide for Legal Practitioners (*October 2018*)
- c) Training Manual for Judges and Prosecutors on Ensuring Women's Access to Justice (*2017*)
- d) Country Studies on Barriers, Remedies and Good Practices for Women's Access to Justice: Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine (*2017*)
- e) Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (*2016*)
- f) Factsheet on Guaranteeing Equal Access of Women to Justice (*2016*)
- g) Abridged Report of the Conference "Towards Guaranteeing Equal Access of Women to Justice" *October 2015, Bern*

- h) Factsheet of the European Court of Human Rights on case-law related to gender equality
- i) Equal access to justice in the case-law on violence against women before the European Court of Human Rights (*October 2015*)
- j) Compilation of Contributions from Member States on Key Challenges and Good Practices on Access to Justice for Women Victims of Violence at National Level (*2014*)
- k) (Gender Equality Commission) Feasibility Study on Equal Access of Women to Justice
- l) Report on cases brought before the European Court of Human Rights by women (April 2010)
- m) Access to Justice for Migrants and Asylum-Seekers in Europe
- n) Access to justice in Europe- European Commission for the Efficiency of Justice (CEPEJ)
- o) Council of Europe Committee of Ministers, Recommendation No. R (93) 1
- p) Parliamentary Assembly Resolution 2054 (2015) 1 - Equality and non-discrimination in the access to justice

## Other Sources

- a) Guidance Note- Framework for measuring Access to justice including specific challenges facing women - UN Women, Council of Europe, 2016
- b) UN Committee on the Elimination of Discrimination against Women General recommendation on women's access to justice (2015)
- c) Eliminating Judicial Stereotyping- Equal Access to justice for women in gender-based violence cases (S. Cusak, 2014), paper commissioned by the Office of the UN High Commissioner for Human Rights
- d) Progress of the World's Women: In Pursuit of Justice, UN Women (2011-2012)
- e) Ten proven approaches to make justice systems work for women in the pursuit of justice- UN Women (2011-2012)
- f) Human rights, rights of women- Female applicants to the European Court of Human Rights (Article by F. Tulkens, former judge and Vice-Resident at the European Court of Human Rights 2007)
- g) Inter-Agency Standing Committee (IASC) Accountability Framework for the IASC Policy on Gender Equality and the Empowerment of Women and Girls in Humanitarian Action 2018-2022
- h) UNHCR Action against Sexual and Gender-Based Violence: An Updated Strategy 2011
- i) UNHCR Handbook for the Protection of Women and Girls, UNHCR, First edition, January 2008

Points to be discussed in this part include the following:

- o Case law of the European Court of Human Rights related to gender
- o Training of judiciary on women's access to justice and strengthening judicial independence impartiality and ethics in the context of access to justice

- Strengthening the principle of equality as a principle to be observed in judicial conduct
- Issues related to difficulties and obstacles in women's access to justice and ways of overcoming these
- Approaches to women's claim on justice
- Sexist conduct in judiciary and its elimination
- Identification of general norms related to gender equality in the context of access to justice
- Issues related to women's and girls' awareness of their rights
- Use of legal aid by women and girls
- Norms related to being attentive to the principle of upholding woman's testimony in judicial processes involving women and girls and preventing secondary victimization
- In addition to points made above, norms relating to the consideration of the specific situation of refugee women and girls (i.e. having a translator available)
- Issues related to ensuring that women and girls with disabilities and LGBTI+ individuals do not face discriminatory treatment in the context of masculinity studies

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## **B. IDENTIFICATION OF NORMS RELATED TO THE THEMATIC AREA**

In this part, norms included with gender equality perspective in human rights documents on access to justice will be presented in their historical sequence. Some headings to be addressed in this sequencing are as follows in alphabetical order: acceptability, accessibility, accountability, avoidance of secondary victimization, being attentive, dignified and adequate standard of living, equality, effectiveness and right to effective remedy, gender equality, intersectionality, judicial passivity, justice and fairness, prohibition of discrimination, legal aid, right to fair hearing (publicly), right to a fair trial, structural injustice, violence against women and credit to woman's testimony.

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## **C. IDENTIFICATION of STANDARDS, CRITERIA and GOOD PRACTICES**

### **1. Standarts and Criteria**

The process of adopting norms on access to justice within the framework of gender equality required the development of some common standards and a strategic plan to reach these standards. The process that followed the development

of standards was related to the identification of objectives and activities foreseen to attain these objectives. The UN standards as well as standards by the CEDAW Committee and its recommendations no. 33 and 35 can be mentioned in this context. With respect to the UN Sustainable Development Goals, standards to be mentioned include the Beijing Action Plan and 2015-2030 criteria for the UN Sustainable Development Goals. There is also the Council of Europe 2018-2023 Strategic Plan on gender equality in access to justice. This part is about objectives under this plan and standards set by the GREVIO within the framework of Istanbul Convention.

The overall objective of the Council of Europe 2018-2023 Strategic Plan is to consolidate the Council of Europe *acquis* in the field of gender equality and to ensure effective realization of gender equality. The objectives of the Council for the period 2018-2023 that focus on six strategic areas are as follows:

- STRATEGY I: Preventing and combating gender stereotypes and sexism.
- STRATEGY II: Preventing and combating violence against women and domestic violence.
- STRATEGY III: Ensuring women's access to justice.
- STRATEGY IV: Ensuring balanced participation of women and men to political and public decision-making processes.
- STRATEGY V: Protecting the rights of migrants, asylum seekers and refugees.
- STRATEGY VI: Ensuring mainstreaming of gender in all policies and measures.

The standards given by GREVIO in the light of Istanbul Convention in its baseline report related to Turkey<sup>41</sup> entail some suggestions to strengthen the enforcement of the Convention. In presenting these suggestions, the way adopted is to use different verbs corresponding to gradual levels of urgency. These are, in order of priority, "*urge*", "*strongly encourage*", "*encourage*" and "*invite*". The GREVIO uses the verb "*strongly recommends*" in issues that it considers as in need of urgent measures. The verb "*strongly encourage*" is used in cases where GREVIO draws attention to gaps that must be filled in near future for full enforcement of the Convention. The verb "*encourage*" corresponding to third level of urgency points out to gaps that need attention even at a later stage. Finally, the verb "*invite*" is for smaller gaps or suggestions<sup>42</sup>. Keeping these in view, the report will give a summary of suggestions related to access to justice *only*.

Firstly in relation to fundamental rights, equality and prohibition of discrimination, GREVIO urges Turkish authorities to continue to develop and considerably strengthen policies and measures ensuring the practical realisation of the principle of gender equality and the abolition of practices which discriminate against women; to expand efforts to develop capacities of judges and prosecutors to understand and apply international legal norms and standards on women's human rights and equality between women and men, including provisions of the

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<sup>41</sup> GREVIO Baseline Evaluation Report Turkey, <https://dspace.ceid.org.tr/xmlui/handle/1/1135>

<sup>42</sup> GREVIO Baseline Evaluation Report Turkey, p. 5.

Istanbul Convention, as well as carry out awareness-raising activities for all women and girls aimed at increasing their knowledge on these provisions and on the available remedies to claim their rights, including before the Constitutional Court; and to assess laws and policies, including the recent 4+4+4 education scheme, for their impact on gender equality and violence against women, amend if necessary such laws and policies, and ensure that all legislative and policy proposals undergo an impact analysis from a gender perspective<sup>43</sup>.

Stressing the paradigm of intersectionality, the GREVIO strongly encourages Turkey to “support efforts to prevent and combat violence which affects women who are or might be exposed to intersectional discrimination, including women in rural areas, Kurdish women, women with disabilities and lesbian women and to by addressing the inequalities faced by these women and to integrate the perspective of such women in the design, implementation, monitoring and evaluation of policies for preventing and combating violence”<sup>44</sup>.

In relation to State’s responsibility for violence, GREVIO refers to the principles of best possible care, avoidance of secondary victimization and accountability urging authorities to act in line with these principles while combating violence<sup>45</sup>.

Some issues related to data collection may have their indirect importance for access to justice in the case of law enforcement and criminal courts in particular. In this context the GREVIO urges authorities to collect data concerning acts of violence covered by the Istanbul Convention while data on victim and perpetrator should be disaggregated by sex, age, type of violence and the relationship of the perpetrator to the victim, and geographical location<sup>46</sup>.

The GREVIO strongly encourages authorities to adopt necessary measures to provide initial and in-service training to all professionals concerned to equip them with information and skills required in combating violence and to give effect to attitude change envisaged by the Istanbul Convention and to build the culture of accountability with these trainings.<sup>47</sup>

The GREVIO strongly encourages relevant authorities in relation to ŞÖNİMs as violence prevention and monitoring centres to make them “single-stop” facility, ensure indiscriminate access to these centres by all victims including those with special needs, improve their quality and expand their service coverage in referring women to support services for gender-sensitive counselling and empowerment support<sup>48</sup>. The GREVIO also encourages the provision of infrastructures that will ensure timely and adequate information for all victims including those exposed to intersectional discrimination, informed decisions and effective exercise of rights<sup>49</sup>.

Besides improving the capacity of women’s shelters and responding to the needs of different categories of victims, introduction of emergency lines in different languages, establishment of sexual violence or assault crisis centres, enhancement of the capacity of Child Monitoring Centres for child victims of violence and

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<sup>43</sup> GREVIO Baseline Evaluation Report Turkey, p. 15.

<sup>44</sup> GREVIO Baseline Evaluation Report Turkey, p. 19.

<sup>45</sup> GREVIO Baseline Evaluation Report Turkey, pp. 23-24.

<sup>46</sup> GREVIO Baseline Evaluation Report Turkey, p. 36.

<sup>47</sup> GREVIO Baseline Evaluation Report Turkey, p. 47.

<sup>48</sup> GREVIO Baseline Evaluation Report Turkey, p. 54.

<sup>49</sup> GREVIO Baseline Evaluation Report Turkey, p. 57.

arrangements for the protection of child witnesses may also be considered in the context of the right to access to justice<sup>50</sup>.

GREVIO strongly encourages States to review and make accessible mechanisms and procedures through which victims of violence can seek remedy not only under the criminal law but also in the context of private law provisions<sup>51</sup>.

Besides warnings about the need to go over criminal law provisions to bring them in line with Istanbul Convention, GREVIO strongly recommends authorities to establish the act of stalking which can happen in digital environments as well as a separate offence to subject to it to an effective punishment. A similar warning is about recognizing forced marriage as an offence under criminal law and ensuring that no victim of rape or harassment is forced into marriage with the perpetrator and preventing the consideration of marriage as event nullifying the act of violence<sup>52</sup>.

In relation to violence and access to justice, the GREVIO insistently recommended the adoption of measures to introduce effective, proportionate and dissuasive sanctions for violence against women<sup>53</sup>.

The report also makes warnings about alternative dispute resolution processes which has its importance in access to justice. In this context GREVIO strongly encourages the authorities to "take measures to ensure that in cases of an offence of violence against a woman, mediation does not apply where the victim has not or is not able to freely consent to the procedure, having regard to the imbalance in power relations between the victim and the perpetrator"<sup>54</sup>. It is also stated that reconciliation must be banned in divorce proceedings where there is history of domestic violence<sup>55</sup>.

The report also mentions some points related to legal aid which is one of the crucial components in access to justice. In this regard, GREVIO strongly encourages Turkish authorities "to improve access to legal aid for victims of the various forms of violence covered by the Istanbul Convention in cooperation with specialist women's organisations." GREVIO further invites the authorities to consider ways to simplify and streamline the procedures for accessing legal aid and to raise the awareness of the Legal Aid Offices of the needs of victims of violence against women"<sup>56</sup>.

## European Court of Human Rights Standards

The standards developed by the ECHR are mainly related to violence against women. These are standards developed on the basis of Articles 2, 3 and 14 in the ECHR in the context of a report prepared in 2015 concerning access to justice in cases of violence against women<sup>57</sup>. These are standards related to protective and effective measures, venues of access to justice and courts, non-discrimination, respect to the personal integrity of the applicant, responsive and effective investigation and absence of judicial passivity.

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<sup>50</sup> GREVIO Baseline Evaluation Report Turkey, pp. 64-68.

<sup>51</sup> GREVIO Baseline Evaluation Report Turkey, p. 71.

<sup>52</sup> GREVIO Baseline Evaluation Report Turkey, p. 76, p. 82.

<sup>53</sup> GREVIO Baseline Evaluation Report Turkey, p. 87.

<sup>54</sup> GREVIO Baseline Evaluation Report Turkey, pp. 89-90.

<sup>55</sup> GREVIO Baseline Evaluation Report Turkey, p. 90.

<sup>56</sup> GREVIO Baseline Evaluation Report Turkey, p. 104.

<sup>57</sup> European Court of Human Rights, *Articles 2, 3 and 14 Equal Access to Justice in the Case-Law of the European Court of Human Rights on Violence Against Women*, 2015, p.5. <https://dspace.ceid.org.tr/xmlui/handle/1/1022>



## 2. Cases of Good Practice

There are various obstacles to access to justice with respect to gender. First of all, the Council of Europe addresses access to justice with respect to gender from the point of women and focuses on women who are exposed to domestic violence. Examples of best practice given are mostly in this context. This way of addressing the issue is an indicator that access to justice with respect to gender is yet at its initial phase. According to the Council of Europe, major obstacles to women's claiming of their rights include fear, embarrassment, information gaps about accessible aid and procedures, limitations imposed on legal aid, worries about economic independence and children and gender-based approach in thrift measures. The council names them as socioeconomic and cultural obstacles<sup>58</sup>. Gender prejudices have their major role in these obstacles that feed women's fears and prevent their recourse to judicial avenues. The Council also says that legal and procedural rules too prevent women's access to justice. These include the following: De jure discrimination against women; gaps in legislation related to women's rights; limited use of anti-discrimination legislation on the ground of sex; gender-blind or gender-neutral legal norms that lead to systemic inequalities; limited use of international standards in judicial decisions; limited remedies for indirect discrimination of women; lengthy criminal proceedings; and dominance of negative gender stereotypes in courts<sup>59</sup>.

While identifying good practices in this field, criteria set by the Council of Europe will be taken as basis. These criteria are: Specialised courts and fast-track procedures; specialised prosecutors; dedicated police units; free legal aid for women victims of violence and discrimination; access to justice and redress for women victims of violence in armed conflict; legal standing for civil society to bring proceedings in cases of violence against women; equality bodies; gender equality training for legal professionals; protection orders; emergency orders and bans on perpetrators contacting and approaching the survivors of violence<sup>60</sup>.

Examples to good practices covered by the Council of Europe' 2015 publication *Compilation of Good Practices to Reduce Existing Obstacles and Facilitate Women's Access to Justice* are generally from measures designed to prevent violence against women. In Austria, for example, there are support services extended online and by phone while there is also a legislative arrangement made in 1997 for protection against violence at institutional level. This law was enacted to provide quick and effective protection to victims of domestic violence. The fundamental principle in the enforcement of this legislation is "one who commits violence leaves home". The idea is to keep the victim in her familiar environment. For the perpetrator, there are some other measures like not coming closer besides removal from home. The police is authorized to see the implementation of such measures. Other measures related to victims of violence are applied by centres for protection against violence. Acting upon the protection order by the police, these

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<sup>58</sup>Council of Europe, *Guaranteeing Equal Access of Women to Justice*, 2016, p. 3, <https://dspace.ceid.org.tr/xmlui/handle/1/1671>

<sup>59</sup> *Guaranteeing Equal Access of Women to Justice*, pp.3-4.

<sup>60</sup> *Guaranteeing Equal Access of Women to Justice*, p.5.

centres offer a safety plan and extend psychological and legal support to victims. Besides victims of domestic violence, these centres also support the victims of stalking. The victim is provided boarding place if there is need for.

Starting from 1 January 2006, those victimized by acts of violence and whose sexual inviolability is violated are authorized to ask for legal aid in judicial proceedings. In this context, for example, relatives of a person killed or family members witnessing violence or the person assaulted may ask for this aid. Here, there is psychological and legal support; the first at the initial stage and the second during criminal proceedings. Legal support is related to provision of information and attorney support is given through legal aid. Additionally, expenses related to court proceedings are covered. Further, protection centres, shelters and emergency phone lines extend psychological and legal support free of charge.

Sexual violence and protection centres extend different services to persons who are continuously victimized by violence. In this regard, there are different centres in Austria. For example, the centre available for victims of forced marriage provide services to girls and women in the age group 16-24. Counselling services given by this service include issues related to intervention to cases of forced marriage, settlement of disputes with the family, support to removal from family, native language support, provision of temporary boarding and, if necessary, legal support. Women's shelters too provide boarding support accompanied by legal and psychological support and assist in filling in forms at the stage of taking legal steps. The information centre, on its part, extend counselling services covering such issues as efforts to prevent domestic violence, production of materials to ensure information flow, information building and prevention of violence against women in general.

In Austria, there is also the law on equal treatment, equal treatment commission under this law, and an Ombudsman that can be applied to in cases related to equal treatment. This law requires equal treatment of women and man at workplaces and equal access to services<sup>61</sup>.

As in other countries, good practices in Turkey in ensuring access to justice can be evaluated with reference to violence against women and domestic violence. In cases related to domestic violence, law enforcers have to be active. This activity must be centred on the victim of violence. This stance is with its justification since domestic violence is so common throughout the world and its sufferers are women. Its importance is clear given that this type of violence encroaches or has the potential of encroaching upon the right to survival and other fundamental rights. However, the meaning of access to justice in the context of gender is not limited to access to justice by women victimized by violence. Understanding the issue in this means ignoring problems and obstacles in other areas when the issue is access to justice in the context of gender.

Since the term access to justice is used in this study in its broader meaning good practices in Turkey will be addressed in the same way. First of all, lack of information about rights is a major obstacle to access to justice. It is actually an area where information is needed the most. One good example is the inclusion "Law and Justice" as an elective course in school curricula by the Ministry of National Education. The "Help Online Education" translated and adapted under the "Joint

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<sup>61</sup> *Compilation of Good Practices to Reduce Existing Obstacles and Facilitate Women's Access to Justice*, pp.11-24.

*Project on Strengthening Capacity of Lawyers in European Human Rights Standards*" covers the **Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence** (Istanbul Convention) in the first place and also basic concepts related to the prevention of violence against women and girls, means of intervention, related case law, and other issues covered by international and European legal documents. Anyone with an account in HELP Online can benefit from this education<sup>62</sup>.

We observe that programmes are developed in Turkey under various projects designed for law enforcers. Apart from these, institutions also have their individual efforts to enhance their capacity. A good example is trainings on access to justice in the context of gender by the General Directorate on the Status of Women of the Ministry of Family, Labour and Social Services.

The following are specialist institutions that can be cited as good examples: TBMM Committee on Equal Opportunities for Women and Men (KEFEK), Human Rights and Equality Institution of Turkey, General Directorate for the Status of Women -ŞÖNİM-Women's Guest Houses, the Ombudsman, Offices for Combating Domestic Violence and Violence against Women, Bureau of Investigation on Cases of Discrimination and Breach of Sexual Inviolability, Ankara Bar Association Gelincik Centre, Ankara Bar Association Centre for LGBTI+ Rights, Inter-University Network for Combating Sexual Harassment and SHA (Sexual Harassment and Assault) Units of Universities.

As an example of good practice, we can also mention phone lines that victims of violence can use. These are KADES, Ankara Bar Association's Gelincik Centre, and lines of the Turkish Federation of Women's Associations, ALO 183.

Among good practices in ensuring access to justice we can also mention institutions and practices that serve to this purpose. These include the directorate of Judicial Support and Victim Services, Judicial interview Rooms, **e-Justice Citizen Application and Accessibility Assessment Module** (ERDEM).

Another example is national action plans on access to justice. The General Directorate on the Status of Women, Ministry of Family, Labour and Social Services, identified three major areas under the national action plan as combating violence against women, empowerment of women, and combating early and forced marriages and plans related to the first two of these are in place. The National Action Plan on Combating Violence against Women is in implementation since 2007 and so far, three action plans were developed for the periods 2007-2010, 2012-2015 and 2016-2020. Besides, the General Directorate on the Status of Women, Ministry of Family, Labour and Social Services developed the "Gender Equality National Action Plan" for the period 2008-2013 and then the "Strategy Document and Action Plan for the Empowerment of Women" covering the period 2018-2023.

Good practices also include court decisions that improve law enforcement in the direction of gender sensitivity and practices related to rights advocacy. These are quite important since they work for transformative equality. Decisions by the ECHR are important in promoting gender-sensitive approaches in domestic law and having the effect of improving access to justice in gender terms. In this sense,

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<sup>62</sup> For these trainings, <http://help.elearning.ext.coe.int/login/index.php> ; <http://help.elearning.ext.coe.int/course/view.php?id=3380> .(Retrieved: 03.11.2020)

transformative effect can be attributed to the ECHR as well. The booklet *“Judicial Standards in Combating Gender-Based Violence: Guide for Lawyers”* prepared by Women’s Solidarity Foundation covers sexist practices against women in criminal and civil law cases and presents a list of indicators deigned to build awareness in sexism in access to justice. The guide has its importance in guiding lawyers in this respect. Following of relevant cases by the Stop Femicide Platform and reports prepared on sexism in the judiciary are important in preventing sexism in criminal proceedings and constitute an important step towards judicial transformation<sup>63</sup>. Finally, the report titled *“LGBTI + Rights in Turkey”* published by the Association of Social Policy, Sexual Identity and Sexual Orientation Studies in 2020 shows how important strategic litigation is in ensuring access to gender-sensitive justice. In strategic litigation, provisions in contrast with the Constitution are also detected and legal course is followed in relation to these provisions. Besides, denunciation in cases running counter to the existing legislation is also a part of this strategic action. An example is denunciation by the KAOS GL for statements of hatred against LGBTI+ individuals<sup>64</sup>. Further, strategic litigation prevents violations of rights and ensures accountability.

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<sup>63</sup> For detailed information: <http://kadincinayetleriniidurduracagiz.net/kategori/davalarimiz>

<sup>64</sup> *LGTBI+ Rights in Turkey*, p. 13.

## IV. ANALYSIS OF PRESENT SITUATION IN THE CONTEXT OF TURKEY

This part gives an overall account of access to justice related legislation in Turkey and focuses on existing gaps in this respect. It is possible to say the existence of norms in Turkey related to women's access to justice in terms of gender. Relevant arrangements, however, mainly focus on violence against women. Hence, there are gaps in the present status of women when it comes to other areas of law such as labour law or inheritance law. Meanwhile, even in the presence of legislation on violence against women, there are still problems in effective enforcement of this legislation. It is one of the reasons why women keep away from taking legal course when exposed to violence. Further, there are gaps in legislation in regard to the situation of refugee women and women with disabilities. The gap is large when it comes to studies on LGBTI+ individuals and masculinity. By focusing on these issues there is need to take action to change the existing structure marked by inequalities. Here, there will be first a situation assessment with respect to legislation, followed by problems in enforcement, and finally demands relating to the present situation will be exposed particularly in the context of CSOs.

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### A. MAPPING LEGISLATION RELATED TO ACCESS TO JUSTICE IN THE CONTEXT OF TURKEY

The body of national legislation related to Access to justice in gender context include the following: Constitution, Law no. 6284 on the Protection of Family and Prevention of Violence against Women, Code of Criminal Procedure, Child Protection Law, Law on Persons with Disabilities, Code of Civil Procedure, Labour Code, Ombudsman Law, Turkish Penal Code, Turkish Civil Code, Law and Regulation on Foreigners and International Protection, Law on Citizenship, Presidential Decree on Support to Victims of Offence, Regulation on Judicial Interview Rooms, Regulation on Principles and Procedures Relating to the Assignment of Defence Attorneys as per Code of Criminal Procedure and their Remuneration, Regulation on the Opening and Management of Women's Guest Houses, ŞÖNİM Regulation

Related Circulars by the Ministry of Justice, related circulars by the Ministry of Interior, regulations of the Union of Turkish Bar Associations and individual bar associations related to legal aid, Legislation on Mediation (Law and Regulation on Mediation in Legal Disputes, Ethical Principles related to the Judiciary (HSK and Supreme Court).

## B. MAPPING INSTITUTIONAL STRUCTURE AND POLICY DOCUMENTS

Policy documents to be examined in this part together with their major objectives consist of Ministry of Justice's judicial reform strategy documents and national action plans on violence against women. As can be gathered from what follows, these plans are mostly related to the prevention of violence against women and developed mainly in order to align with the Istanbul Convention. These documents, however, do not cover other issues related to access to justice and LGBTBI+ individuals. Neither can it be said that they were developed by taking due account of the principle of intersectionality.

### 1. Ministry of Justice Judicial Reform Strategies

#### - Ministry of Justice Judicial Reform Strategy 2019 2019<sup>65</sup>

Examining the 2019 Strategy Report we see that the following points are covered:

The strategy targets balancing of work burden to increase the quality and quantity of human resources and states that *"the principle of gender equality will continue to be looked after in the recruitment of judges, prosecutors and staff"*<sup>66</sup>. After pointing out to the importance of arrangements envisaging positive discrimination in favour of women in their access to justice, the document states that *"The most important binding document regarding women rights, protection of family, violence against women and family mediation is Istanbul Convention"*<sup>67</sup>.

Under the aim "Ensuring access to justice and enhancing satisfaction from services" it is stated that there will be new procedures and practices related to women's rights which will provide more effective protection of women's rights in the judicial system. There will also be programmes related to women's rights in pre-service and in-service trainings<sup>68</sup>.

In the simplification and increasing the effectiveness of trials, there will be efforts to eliminate problems stemming from the enforcement of the "Law on the Protection of Family and Prevention of Violence against Women" including the removal of practices that further deepen disputes under the family law.<sup>69</sup>

In the context of promoting alternative dispute resolution methods, it is envisaged to introduce "court-based family mediation" with due account of the provisions of the Istanbul Convention<sup>70</sup>.

The document also mentions the rights of persons with disabilities as another disadvantaged group. Protection of the rights of persons with disabilities is recognized as a requirement of a democratic society and the objective is stated as

<sup>65</sup> Adalet Bakanlığı Yargı Reformu Stratejisi 2019. <https://dspace.ceid.org.tr/xmlui/handle/1/1657>

<sup>66</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 44.

<sup>67</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 67, footnote 50.

<sup>68</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 69.

<sup>69</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 87.

<sup>70</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 92.



promoting practices that facilitate this group's access to justice<sup>71</sup>. The report also refers to the United Nations Convention on the Rights of Persons with Disabilities with the commitment to observe the principles included in this convention<sup>72</sup>.

### - 2019/2023 Ministry of Justice Strategic Plan<sup>73</sup>

As the most recent document, the Strategic Plan 2019-2023 does not include the definition of "disadvantaged group". The Strategic Plan envisages the following to improve the quality of criminal justice system, to develop pre-prosecution means of settlement and to strengthen investigation processes: Ensuring the completion of legal proceedings in reasonable periods of time; protection of fundamental rights and freedoms of children drifted into crime; ensuring effective use of right of defence; facilitating citizens' works in the judiciary and better protecting the rights of victims<sup>74</sup>. More concrete targets of these policies include the following: Developing legislation related to victim rights; dissemination of judicial interview rooms; simplifying procedures related to appeal for legal aid; development of a human rights action plan; giving priority to cases involving child delinquents; and home-based execution of penalties through electronic surveillance when offences are not committed by violence and perpetrators are elderly persons, women and children<sup>75</sup>.

The following are the main points in the plan geared to ensuring gender equality and facilitating disadvantaged groups' access to justice:

- Maintaining the observance of the principle of equality of women and men in recruitment of judges, prosecutors and judicial personnel<sup>76</sup>
- In policies related to the execution of penalties, ensuring home-based execution through electronic surveillance centre of elderly, women and children who are convicted for offences that involve no violence<sup>77</sup>
- Promoting practices in court houses that facilitate physical access for elderly people and persons with disabilities<sup>78</sup>.

## 2. National Action Plans by the Ministry of Family, Labour and Social Services

The Ministry of Family, Labour and Social Services has its national action plans on combating violence against women covering the periods 2007-2010, 2012-2015, and 2016-2020.<sup>79</sup> The 2016-2020 Plan defines the concept of gender in line with the İstanbul Convention as "*socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men*"<sup>80</sup>.

<sup>71</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 66.

<sup>72</sup> Ministry of Justice Strategy for Judicial Reform 2019, p. 69.

<sup>73</sup> For full texts of plans. <http://www.sgb.adalet.gov.tr/Home/SayfaDetay/stratejik-plan>. (Retrieved: 23.07.2020).

<sup>74</sup> Adalet Bakanlığı 2019/2023 Stratejik Planı, ss. 8-10.

<sup>75</sup> Adalet Bakanlığı 2019/2023 Stratejik Planı, ss. 8-10.

<sup>76</sup> Adalet Bakanlığı 2019/2023 Stratejik Planı, s. 45.

<sup>77</sup> Adalet Bakanlığı 2019/2023 Stratejik Planı, s. 8.

<sup>78</sup> Adalet Bakanlığı 2019/2023 Stratejik Planı, s. 42.

<sup>79</sup> Aile, Çalışma ve Sosyal Hizmetler Bakanlığı 2007-2010 Eylem Planı, Tam metinler için bkz.

<https://dspace.ceid.org.tr/xmlui/handle/1/111>

<sup>80</sup> Aile, Çalışma ve Sosyal Hizmetler Bakanlığı 2016-2020 Eylem Planı, s. v. <https://dspace.ceid.org.tr/xmlui/handle/1/113>



Five major activities envisaged by the plan and related objectives are as follows:<sup>81</sup>

### **- Legislative Arrangements**

- There will be necessary amendments in the Constitution and relevant fundamental laws in line with international conventions and documents related to women's human rights.
- There will be modifications to increase effectiveness in the enforcement of the Law no. 6284 and secondary legislation will be enacted.
- Institutional legislation (i.e. related to establishment, regulations, directives, circulars, instructions, etc.) of institutions with responsibilities under the Istanbul Convention and the Law no. 6284 will be brought in line with the provisions of the mentioned convention and legislation.

### **- Awareness Building and Mentality Transformation**

- Such activities as seminars, workshops, etc, for representatives of institutions offering services related to violence against women will be organized in cooperation.
- There will be training of trainers, a pool of trainers will be created, and continuity of trainings will be ensured in all institutions and agencies having their place in combating violence against women.
- TV and radio programmes as well as visual audial and printed materials will be produced, aired and promoted in cooperation for building awareness and sensitivity in policy makers, decision makers, service providers and the public.
- There will be efforts and activities to build awareness and bring about mentality change in men in the context of combatting violence against women.
- Existing curricula from preschool education to all levels of formal and non-formal education will be reviewed in the context of violence against women and gender equality, modifications will be made, if necessary, and their effective delivery will be ensured.
- National and local level effort will be waged for the prevention of early and/or forced marriages.
- Impact analysis of training programmes on violence against women will be made and existing programmes and materials will be updated I line with outcomes of this analysis.

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<sup>81</sup> Republic of Turkey Ministry of Family, Labour and Social Services, National Action Plan on Combating Violence against Women 2016-2020, <https://dspace.ceid.org.tr/xmlui/handle/1/113>

## **- Delivery of Protective and Preventive Services and Empowering Victims of Violence**

- Violence Prevention and Monitoring Centres will be made active in all provinces while their capacity and service standards are improved.
- Standards of services offered in women's guest houses/shelters will be improved and there will be specialization in these services.
- Initiatives will be taken to ensure launching of guest houses/shelters by all municipalities with population over 100,000.
- A model will be developed to support and follow women victims of violence after their time in guest house.
- There will be wider use of technical tools and methods for effective protection of victims of violence.
- Psychosocial support programmes will be developed and implemented for child victims/witnesses of violence receiving services from centres along with women victims.
- Refugee and asylum-seeking women's and children's use of protective and preventive services will be ensured.
- Specialized service units at province and district levels will be established by the Ministry of Interior, General Directorate of Security and General Command of Gendarme for combating violence against women and capacity of these service units will be enhanced.
- Service delivery capacity ALO 183 Social Support Line in combating violence against women will be improved.
- There will be collaborative efforts to ensure that beneficiaries of women's service units also benefit from employment-oriented occupation building courses and trainings in entrepreneurship.

## **- Organization and Delivery of Health Services**

- As required by the Istanbul Convention, institutional service units will be created, their number and capacity will be increased in order to prevent secondary victimization and loss of evidence in judicial cases related to violence against women.
- As required by the Istanbul Convention, special service models will be developed and implemented for victims of sexual violence.
- Psychological support centres will be established and their capacity will be enhanced to implement rehabilitation and support programmes for perpetrators of acts of violence for whom preventive measures are applied in the context of the Law no. 6284.
- Special therapy and rehabilitation programmes will be implemented for child victims and witnesses of cases of violence as well as for children who are inclined to violence or displaying violent behaviour.

## - Inter-agency Cooperation and Policies

- An inter-agency database for joint use will be created in order to ensure effective tracing of data related to violence against women.
- In combating violence against women, existing protocols will be maintained and new protocols of cooperation will be prepared.
- Efforts will be made to ensure effective working of central and local level committees/boards in combating violence against women.

Assessment of whether above-mentioned objectives of the action plan have been achieved will be made in the last part of the present study. Still, some headings may be given as yet incomplete state of legislative arrangements, insufficient number of shelters, and insufficient ŞÖNİM capacity. Apart from these, necessary arrangements were made in some areas. For example, circulars were issued to support the enforcement of the Law no. 6284 and ŞÖNİMs were established in all provinces along with provincial coordination boards at governorate level.

Since coordination deficiency is an important problem when the issue is violence against women, the Ministry developed the 2020-2021 Coordination Plan for Combating Violence against Women to solve this problem<sup>82</sup>. Another action plan also developed by the Ministry is Women's Empowerment Strategy Document and Action Plan covering the period 2018-2023. This plan provides for the analysis of the present situation, objectives, strategies and activities around five policy axes as education, health, economy, participation to decision-making and the media. Initiatives envisaged under the heading education include training staff and personnel in education institutions in women's human rights; awareness building in cases of violence; removing sexist elements from textbooks; and also informing women about their rights<sup>83</sup>. The Ministry is now also carrying out work for "National Strategy Document and Action Plan against Early and Forced Marriages."

### 3. Other Works

The projects developed by relevant organizations and institutions have their importance in terms of developing policies for access to justice, identifying the existing situation, and coming up with suggestions with respect to gender. Works examined in this context are as follows:

- Council of Europe Access to Justice Project Reports<sup>84</sup> Project on Developing Comprehensive Intervention to Violence against Women and Domestic Violence in Turkey" and "Joint Project on Enhancing the Capacity of Judiciary Staff for Strengthening Criminal Justice System and Preventing Violations of the European Convention on Human Rights."
- UNDP Access to Justice/Legal Aid Project Reports
- UNICEF Report on Turkey

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<sup>82</sup> Ministry of Family, Labour and Social Services 2020-2021 Action Plan, pp. 8-35

<sup>83</sup> Women's Empowerment Strategy Paper and Action Plan (2018-2023), For detailed information about the plan: <https://dSPACE.ceid.org.tr/xmlui/handle/1/887>

<sup>84</sup> For all projects: <https://www.coe.int/tr/web/ankara/programmes-in-turkey>.

- Reports of Access to Justice Projects by Universities: The Project for Strengthening Women’s Access to Justice (July 2018-July 2019) was implemented by the Mor Çatı Women’s Shelter Foundation in partnership with İstanbul Bilgi University Human Rights Law Research Centre with the support of Sabancı Foundation<sup>85</sup>. Studies on Domestic Violence against Women by Hacettepe University Institute of Population 2008 and 2014<sup>86</sup> oldukça önemlidir. are quite important. Outcomes of the 2008 survey suggest that 51% of women victims of violence do not share their experience with anybody else and do not believe they can get support in this respect<sup>87</sup>. 92% of women with experience of physical or sexual violence do not apply to any official authority or CSO<sup>88</sup>. This picture is quite worrying when one considers access to justice in cases of violence against women. The 2014 survey too presents similar outcomes in relation to violence against women. This survey maintains that women from all groups are under the threat of violence and they stand against this act alone<sup>89</sup>. 11% of women resort to institutional mechanisms only when violence reaches an unbearable point<sup>90</sup>. Another important finding of the report in relation to access to justice is that the most widely known institutions extending services in this area are police/police stations and guesthouses/shelters<sup>91</sup>. Problems in processes involving these institutions are stated as not taking the testimony of women and women being alone while making their statements to authorities. ŞÖNİMs are mentioned as the least known institutions<sup>92</sup>.
- Reports Prepared by Civil Society Organizations: These organizations include Discrimination Monitoring Platform, Association of Women with Disabilities, Equal Rights Monitoring Association , Stop Femicide Platform, Women’s Solidarity Foundation, Mor Çatı Women’s Shelter Foundation, Pembe Hayat-KAOS-GL, Association of Social Policy, Sexual Identity and Sexual Orientation Studies and Turkish Economic and Social Studies Foundation (TESEV). These organizations have projects on a wide spectrum from women victims of violence to persons with disabilities and LGBTBI+ individuals.

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<sup>85</sup> Burcu Yeşiladali, Project on Enhancing Women’s Access to Justice (July 2018-July 2019), for the full text of the report, see. <https://dspace.ceid.org.tr/xmlui/handle/1/1688>

<sup>86</sup> For the reports of studies: <http://www.hips.hacettepe.edu.tr/yayin.shtml>. (Retrieved: 24.07.2020).

<sup>87</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p 188.

<sup>88</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p 188.

<sup>89</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p. 331.

<sup>90</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p. 332.

<sup>91</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p. 333.

<sup>92</sup> Hacettepe University Institute of Population Studies 2008 Research on Domestic Violence against Women, p. 333.

## **C. MAPPING THE CAPACITY OF CIVIL SOCIETY ORGANIZATIONS AND OTHER PUBLIC ACTORS**

### **1. Relevant Public Actors**

This heading deals with public actors engaged in studies on access to justice in the context of gender. One of the leading actors in this respect is the Union of Turkish Bar Associations (TBB) and its member bar associations. The “Project for Strengthening Legal Aid in Turkey” that the Union of Turkish Bar Associations is one of the beneficiaries is an important initiative with respect to violence against women although it does not fully represent a gender-sensitive approach. The TBB is also active in issues related to refugees and aims to improve justice and safety for women and girls by combating gender-based violence in its project *“Supporting Access to Justice by Refugees, Asylum-Seekers and Persons under Temporary Protection in Turkey”*. Besides TBB, individual bar associations too introduce women’s rights centres or boards, and their activities are mainly geared to preventing violence against women. These centres or boards participate as intervenors or observers to cases of violence against women and take an active position in advocacy of rights.

The Turkish Economic and Social Studies Foundation (TESEV) and TÜSİAD to have their studies on access to justice.

### **2. Relevant International Organizations**

The following are the organizations conducting work on access to justice in the context of gender in Turkey: Amnesty International, UNDP, UNICEF, UN Women, UNFPA and UNHCR.

### **3. Relevant National Civil Society Organizations**

In Turkey there are many civil society organizations working on gender issues and particularly on access to justice by women victims of violence. The leading ones are: Association against Sexual Violence, Association of Women with Disabilities, Equal Rights Monitoring Association, Support to Life Association, Human Rights Joint Platform (IHOP), İstanbul Convention Turkey Monitoring Platform, Stop Femicide Platform, Women’s Solidarity Foundation, Centre for Legal Support to Women (KAHDEM), Women’s Human Rights New Solutions Association, Kaos Gay and Lesbian Cultural Studies and Solidarity Association (Kaos GL), Red Umbrella Sexual Health and Human Rights Association, Mor Çatı Women’s Shelter Foundation, Pembe Hayat, Association of Social Policy, Sexual Identity and Sexual Orientation Studies, Turkish Penal Code 103 Women’s Platform against Pardoning of Crimes of Child Sexual Abuse, Turkish Union of Women, Turkish Federation of Women’s Associations.

## V. MAPPING GENDER EQUALITY IN TURKEY WITH RESPECT TO ACCESS TO JUSTICE

This part is devoted to an overall evaluation concerning access to justice in gender context. The Council of Europe has set some criteria relating to access to justice on the basis of good practices identified. These criteria are: specialised courts and fast-track procedures; specialised prosecutors; dedicated police units; access to free legal aid for women victims of violence and discrimination; access to justice and redress for women victims of violence in armed conflict; legal standing for CSOs to bring proceedings in cases of violence against women; equality bodies; gender equality training for legal professionals; protection orders, emergency orders, and bans on perpetrators contacting and approaching the survivors of violence<sup>93</sup>. Considering these criteria it can be said that Turkey has many of these in relation to violence against women. But there are also some gaps. These are given below within the framework of subject headings.

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### A. PRESENT SITUATION

There are, in general, difficulties in accessing justice in Turkey. The 2020 European Commission Report on Turkey also mentions these problems. The report makes remarks of concern about judicial independence and impartiality and points out to the following problematic areas: Appointment of the president of Justice Academy by the President of the Republic; frequent changes in the duty places of judges and prosecutors by the HSK; judicial decisions given without sound evidence base particularly in cases related to terrorism, and obstructions in exercise of the rights to justice and defence. There is also mention of postponement of court hearings and other proceedings until 16 June 2020 as a result of the Covid-19 pandemic and recommendation is made about effective use of the budget of 18 billion TL allocated to the judiciary for the year 2019<sup>94</sup>. Meanwhile, the legal aid system in Turkey has many problems from the budget allocated to the expertise of attorneys.

These cases of structural injustice which, in general, characterizes the system in access to justice further feeds inequalities when it comes to gender. Legal rules are yet not totally immune to discrimination and this becomes manifest particularly in relation to LGBTI+ individuals. Even when legal rules are not discriminatory, there may be problems in their enforcement. Here, at this point, we are confronted with gender prejudices. Apart from these, experiences of women and men in judicial processes differ in addition to differences among women and men, respectively. Problems of this kind reveal why there is need for a gender-sensitive approach in access to justice. Gender-sensitive approach discloses inequalities in access to justice based on gender, sexual orientation and gender identity and is important in ensuring access to courts and fair trial.

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<sup>93</sup> *Guaranteeing Equal Access of Women to Justice*, s.5.

<sup>94</sup> *Turkey 2020 Report, European Commission, 2020*, p.25. <https://dspace.ceid.org.tr/xmlui/handle/1/1255>



It is observed in Turkey that access to justice in gender terms is mostly an issue related to women and within the framework of violence against women. It is mostly studying of this kind that throw light upon related practices. Though limited, there are also studies related to other groups; but as will be stated below the issue is rarely addressed in relation to LGBTI+ individuals. Meanwhile, in studies relating to women difference among women and different states of masculinity are not considered. Besides, it is also observed that studies related to gender do not address existing problems with reference to the principle of intersectionality. Consequently, there are lacks relating to these groups in the present assessment and there are there is shortage of data in all areas. Similar things are valid for female children as well.

In this part, the assessment of the present state in Turkey will be made, under some major headings, with reference to UN Women's criteria related to access to justice.

## 1. With Respect to Rights

### - Present Situation and Gaps with Respect to Legislation

With respect to rights, the existing legislation falls short of some necessary arrangements. Firstly, there is the problem of the absence of the terms sexual orientation and gender identity in legal texts. In essence, however, these terms are explicitly expressed in the Istanbul Convention. Besides, the term sexual orientation appears under the heading "principle of equality" as one of the principles in Court of Cassation Ethical Principles.

In spite of these provisions, however, the principle of non-discrimination is not adequately guaranteed for in legal context as stated in the EU Progress Report for Turkey<sup>95</sup>. Similarly, the 2020 report of the European Commission states that the principle of non-discrimination is not at desired European standards while hate crimes do not cover LGBTI individuals. The signing of the ECHR Protocol 12 by Turkey requires, as per Istanbul Convention, legal arrangements to prohibit discrimination on the basis of sexual orientation and gender identity<sup>96</sup>. In this respect it is particularly important for Turkey to include sexual orientation and gender identity in her constitutional principle of equality and to broaden the scope of the crime of hatred and discrimination as defined in the Penal Code.

Meanwhile, although there is explicit reference to sexual orientation and gender identity in Istanbul Convention and it should be superior to domestic law as required by Constitutional Article 90 these are not reflected into enforcement. For example, as stated in the "Special Report on Hate Crimes and Recent Racist Attacks in Turkey" by the Human Rights Association (İHD) dated 22 September 2020, "*Ethnic discrimination, racism and gender-based or sexual orientation-based discrimination are not regarded as offenses because hate crimes are defined in quite a narrow way in Turkey*"<sup>97</sup>. The İHD maintains that the definition of hate crimes must comply with

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<sup>95</sup>European Commission, 2019 Report on Turkey, p. 42, <https://dspace.ceid.org.tr/xmlui/handle/1/1700>

<sup>96</sup> *Turkey 2020 Report*, p.38.

<sup>97</sup> Human Rights Association, Special Report on Crimes and Recent Racist Attacks in Turkey, 2020, p. 2,, <https://dspace.ceid.org.tr/xmlui/handle/1/1701>



that of OSCE which says, "*Any criminal offense, including offenses against persons or property, where the victim, premises, or target of the offense are selected because of their real or perceived connection, attachment, affiliation, support, or membership of a group. A group may be based upon a characteristic common to its members, such as real or perceived race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.*"<sup>98</sup>. Besides, as stated in the report, "*neither the law that established the Human Rights and Equality Institution of Turkey nor its governing regulations include sexual orientation-based discrimination.*"<sup>99</sup>.

In relation to LGBTI+ individuals, the 2020 report by the European Commission also notes that provisions in the military discipline system defining homosexuality as "psychological illness" still remain unaltered<sup>100</sup>.

The legislation addressing violence against women can be said as well developed in Turkey. The Istanbul Convention, Law no. 6284 and regulation about its enforcement, ŞÖNİM regulation and circulars by ministries mentioned above are all significant legal bases in this respect. Apart from these, also important with respect to the protection of rights is the Presidential Decree dated 10 June 2020 on the Protection of Victims of Crime which envisages the enforcement of judicial decisions and protection of persons suffering damage as a result of offence. Since this decree is very recent it is not possible to say something about the outcomes of enforcement. Still, it can be said that the decree will be functional in solving a part of existing problems. The decree (Article 6 in particular) in preventing violence against women and domestic violence and protecting rights. The provision mentioned is essentially related to victims of some specific offences. According to Article 6 in the Decree, these are the victims of wilful murder and attempt to it, causing heavy injury; sexual abuse of the child, major sexual assault, and crimes of torture. Among these crimes, since the victims of sexual violence are women and when evaluated in the context of the Law no. 6284, the above-mentioned provision in the Decree is very important. Also, Article 7 in the Decree provides for services to be delivered to vulnerable groups. According to definition made in Article 2, vulnerable group refers to "*victims who, according to individual assessment made by judicial support staff, are more affected by the offence and thus need protection, and children included in the judicial system.*" While this definition makes vulnerable group somewhat blurry, Article 7 in the same Decree partly clarifies the definition. Those who are included in the definition of "vulnerable group" in this context include children, victims of terrorist actions and trafficking in human beings, victims of sexual violence, victims of domestic violence, women, elderly persons and persons with disabilities. This definition falls short for not covering refugees and LGBTI+ individuals. There is no legal impediment, however, to these groups in utilizing legal aid in case they are victimized by offences specified in paragraph (1) of Article 7 and ask for this aid. Another important provision in the Decree is in article 9 which is about the establishment of centres of sexual violence specified in the Istanbul Convention.

In this context it can be said that the decree is important in ensuring the enforcement of the Law no. 6284, relevant regulations and circulars mentioned

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<sup>98</sup> *Hate Crimes in Turkey*, p. 6.

<sup>99</sup> *Hate Crimes in Turkey*, p 2.

<sup>100</sup> *Turkey 2020 Report*, s.40.

earlier under “legislation” and the İstanbul Convention. Meanwhile, under the İstanbul Convention there are some provisions that must be inserted in the Penal Code, Code of Criminal Procedure and Code of Civil Procedure. As a matter of fact, the 2016-2020 National Action Plan for Preventing Violence against Women mentions such gaps and says they will be covered, which still remains to be done. It is observed meanwhile that legislation needed for effective enforcement of the Law no. 6284 is given effect by successive circulars. These circulars may be issued by Ministries of Justice or Interior or by provincial directorates under the MoFLSS.

We can find in GREVIO report suggestions to this direction. According to the report, provisions to be introduced in the Penal Code must be to the effect of classifying forced marriage and stalking as offences. Besides, the report also states, in line with the İstanbul Convention again, that the definition of rape must include the absence of consent and sexual abuse of children over age 15 as well as all sexual offences in the absence of consent must be established as offence. Given that Turkey is a migrant receiving country, the report suggests the insertion of a provision defining female genital mutilation as an offence. Further, on the basis of Article 42 in İstanbul Convention which declares justification for crimes committed in the name of honour as unacceptable, it is also suggested that the motive of tradition or culture in crimes must be added to the Penal Code as a factor aggravating punishment to be given<sup>101</sup>. It is also suggested, in line with this Convention, that victim’s sexual history should not be considered as “evidence” in criminal and civil proceedings (in case it is not directly related to the case)<sup>102</sup>. Apart from these, it is also necessary under the Convention to ensure attentiveness to the trial, prevention of secondary victimization and the principle of intersectionality. Since İstanbul Convention covers women and female children, provisions mentioned must be applicable to girls as well. The GREVIO remarks that religious marriages is a factor contributing to early marriages and that in 60% of marriages under 18 marriage contract is delivered by official imams<sup>103</sup>. According to the GREVIO report, legal consequences of forced marriage must be covered not only by Penal Code but Civil Code as well. In this report GREVIO states early marriages are more commonly seen in times of crisis GREVIO and notes that the age interval in marriages of Syrian refugee girls in Turkey is 13-20<sup>104</sup>. The completion of the national action plan against early and forced marriages presently being prepared by the KSGM is quite important in this respect. Also important are other initiatives on the same issue taken jointly KSGM and UNICEF.

In relation to discrimination, homophobia and transphobia on the basis of sexual orientation and gender identity, there is also need to define the legal status of intersex persons and see their present position in access to justice. The Malta Declaration of 2013 states there is need for protective legislation against hate crimes and discrimination based on differences of sexual identity which will protect intersex persons from multiple-discrimination. The declaration mentions, in this context, the right to marry and establish a family, right to be legally represented with self-defined identity, remedy for past injustices and damages, access to medical records, access

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<sup>101</sup> GREVIO, In relation to legislative and other measures ensuring the implementation of the provisions of the İstanbul Convention, GREVIO (First) Evaluation Report-TURKEY, 2018, pp. 107-108. <https://dspace.ceid.org.tr/xmlui/handle/1/1134>

<sup>102</sup> GREVIO (First) Evaluation Report-TURKEY, p. 112.

<sup>103</sup> GREVIO (First) Evaluation Report-TURKEY, p. 71.

<sup>104</sup> GREVIO (First) Evaluation Report-TURKEY, p. 70.

to information and justice<sup>105</sup>. The Council of Europe Commissioner for Human Rights states, in its 2015 report, there are very few cases in Europe where intersex individuals apply to the judiciary, and applications to equality or other institutions in Europe also remain very limited; the report recommends arrangements to protect the human rights of intersex persons<sup>106</sup>.

In its 2015 report, the European Union Agency for Fundamental Rights dealt with the legal status of intersex persons and remarked that many countries in Europe are involved in gender-based discrimination by defining sex as man and woman. It is stated that in 21 European countries children's sex is "normalized" by surgery and in 18 countries family consent is required for this surgery. Solutions suggested include inclusion of intersex status as gender indicator and making consent compulsory before surgeries<sup>107</sup>.

The report says that the provision in paragraph (g) of Article 8 in the Law no. 2802 on Judges and Prosecutors which reads *"Not to have physical or mental health problems or disabilities which will prevent to perform the profession of judgeship and prosecutorship throughout the country, or not to have handicaps such as unusual difficulties for speaking or controlling movement of organs that may be regarded as odd by other people"* is of discriminatory nature when persons with disabilities are concerned. The report also says that the case of women and LGBTI individuals with disabilities must be considered<sup>108</sup>. Leaving these aside, a gender-sensitive approach cannot be found in the report as whole and there is no gender-related suggestion in the part about suggestions.

The 2020 report by the European Commission draws attention to similar points and states that there are no criteria to identify cases of multiple-discrimination, for example, discrimination against women with disabilities<sup>109</sup>. The report also says in giving effect to necessary arrangements related to persons with disabilities, provisions excluding these persons from some occupations (i.e. diplomatic mission, governorship, judicial positions as judges and prosecutors) must be removed.

### - Present Situation and Gaps with Respect to Enforcement

The Law no. 6284 is an important instrument in preventing violence against women and domestic violence. However, there are some problems in the enforcement of this law. These problems derive mainly from insufficient number of experts in violence against women and domestic violence and authorities' randomly given orders of injunction without sufficiently examining cases of violence.

The presence of units of expertise is important in enforcing measures envisaged by the Law no. 6284 (like ŞÖNİM, domestic violence bureaus and units ). The increase in the number of shelters and introduction of first-step centres are quite important developments in this respect. Also important is the coordination role

<sup>105</sup> Dan Christian Ghattas, *İnterseks Bireylerin Haklarını Savunmak*, Translated by Belgin Günay, Ankara 2016, p.18. <https://dSPACE.ceid.org.tr/xmlui/handle/1/1857>

<sup>106</sup> Commissioner for Human Rights, *Human Rights and Intersex People*, <https://dSPACE.ceid.org.tr/xmlui/handle/1/1702>

<sup>107</sup> The Fundamental Rights Situation of Intersex People, <https://dSPACE.ceid.org.tr/xmlui/handle/1/1703>

<sup>108</sup> *Access to Justice by Persons with Disabilities*, p. 88. <https://dSPACE.ceid.org.tr/xmlui/handle/1/1690>

<sup>109</sup> *Turkey 2020 Report*, p.40.

assumed by the General Directorate on the Status of Women through provincial governorates in efforts to prevent violence against women. The directorate is also engaged in risk assessment concerning the life safety of victims of violence. Under the "2020-2021 Coordination Plan for Combating Violence against Women" an initiative was taken to develop a Risk Analysis and Management Module to be integrated with Family Information System (FIS). In this context, a module embodying risk-scale and steps in social service interventions was developed and put into effect in 18 provinces including electronic surveillance and management information system. In this way, services to be extended to victims of violence by ŞÖNİM personnel will also include interventions to be designed according to the focus of risk<sup>110</sup>. Beyond, in order to respond to the needs of women and children exposed to violence and to ensure effective enforcement of measures *Women's Services Contact Points* was created in 81 ŞÖNİMs and 347 Social Service Centres as of 2020<sup>111</sup>. It is stated that electronic handcuffs and warning buttons are effective in the context of protective and preventive measures for victims of violence. Finally, "Domestic Violence Forms" in use since 2009 is important in obtaining information about the case of violence and adopt effective measures accordingly<sup>112</sup>.

One of the major problems in preventing violence against women is the lack of coordination between authorized units. To solve this problem, the Ministry of Family, Labour and Social Policies developed the *Coordination Plan for Combating Violence Against Women 2020-2021* which is the first plan in Turkey undersigned by five ministries (Ministry of Family, Labour and Social Policies- Justice-Interior-National Education-Health) plus the Head Office for Religious Affairs. Under this coordination plan, ministries mentioned and the Religious Affairs together set their objectives in three main areas as effective enforcement, capacity building and awareness-information building. The plan also specifies provisions related to coordination. For ensuring effective coordination, it is stated in the plan that a "Technical Board for Combating Violence against Women" coordinated by the Ministry of Family, Labour and Social Services will hold quarterly meetings and monitoring and evaluation reports prepared by this board will be presented to the "Monitoring Committee on Violence against Women" that will gather once a year<sup>113</sup>. The implementation of this plan will be an important step in ensuring coordination between units and institutions.

In spite of these development, however, the Law no. 6284 has its problems relating to the security, prosecution offices and judicial decisions. Indeed, in a report prepared by the Police Academy in 2018 attention was drawn to problems in the enforcement of legislation. The report points out to such needs as making local branches of central government more active in adopting measures, overcoming the problem different measures adopted by judges in different provinces of judges and necessity of standard processes and procedures in trainings and information

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<sup>110</sup> Republic of Turkey, Ministry of Family, Labour and Social Services, "Minister Selçuk: We launched the 'Risk Analysis and Management Module' in preventing violence against women in 18 pilot provinces", <https://www.ailevecalisma.gov.tr/ksgm/haberler/bakan-selcuk-kadina-yonelik-siddeti-onlemede-risk-analiz-ve-yonetim-modulunu-18-pilot-ilde-baslattik/>, (Retrieved: 22.10.2020).

<sup>111</sup> Republic of Turkey, Ministry of Family, Labour and Social Services, "Bakan Selçuk: "81 ŞÖNİM ve 347 SHM'de 'Kadın Hizmetleri İrtibat Noktaları' Oluşturduk",", <https://www.ailevecalisma.gov.tr/ksgm/haberler/bakan-selcuk-81-sonim-ve-347-shm-de-kadin-hizmetleri-irtibat-noktalarini-olusturduk/>, (Retrieved: 22.10.2020).

<sup>112</sup> GREVIO (First) Evaluation Report-Turkey, p.20.

<sup>113</sup> *Coordination Plan on Violence against Women*, <https://dSPACE.ceid.org.tr/xmlui/handle/1/935>

building events<sup>114</sup>. The GREVIO report too gives a detailed account of problems faced in the enforcement of Law no. 6284. These problems include inadequate information given to victims of violence at the security office step, not referring victims to authorized bodies, experience of secondary victimization due to accusations made at this step, and shortage of data on victims of violence. It is stated that failure in effective enforcement of measures taken under Law no. 6284 lead to the perpetuation of acts of violence<sup>115</sup>.

Meanwhile, difficulties in the enforcement of the law no. 6284 aggravated during the pandemic. The report by the Mor Çatı dated June 2020 draws attention to the insufficiency of shelters, inaccessibility of authorized persons in legal aid and general attitude of neglect on the part of authorities<sup>116</sup>.

Apart from these, shortage of gender-sensitive personnel and trainings in this respect, insufficient capacity of ŞÖNİMs and particularly sexist prejudices in criminal proceedings are the main causes of difficulties faced in enforcement.

The European Commission report dated 2020 too draws attention to similar problems in enforcement. With respect to gender, the report underlines gender-based violence, hate speech and violation of rights of LGBTI+ individuals. The Human Rights and Equality Institution of Turkey is regarded as problematic in its adherence to impartiality and human rights principles and criticized for its stance vis a vis gender equality, rights of women and attitude to LGBTI+ individuals. The institution's opposition to the Istanbul Convention on the ground that it is in "contrast with family values" is also considered unacceptable<sup>117</sup>.

The commission report further states that although the principle of equality of women and men is included in legislation it is weakly observed in practice and law enforcers are not fully aware of the problem of violence against women. For example, in the case *Civek v. Turkey* (case no 55354/11 dated 23.02.2016) the ECHR stated that authorities who are supposed to protect women victims of violence do not sufficiently fulfil their obligations. There is no reliable data on cases of femicide. Still, it is known that more than 2,600 women were killed in Turkey since 2010 and the number of the year 2019 is 476. It is also stated that services organized to support women remain limited and the number of women's shelters is only 146 as of December 2019<sup>118</sup>. Besides concerns about forced and child marriages, it is also stated that there is frequent use of discretionary mitigation in cases related to violence against women while sexist prejudices and accusations targeting victims still persist. Another point stressed in the report is avoidance of using the term gender equality in official documents. An example is the Strategic Plan (2018-23) by the Ministry of Family and Social Policies where the term "women's empowerment" is used instead of gender equality. It is stated that instead of independent organizations of women conservative groups are invited to meetings where legislative arrangements related to women's rights are discussed. However, there is some progress, although limited, in issues related to children; the recent strategic

<sup>114</sup> Anadolu Ajansı, "Polis Akademisi 'Aile İçi ve Kadına Karşı Şiddetle Mücadele' raporu hazırladı", <https://www.aa.com.tr/tr/turkiye/polis-akademisi-aile-ici-ve-kadina-karsi-siddetle-mucadele-raporu-hazirladi/1091160>, (Retrieved: 20.10.2020). <https://dspace.ceid.org.tr/xmlui/handle/1/1672>

<sup>115</sup> GREVIO (First) Evaluation Report-Turkey, pp.19-20.

<sup>116</sup> Mor Çatı Women's Shelter Foundation, Coronavirus Pandemic and Violence against Women / Mor Çatı June 2020 Report <https://morcati.org.tr/izleme-raporlari/koronavirus-salgini-ve-kadina-yonelik-siddet-mor-cati-haziran-2020-raporu/>, (Retrieved: 14.10.2020).

<sup>117</sup> Turkey 2020 Report, p.30.

<sup>118</sup> Turkey 2020 Report, p.38.



plan, for example, covers early and forced marriages, child labour and prevention of violence against children in general and children with disabilities in particular. Yet, there are problems in access to justice in relation to child rights. Institutions working on child issues are inadequate and legal aid services for children are problematic. The report says the freedom of assembly of LGBTI+ civil society organizations is blocked, hate speech is used by leading media channels and public authorities, and there is no protective arrangements for LGBTI+ individuals. While the report mentions Turkey as one of the countries with highest rates of homicide in relation to trans individuals, it adds that there is yet no report explaining these cases<sup>119</sup>. Similarly the GREVIO report mentions reporting of cases where women and girls are forced to commit suicide or kept under oppression but without any official records on such cases. It is stated that after aggravated sentences introduced by the Penal Code to so called honour killings, perpetrators try different ways by forcing women and girls to commit suicide<sup>120</sup>.

The GREVIO report also covers problems that women with disabilities encounter in enforcement<sup>121</sup>.

## 2. Legal Aid

There are problems relating to legal aid in Turkey. Reports by the European Union repeatedly criticise the complex and problematic nature of the legal aid system in Turkey and quality of services delivered. Nevertheless, the 2019 report finds it as a positive step that a strategic plan for the period 2018-2020 also including an action plan is developed to restructure the system<sup>122</sup>. The problem in legal aid with respect to gender is that its legislation provides no arrangement related to gender. Consequently, legislation concerning legal aid must be revised so as to consider women in the first place, women with disabilities, refugee women, LGBTI+ individuals and multiple-discrimination.

According to the Code of Criminal Procedure Article 150 paragraph (2): *"If the suspect or the accused who does not have a defence counsel is a child, or an individual, who is disabled to that extend that he cannot make his own defence, or deaf or mute, then a defence counsel shall be appointed without his request."* In this article vulnerable groups mentioned are too limited. The weak side of the report is that there is no quest for a gender-sensitive approach. The report is also criticised for specifying vulnerable groups as a separate group and distancing itself from a framework that mainstreams gender. This stance is observed also in reports about human rights in general and in strategies and action plans related to access to justice. The approach adopted in such reports suffices with specifying a limited number of problems by referring to groups with special needs, vulnerable or disadvantage groups.

The Project for Improving Legal Aid Practices for Ensuring Access to Justice is an important initiative in eliminating problems related to legal aid. The second stage of the project concentrates on violence against women. The project envisages

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<sup>119</sup> Turkey 2020 Report, p.40.

<sup>120</sup> GREVIO (First) Evaluation Report-Turkey, p. 74.

<sup>121</sup> GREVIO (First) Evaluation Report-Turkey, p 17.

<sup>122</sup> European Union Progress Report 2019, p.44.



developing mechanisms to improve coordination between the Union of Bar Associations, individual bar associations, lawyers, women's organizations and civil society and creating networks, enhancing the capacity of lawyers through online trainings. There is also the target of pilot-scale initiatives on special legal aid services for four victims of gender-based violence. Under the project, there will be activities to establish Violence Prevention Centres (VPC) in selected bar associations on the basis of the example of Ankara Bar Association's Gelincik Centre and to strengthen women exposed to violence.<sup>123</sup>

### 3. Awareness of Law

In the context of awareness of law, we see protective law practices by the Ministry of Justice. A protocol is acted between the Ministry of Justice and the Ministry of National Education for the project '*Development of Protective Law Practices to Ensure Better Access to Justice in Turkey*' and in line with this protocol the course "Law and Justice" is introduced to secondary education grades 6, 7 and 8. This course seeks to build awareness in students related to law and rights. 198,929 students elected this course in the school year 2019-2020<sup>124</sup>. This initiative in education is also in line with CEDAW, Istanbul Convention, and the Law no. 6284 on the Prevention of Violence against Women and Domestic Violence.

There is no data on how these provisions find reflection in enforcement. It is observed that there are campaigns to prevent violence against women and build awareness in access to justice from gender perspective. The report states, however, these activities fall short of existing prejudices and cliches regarding women. This is the most important barrier to ensuring awareness. Meanwhile while public awareness campaigns were useful in informing the public about the Law no. 6284, there is still a gap in understanding what this law means, for example, the meaning of injunction orders. The 2014 Survey on Domestic Violence against Women makes this point clear and also shows that there is difference between women and men in this regard as men are less informed about legislation<sup>125</sup>.

Access to justice requires information not only about rights but judicial processes as well. Yet, the 2017 study by the Ministry of Justice Department for Rights of Victims on 'Women Victims in Judicial Process' shows that women lack information about these processes and procedures.<sup>126</sup>

It will therefore be important in eliminating these gaps if Directorates of Judicial Support and Victim Services existing under the Ministry of Justice Department for Rights of Victims and targeted for all provinces undertakes activities to provide information about judicial processes to vulnerable groups in particular. These directorates foresee offices for support to vulnerable groups, individual assessment, legal aid plans, case management and follow-up plans as their inner organization and activities. The Presidential Decree on Support to Victims of Offence mentioned above has its importance at this point. It is stated in Article 2 of this

<sup>123</sup> <https://ilaprojesi.org/tr/faaliyetler/>. (Erişim Tarihi: 25.09.2020)

<sup>124</sup> *Ministry of Justice 2019 Report of Activities*, pp.70-71.. <https://dspace.ceid.org.tr/xmlui/handle/1/1707>

<sup>125</sup> Gülriş Uygur, "Kadına Yönelik Toplumsal Cinsiyete Dayalı Ev-İçi Şiddetle Mücadelede Hukuk Yetersiz midir? : 4320 sayılı Kanun ve 6284 sayılı Kanun Bakımından Bir İnceleme", *Kişisel Olan Politikadır: Kadınlara Yönelik Eviçi Şiddet Veirisi ve Politika* içinde, Haz. İ.Yüksel-Kaptanoğlu, İstanbul: Nota-Bene, 2020, pp. 94-95.

<sup>126</sup> *Adli Süreçte Mağdur Kadınlar Araştırma Raporu*, Adalet Bakanlığı Mağdur Hakları Daire Başkanlığı, Ankara 2017, p.31. <https://dspace.ceid.org.tr/xmlui/handle/1/1900>

decree that victims will be informed about their rights and obligations by the security and Victim Services upon their request, procedures used in this information supply will consider special conditions of the victim (i.e. like disability) and a clear language will be used. In this respect, it can be said that directorates will play an important role in informing people about judiciary processes in the context of ensuring access to justice.

One of the headings included in MoFLSS's third action plan (2016-2020) is about awareness building. The KSGM is delivering training seminars in preventing violence against women as a part of this heading<sup>127</sup>.

Shortfalls in trainings geared to awareness building in legal rights of women and girls are valid as well when it comes to LGBTI+ individuals, refugees and persons with disabilities. It is stated, for example, in relation to access to justice by persons with disabilities: "*opportunities and means for persons with disabilities to learn their legal rights in access to justice are limited. Even when persons with disabilities reach this information, it is too difficult for them to understand that legal parlance. There is presently no legal basis for starting legal counselling services for persons with disabilities.*"<sup>128</sup> This point is mentioned also in other reports and holds true for women, LGBTI+ individuals and refugees.

It is not possible to say that gender-sensitive approach is established when law enforcers are concerned. Although there are trainings in this by the KSGM, they have to be expanded to cover more people from the judiciary. As can be seen below, approach to problems with gender prejudices on the part of law enforcers is a significant barrier to access to justice. This awareness could not be ensured yet despite the provisions of CEDAW and Istanbul Convention related to the training of experts. The CEDAW Committee Recommendation 35, EU progress report, GREVIO report and reports by civil society organizations also point of to this problem.

#### 4. Gender Inequality in Terms of Adjudication

As far as criminal proceedings are concerned, there are gender prejudices and cliches that come to the fore particularly in sexual offenses. The GREVIO report states that stereotypes attributed to the roles of women and men should have no effect at all when handling such cases<sup>129</sup>. The report also states judges must receive preventive training against the possibility of according sentences lighter than what is prescribed by the legislation under the influence of such stereotypes and cliches<sup>130</sup>. The situation is exposed by the report prepared by the Stop Femicide Platform on sexism in the judiciary. Besides, the guide titled "Standards of Trial in Combating Gender-Based Violence" states that there is no gender-sensitive approach in handling crimes such as intentional killing, injuring, sexual violence, maltreatment, etc. which are mostly committed by men against women. The guide further states that rights are not well protected in investigation and prosecution in criminal proceedings, there are cases of secondary victimization, reasoning is by gender-based prejudices without much care in examining the file and, particularly

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<sup>127</sup> On this issue see, Women in Turkey, p.65 and on.

<sup>128</sup> *Engellilerin Adalete Erişimi*, s.68.

<sup>129</sup> *GREVIO (First) Evaluation Report-Turkey*, p. 67.

<sup>130</sup> *GREVIO (First) Evaluation Report-Turkey*, p. 75.

in cases related to sexual violence, there is impunity at the end of trial. In such cases, it is stated that sexist defence by perpetrators may lead to remission on the ground of "unjust provocation". The guide also draws attention to sexism in cases of civil justice, poor examination of files, gender stereotypes while adding that appeals to higher courts are also based on sexist justifications and adjudication takes too long. Finally, the guide says there are difficulties related to redress and alimony in cases resolved in favour of women<sup>131</sup>.

## 5. Trust in the Justice System

In the context of trust in the judiciary, problems faced by women in enforcement constitute the major obstacle. Problems emerging in the enforcement of the Law no. 6284 mentioned above point out to this obstacle. Besides, the survey conducted the Ministry of Justice Department for Rights of Victims with women victims of violence reveal similar points. Experiences in judiciary processes including impunity or abatements in penalties are also among causes reducing trust in the judiciary.

According to the KAOS GL report on "Homophobia and Transphobia-Based Hate Crimes" released in May 2020, there were 150 cases of hate crime only within the year 2019 and many of these cases took place in public spaces like schools, means of mass transportation and streets<sup>132</sup>.

## 6. Accessibility of Judicial Institutions

Accessibility of judicial institutions is understood as starting from the knowledge of related rights and also covering their physical accessibility. Starting from the police station, it includes having information about the judicial process and decisions. Access to decisions is secured the presence of the UYAP system. A person may also follow his or her case through this system. Nevertheless, there are still problems related to the judicial process. The report prepared by the Ministry of Justice Department for Rights of Victims mentions, for example, problems that women face in police stations, male policeman taking statements, complaints not taken seriously by the police, and slow-going procedures in police stations. As far as court environments are concerned, major problems are stated as lack of information about court process, safety problems that may emerge, victims being present in the same space with perpetrator and slow-going court processes<sup>133</sup>.

Meanwhile, there are also some arrangements that eliminate some difficulties faced by victims of violence. Rather new, the Decree on Support to Victims of Crime dated 10 June 2010 is quite important in this respect.

Apart from these, though legal aid has its important function in ensuring access to justice we see some problems here too. Defence attorneys can be

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<sup>131</sup> Women's Solidarity Foundation, Judicial Standards in Combating Gender-Based Violence -A Guide for Lawyers, 2018, pp. 41-44,, <https://dspace.ceid.org.tr/xmlui/handle/1/452>

<sup>132</sup>Kaos GL, Report on Homophobia and Transphobia-Based Crimes of Hatred Committed in Turkey in 2019 <https://kaosgl.org/gokkusagi-forumu-kose-yazisi/2019-homofobi-ve-transfobi-temelli-nefret-suclari-raporu-onsoz>. (Retrieved: 21.09.2020).

<sup>133</sup> *Adli Süreç*, p.21 and on.

appointed to defendant women in criminal proceedings, but legal aid remains limited in civil proceedings. In the guide titled "Trial Standards in Combating Gender-Based Violence" it is stated that legal aid is limited in civil proceedings, costs involved may be a burden to victims, language of legislation cannot be understood by many and there may be loss of rights as a result of lack of information about time prescriptions in bringing lawsuit<sup>134</sup>.

In criminal proceedings there may be problems experienced with lawyers. As a matter of fact, the report prepared by the Ministry of Justice Department for Rights of Victims mentions delays in the appointment of lawyers and their loose interest in their assigned cases which lead many women to finding lawyers with their own means which may be too costly. The same report shows financial constraints is the major impediment to women's access to justice. Court expenses, quite low amounts of alimony and negative effects of fines imposed on men on women as well are mentioned as some major problems. There are even cases, it is said, that men force women to pay their fines. Even in cases where there is no payment to lawyers women still have to incur some expenses related to court processes and it is stated that this is a serious problem for women staying shelters<sup>135</sup>.

In relation to access to justice by persons with disabilities there is need to make arrangements complying with the definition of accessibility as given in Article 3 (f) of the Law on Persons with Disabilities: "*Having buildings, open spaces and services of transportation and information as well as related information and communication technology safe for and usable by persons with disabilities*" These arrangements must also be reasonable as stated by paragraph (j) under the same article: "*Adoption of changes and measures that are needed in certain cases which avoids bringing disproportionate or excessive burden in order to ensure that persons with disabilities enjoy and exercise their fundamental rights and freedoms fully and equally with others.*" In practice, however, the means of access to justice is not in compliance with these provisions.

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<sup>134</sup> *Cinsiyete Dayalı*, p. 43.

<sup>135</sup> *Adli Süreç*, pp.35-36.

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## **B. SOURCES OF INDICATORS AND DATA RELATED TO ACCESS TO JUSTICE IN THE CONTEXT OF GENDER IN TURKEY**

Indicators prepared by the UN Women that cover women's access to justice as well specify, first of all, some general indicators which are:

1. Rights
2. Legal aid
3. Awareness of law
4. Fundamental problems that citizens experience in criminal justice
5. Trust in the judiciary
6. Accessibility of judicial institutions
7. Procedures and application mechanisms
8. Judicial independence
9. Corruption
10. Transparency and accountability
11. Enforcement of Judicial Decisions
12. Capacity of Judicial Institutions
13. Special courts and alternative dispute resolution.<sup>136</sup>

Indicators presented in this part were developed on the basis of data-supported studies. Since no indicators are suggested for issues which have no data, indicators presented here cover all issues mentioned so far. Relevant indicators were developed on the basis of reports by various institutions and agencies in a way to cover LGBTI+ individuals and intersectionality as well.

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<sup>136</sup> Un Women, *Guidance Note Framework For Measuring Access To Justice Including Specific Challenges Facing Women*, 2016, p. 12, <https://dspace.ceid.org.tr/xmlui/handle/1/1699>

**Table 1** Existing Indicators Relating to Access to Justice

	<b>Theme</b>	<b>Related Human Right(s) and Norms</b>	<b>Indicator</b>	<b>Data Source</b>	<b>Data collection method</b>	<b>Data collection frequency</b>
<b>1</b>	Rights-Accessibility	Equality, Discrimination, its Prohibition, Intersectionality	<b>1.1.</b> Number of crime victims and plaintiffs in criminal proceedings by gender and nationality	Ministry of Justice	Examination of administrative records and data/analysis	Annual
	Rights-Accessibility	Equality, Discrimination, its Prohibition, Intersectionality	<b>1.2.</b> Number of suspects subject to criminal proceedings by gender and nationality	Ministry of Justice	Examination of administrative records and data/analysis	Annual
	Rights-Accessibility	Equality, Discrimination, its Prohibition, Intersectionality	<b>1.3.</b> Number of persons undergoing criminal procedure by gender and age	Ministry of Justice	Examination of administrative records and data/analysis	Annual
	Rights-Accessibility	Equality, Discrimination, its Prohibition, Intersectionality	<b>1.4.</b> Number of persons undergoing criminal proceedings and victims of crime by gender, age and nationality and number of related court decisions	Ministry of Justice	Examination of administrative records and data/analysis	Annual
	Rights-Accessibility	Equality, Human Dignity and Adequate Standard of Living, Fair Trial	<b>1.5.</b> Number of suspects and victims in cases of violence against women and domestic violence by gender and age	Ministry of Interior	Examination of administrative records and data/analysis	Annual



	<b>Theme</b>	<b>Related Human Right(s) and Norms</b>	<b>Indicator</b>	<b>Data Source</b>	<b>Data collection method</b>	<b>Data collection frequency</b>
		Accessibility, Effectiveness and Effective Right to Remedy, Due diligence	<b>1.6.</b> Number of decisions given under the Law no. 6284	Ministry of Justice	Examination of administrative records and data/analysis	Annual
	Rights-Protection	Justice and Equity, Equality, Prohibition of Discrimination, Due diligence, Gender Equality, Structural Injustice	<b>1.7.</b> Total number of provinces where there are provincial action plans against early and forced marriages	MoFLSS	Examination of administrative records and data/analysis	Annual
<b>2</b>	Trust in the Justice System	Accessibility, Gender Equality	<b>2.1.</b> Number of studies exposing gender-based differences with respect to trust in the judiciary	Research	Examination of administrative records and data/analysis	Research Period
<b>3</b>	Capacity	Due diligence, Accessibility, Effectiveness and Effective Right to Remedy, Preventing Secondary Victimization	<b>3.1.</b> Number of ŞÖNİMs in the country, ŞÖNİM applicants, and trainings given to ŞÖNİM personnel	MoFLSS	Examination of administrative records and data/analysis	Annual
	Capacity	Due diligence, Accessibility, Effectiveness and Effective Right to Remedy, Preventing Secondary Victimization	<b>3.2.</b> Total number of guest houses and their beneficiaries in the country	MoFLSS	Examination of administrative records and data/analysis	Annual

Capacity	Due diligence, Accessibility, Effectiveness and Effective Right to Remedy, Preventing Secondary Victimization	<b>3.3.</b> Number of provinces where methods of technical surveillance are used in the context of combating violence against women	MoFLSS	Examination of administrative records and data/analysis	Annual
Capacity	Due diligence, Accessibility, Effectiveness and Effective Right to Remedy, Preventing Secondary Victimization	<b>3.4.</b> Number of persons serving in the judiciary by gender	Ministry of Justice	Examination of administrative records and data/analysis	Annual

**Table 2** Table List of Some National Data Sources Indicative of Gender-Based State of Access to Justice

Data Source	Theme	Access	Data
<b>TUİK</b>	Judicial Statistics	<a href="http://www.tuik.gov.tr/PreTablo.do?alt_id=1070">http://www.tuik.gov.tr/PreTablo.do?alt_id=1070</a>	Available
<b>TUİK</b>	Social Structure and Gender Statistics	<a href="http://www.resmiiistatistik.gov.tr/detail/subject/toplumsal-yapi-ve-cinsiyet-istatistikleri/">http://www.resmiiistatistik.gov.tr/detail/subject/toplumsal-yapi-ve-cinsiyet-istatistikleri/</a>	X
<b>TUİK</b>	Domestic violence against women	<a href="https://biruni.tuik.gov.tr/kadinasiddetdagitim/kadin.zul">https://biruni.tuik.gov.tr/kadinasiddetdagitim/kadin.zul</a>	Available
<b>Ministry of Justice General Directorate of Criminal Records and Statistics</b>	Judicial Statistics	<a href="https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adli-istatistikler-2019-kitab12062020095712">https://adlisicil.adalet.gov.tr/Home/SayfaDetay/adli-istatistikler-2019-kitab12062020095712</a>	Available
<b>Ministry of Justice</b>	Strengthening Legal Aid Systems in Turkey	<a href="https://adliyardim.adalet.gov.tr/">https://adliyardim.adalet.gov.tr/</a>	Incomplete data
<b>Ministry of Justice</b>	Ministry of Justice Annual Reports	<a href="https://www.adalet.gov.tr/faaliyet-raporlari">https://www.adalet.gov.tr/faaliyet-raporlari</a>	Incomplete data
<b>Ministry of Family, Labour and Social Policies</b>	National Action Plans to Prevent Violence against Women	<a href="https://www.ailevecalisma.gov.tr/ksgm/ulusal-eylem-planlari/kadina-yonelik-siddetle-mucadele-ulusal-eylem-planlari/">https://www.ailevecalisma.gov.tr/ksgm/ulusal-eylem-planlari/kadina-yonelik-siddetle-mucadele-ulusal-eylem-planlari/</a>	Available
<b>Ministry of Family, Labour and Social Policies</b>	Women in Turkey	<a href="https://www.ailevecalisma.gov.tr/media/44013/02-03-2020-tr-de-kadin-donusturuldu.pdf">https://www.ailevecalisma.gov.tr/media/44013/02-03-2020-tr-de-kadin-donusturuldu.pdf</a>	Available
<b>Council of Judges and Prosecutors</b>	Council of Judges and Prosecutors Statistics	<a href="https://www.hsk.gov.tr/istatistikler.aspx">https://www.hsk.gov.tr/istatistikler.aspx</a>	Incomplete data
<b>Union of Turkish Bar Associations</b>	Legal Aid Commission	<a href="http://adliyardim.barobirlik.org.tr/">http://adliyardim.barobirlik.org.tr/</a>	Incomplete data
<b>BİANET</b>	Male Violence Tally	<a href="https://bianet.org/bianet/bianet/133354-bianet-siddet-taciz-tecavuz-cetelesi-tutuyor">https://bianet.org/bianet/bianet/133354-bianet-siddet-taciz-tecavuz-cetelesi-tutuyor</a>	Available.
<b>Stop Femicide Platform</b>	Cases of Femicide	<a href="http://kadincinayetlerinidurduracagiz.net/kategori/veriler">http://kadincinayetlerinidurduracagiz.net/kategori/veriler</a>	Available
<b>KAOS_GL</b>	Report on Violations Faced by LGBTI Individuals	<a href="https://kaosgldernegi.org/e-kutuphane">https://kaosgldernegi.org/e-kutuphane</a>	Available
<b>Ministry of Interior</b>	Cases of Femicide	<a href="https://www.icisleri.gov.tr/icguvenlik/aile-ici-siddet-ve-kadincinayetlerinin-onlenmesinde-kollugun-onemi-ve-rolu">https://www.icisleri.gov.tr/icguvenlik/aile-ici-siddet-ve-kadincinayetlerinin-onlenmesinde-kollugun-onemi-ve-rolu</a>	Available

**Table 3** Available data for indicators related to access to justice in Turkey- 2019

Indicator	Data Source	Women	Male	Total
<b>1. Rights-Accessibility</b>				
1.1 Total number victims and complainants in the investigation phase of criminal proceedings by gender	Judicial Statistics <sup>137</sup> -2019	2,917,943	7.125.058	10.504.922
1.1.1. Total number victims and complainants in the investigation phase of criminal proceedings by gender and nationality (Turkish)	Judicial Statistics-2019	2,770,720	6.831.212	9.601.932
1.1.2. Total number victims and complainants in the investigation phase of criminal proceedings by gender and nationality (Foreigner)	Judicial Statistics-2019	147,223	228.509	375.732
1.2. Number of suspects in the investigation phase of criminal proceedings by gender	Judicial Statistics-2019	1,396,519	7.884.855	9.281.374
1.2.1. Distribution of suspects in the investigation phase of criminal proceedings by gender and nationality (Turkish)	Judicial Statistics-2019	1,349,66	7 656.3468	7.791.312
1.2.2. Distribution of suspects in the investigation phase of criminal proceedings by gender and nationality (Foreigner)	Judicial Statistics-2019	46,851	293.846	340.697
1.3. Number of persons undergoing criminal proceedings by gender and age	Judicial Statistics-2019	461,236	3.787.815	4.246.051
1.3.1. Number of persons undergoing criminal proceedings by gender and age (Age 12-14)	Judicial Statistics-2019	10,183	88.020	98.203
1.3.2. Number of persons undergoing criminal proceedings by gender and age (Age 15-17)	Judicial Statistics-2019	10,982	125.894	136.876
1.3.3. Number of persons undergoing criminal proceedings by gender and age (Age 18+)	Judicial Statistics-2019	440,071	3.570.901	4.010.972
1.4. Number of victims and complainants in offences subject to criminal proceedings by gender	Judicial Statistics-2019	642,150	1.325.353	2.462.912
1.4.1. Number of victims and complainants in offences subject to criminal proceedings by gender and nationality (Turkish)	Judicial Statistics-2019	599,017	1.234.156	1.833.173

<sup>137</sup> Judicial Statistics 2019, <https://adlisicil.adalet.gov.tr/Resimler/SayfaDokuman/1062020170359HizmeteOzel-2019-bask%C4%B1-%C4%B0SA.pdf> (Retrieved 01.11.2020)

Indicator	Data Source	Women	Male	Total
1.4.2. Number of victims and complainants in offences subject to criminal proceedings by gender and nationality (Foreigner)	Judicial Statistics-2019	91,197	43.133	134.330
1.5. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender and nationality (Turkish)	Judicial Statistics-2019	123,458	1.958.916	2.082.374
1.5.2. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender and nationality (Foreigner)	Judicial Statistics-2019	32,068	3.776	35.844
1.6. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender	Judicial Statistics-2019	119,682	1.926.848	2.046.530
1.6.1. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender and age group (12-14)	Judicial Statistics-2019	1,596	28.752	30.348
1.6.2. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender and age group (15-17)	Judicial Statistics-2019	1,969	45.490	47.459
1.6.3. Number of verdicts of conviction accorded to the accused under TCK and special laws by gender and age group (18+)	Judicial Statistics-2019	116,117	1.852.606	1.968.723
1.7. Number of suspects in cases of intentional homicide by gender and age	Ministry of Interior-2019 <sup>138</sup>			
1.7.1. Number of suspects in cases of intentional homicide by gender and age (18+)	Ministry of Interior-2019	366	3.739	4.105
1.7.2. Number of suspects in cases of intentional homicide by gender and age (18-)	Ministry of Interior-2019	30	90	120
1.8. Number of deceased in offences of intentional homicide by gender	Ministry of Interior-2019	83	3199	3.282
1.9. Number of cases of domestic violence and violence against women by forms of violence	Ministry of Interior-2019			186556
1.9.1. Wilful injury	Ministry of Interior-2019			85645
1.9.2. Threat	Ministry of Interior-2019			55295

<sup>138</sup> Ministry of Interior, *Importance and Role of Security in Preventing Cases of Domestic Violence and Femicide*, Ankara 2020, p.30 and on.

<b>Indicator</b>	<b>Data Source</b>	<b>Women</b>	<b>Male</b>	<b>Total</b>
1.9.3. Insult	Ministry of Interior-2019			15613
1.9.4. Maltreatment	Ministry of Interior-2019			8025
1.9.5. Breach of Obligation Deriving from Family Law	Ministry of Interior-2019			2236
1.9.6. Sexual Assault	Ministry of Interior-2019			2142
1.9.7. Sexual Harassment	Ministry of Interior-2019			2086
1.9.8. Deprivation of liberty	Ministry of Interior-2019			1900
1.9.9. Breach of residence immunity	Ministry of Interior-2019			1095
1.9.10. Intentional Killing	Ministry of Interior-2019			443
1.9.11. Imminent Jeopardy to Public Safety	Ministry of Interior-2019			325
1.9.12. Other	Ministry of Interior-2019			11.751
2.1. Total number of decisions given under Law no. 6284		-	-	743.338
2.1.1. Total number of requests for decision of protection under Law no. 6284	Judicial Statistics-2019	-	-	264.660
2.1.2. Total number of requests four protection rejected under Law no. 6284	Judicial Statistics-2019	-	-	41.383
2.1.3. Total number of requests for protection accepted under Law no. 6284	Judicial Statistics-2019	-	-	169.992
2.1.4. Total number of decisions given for protection under Law no. 6284	Judicial Statistics-2019	-	-	264.753



Indicator	Data Source	Women	Male	Total
2.1.5. Total number of persons challenging decision of preventive detention given under the Law no. 6284	Judicial Statistics-2019	-	-	1.304
2.1.6. Total number of decisions rejecting challenges against preventive detention taken under the Law no. 6284	Judicial Statistics-2019	-	-	962
2.1.7. Total number of decisions accepting challenges against preventive detention taken under the Law no. 6284	Judicial Statistics-2019	-	-	284
2.1.8. Total number of women losing their life in cases covered by the Law no. 6284	Ministry of Interior-2019	336	-	336
2.2. Total number of provinces where there are provincial action plans to prevent early and forced marriages	MoFLSS (2019)	-	-	19
3. 1. Number of studies that expose gender-based differences in trust in the judiciary	Research	-	-	5
4.1. Number of ŞÖNİMs in the country	MoFLSS <sup>139</sup> (2019)	-	-	81
4.2. Number of ŞÖNİM applicants by gender	MoFLSS (2019)	-	-	193.451
4.3. Total number of trainings delivered to persons in ŞÖNİMs	MoFLSS (2019)	-	-	23
4.4. Total number of guest houses in the country	MoFLSS (2019)	-	-	145
4.5. Total number of guest house beneficiaries	MoFLSS (2019)	-	-	73.001
4.6. Total number of provinces where technical surveillance systems are used in the context of combating violence against women	MoFLSS (2019)	-	-	15
4.7. Number of persons employed in the judiciary by gender		7,152	12.015	19.167
4.7.1. Number of persons employed in civil and criminal jurisdiction by gender	Judicial Statistics 2019	4,298	4.274	8.572
4.7.2. Number of judges serving in administrative justice by gender	Judicial Statistics 2019	9,35	410	1.345
4.7.3. Number of judges serving in regional courts of justice by gender	Judicial Statistics 2019	570	1.077	1.647
4.7.4. Number of judges serving in regional administrative courts by gender	Judicial Statistics 2019	121	236	357
4.7.5. Number of judges serving in the Constitutional Court by gender	Judicial Statistics 2019	25	94	119

<sup>139</sup>Ministry of Family, Labour and Social Services Report of 2019 Activities <https://dspace.ceid.org.tr/xmlui/handle/1/1114>

<b>Indicator</b>	<b>Data Source</b>	<b>Women</b>	<b>Male</b>	<b>Total</b>
4.7.6. Number of judges serving in the State Council by gender	Judicial Statistics 2019	254	319	573
4.7.7. Number of public prosecutors serving in civil and criminal jurisdiction by gender	Judicial Statistics 2019	885	5.019	5.904
4.7.8. Number of public prosecutors serving in regional courts of justice by gender	Judicial Statistics 2019	15	186	201
4.7.9. Number of chief public prosecutors serving in civil and criminal jurisdiction by gender	Judicial Statistics 2019	1	222	223
4.7.10. Number of public prosecutors serving in Supreme Court of Appeals by gender	Judicial Statistics 2019	31	167	198
4.7.11. Number of public prosecutors serving in the Court of Appeals by gender	Judicial Statistics 2019	17	11	28

## VI. LIST OF CONCEPTS AND TECHNICAL TERMS IN THE RELATED THEMATIC AREA

**Access to justice:** The concept of access to justice which historically emerged together with the right to a fair trial was started to be used in legal texts with the 2000s. In general, access to justice is understood as access to trial and courts only. In its broader sense, however, it denotes a range of conditions from having one's word heard during the trial to meeting other requirements of fairness and justice. In its narrower sense, access to justice is related to legal aid.

**Right to a fair hearing (fair and public hearing):** As one of the core rights related to fair trial, the right to a fair hearing means any person charged with an offence must effectively participate to proceedings and effectively exercise his/her other rights in trial process.

**Legal aid:** Assistance extended to persons who do not have adequate material means to participate to judicial processes. Legal aid which is important in terms of freedom to seek rights and access to justice is also a must for ensuring disadvantaged groups' access to justice.

**Absence of judicial passivity:** The absence of judicial passivity is one of the standards developed by the European Court of Human Rights and it is important in the context of access to justice. Judicial passivity is related to the inactive or ineffective state of judicial authorities as they either do not take action at all or act ineffectively. In this sense judicial passivity denotes the absence of standards for effective remedy and effective judicial investigation.

**Prohibition of discrimination:** Prohibition of discrimination can be defined as the other face of the principle of equality which is one of the fundamental values in fair trial. It entails equal treatment to all regardless of race, colour, sex, language, religion, political opinion, national or social origin, property and others. The CEDAW denounces discrimination against women and envisages that women should be able to enjoy and exercise all human rights in political, economic, social, cultural, personal and other areas on the basis of equality between women and men and regardless of their marital status. The convention defines discrimination as all forms of gender-based bias, exclusion or restriction that obstruct or lead to the obstruction of enjoyment and exercise of these rights by women and obliges states to eliminate all these forms of discrimination.

**Transformative justice:** It is the concept of equality that focuses on transforming unequal power relations that lead to discrimination at local and global level and concentrating on the process itself. It underlines the need to address not only legal but also social, political and economic relations.

**Accessibility:** As an important element in access to justice, accessibility is defined as follows by CEDAW Committee Recommendation 33 concerning women's access to justice: *"all justice systems, both formal and quasi-judicial, being secure, affordable and physically accessible to women, and adapted and appropriate to the needs of women, including those who face intersecting or compounded forms of discrimination."*

**Equality:** Equality has its different meanings.

**Formal Equality:** Formal equality is based on uniformness and treating likes alike. The notion of substantive equality has been developed, however, since formal equality does not always provide a sound comparison and outcome when the same treatment is accorded to disadvantaged individuals who do not enjoy equal conditions with others.

**Substantive equality:** Equality in this sense focuses on referent treatment to make individuals in different circumstances equal and upholds the content of the term equality.

**Transformative equality:** As newly emerging meaning of equality, transformative equality targets the transformation of mentalities and attitudes in a way to make people equal in social reality. This meaning, however, does not necessitate leaving aside the notions of formal and substantive equality; to the contrary, it stresses the need to address substantive equality in particular together with transformative equality. This understanding of equality is an important step in eliminating structural injustice.

**Effectiveness:** Effectiveness is related to lawful and timely acts in compliance with justice and fairness by all persons and institutions constituting a part of the process of access to justice.

**Fairness:** The relevant literature often refers to the meaning of fairness in relation to decision maker. When the need for fairness in a decision taken by a judge is stressed, fairness has two meanings. The first meaning is related taking similar decisions in similar situations and decision makers' informing parties about general and abstract legal norms irrespective of their personal characteristics. The second meaning is related to the practice of decision makers through which they settle a

legal dispute by concentrating on specific situations and taking into account the characteristics of a single situation. The second meaning of fairness is more about the procedural form of the judicial process and here it is important that parties in dispute have equal opportunities. For instance, the principle of equality of arms in criminal proceedings is related to this meaning of fairness.

**Secondary victimization:** In trials involving victims of harassment and assault in particular, their traumatic experiences bring about the risk of their secondary victimization. This concept points out to the possibility that acts and attitude of specialized persons at any stage of access to justice may cause victims to face secondary victimization.

**Violence against women:** The Istanbul Convention describes violence against women as a violation of human rights and a form of discrimination against women. Either in public or private sphere, all forms of gender-based acts that physically, sexually, psychologically or economically harm or may harm women, threats of such acts, coercion or arbitrary deprivation of liberty are considered as violence against women.

**“Believe Women”:** Due to their nature, offences to sexual inviolability are usually in short of evidence and witness. Given sexist attitudes in access to justice, there is now a debate on taking women’s statement as basis as a part of in case law. However, this principle does not mean all charges against the perpetrator will be solely based on women’s testimony; it is about, for example, possibility of taking decisions about measures to be applied against violence without “looking for evidence or document” in some cases.

**Intersectionality:** It is important in understanding cases of multiple discrimination. Intersectionality is an “analytical tool” in addressing personal characteristics and identities in the context of their simultaneous interactions in a given case of discrimination and developing solutions accordingly.

**Right to access to court:** The right to access to court covers having access to and being informed about the court, judicial decision and other relevant legal documents as well as geographical accessibility of the court and affordability of participation.

**Due diligence:** It is a principle observed when states avoid undertaking responsibility in cases of violation of human rights by non-state actors. In feminist literature, this principle taking victim-centred approach as its basis is expressed as an obligation for all public institutions and authorities to effectively prevent and



combat violence particularly in cases of violence against women. It is an important principle in understanding any specific case of victimization properly and in a holistic way and effectively managing the process.

**Procedural justice:** It is related to the fairness of decision-making procedure as per requirements of social justice. It concentrates on the procedure itself rather than decision. It gives people as dignified persons the opportunity to influence the outcomes of the decision and have their voices heard.

**Gender:** According to the first international document defining this concept, gender means *“socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”*.

**Structural injustice:** According to Iris Marion Young, structural injustice *“exists when social processes put large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing and exercising their capacities.”*



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