

LEGAL SERVICES AND STATE-FUNDED LEGAL AID

QUESTIONS AND ANSWERS FOR ASYLUM SEEKERS IN TURKEY

Mülteci
Hakları
Merkezi

Refugee
Rights
Turkey

TÜRKİYE'DE AVUKATLIK HİZMETLERİ VE ADLİ YARDIM

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İNGİLİZCE

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Mülteci Hakları
Merkezi



Refugee Solidarity
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What is legal assistance?

Legal assistance is a form of support provided to exercise a right or take a legal action in response to a breach of a right and to recover any losses or damages that might have incurred as a result of that breach.

How can I access legal assistance? Who can provide legal assistance?

As a general rule, legal assistance and counselling can be provided by lawyers in Turkey. The law also permits bar associations to assist you in accessing your rights. In addition, civil society organizations can also provide information and support in ensuring your access to rights.

Who is a lawyer?

A lawyer or an attorney is a licensed individual who has the authority to practice law. In order to be able to qualify as a lawyer in Turkey, a person must be a graduate of a law school, complete a mandatory law internship, obtain a license, and register with a bar association.

Persons who do not meet these criteria cannot practice law in Turkey and are legally prohibited from engaging in work exclusive to lawyers. Similarly, foreigners are barred from practicing law in Turkey. Thus, despite having the necessary qualifications in their country of origin, a foreign national is not permitted to practice law in Turkey.

In Turkey, any person admitted to practice law is given a unique license number. This number as well as names and surnames are also retrieved in the database of bar associations. This database is open to the public and all individuals can enjoy access either via the official webpage of the Union of Turkish Bar Associations or of the respective bar association of which the lawyer is admitted. You may therefore verify the legal status of a lawyer simply by entering the name and surname or the license number and run a search.

What is a bar association?

A bar association is the professional association of lawyers in a specific province or region. Bar associations are primarily responsible for the

regulation of the legal profession and upholding the rule of law.

What is a lawsuit?

A lawsuit, in the broadest sense, is the exercise of the right to a legal remedy before the courts. In other words, a “lawsuit” is the term for a legal action initiated to assert the existence of a right or for the final settlement of a dispute before a court.

Thus, filing an action for performance, or requesting the court to declare the existence or non-existence of a right or a legal relationship, or demanding the creation, modification or dissolution of a specific right or legal relationship, all fall under the term “lawsuit.”

Similarly, filing an action against administrative acts or actions before a court, or judicial proceedings relating to acts defined as a criminal offense are also considered as a “lawsuit.”

Are there any requirements to file a lawsuit/ complaint?

The key requirement in filing a complaint is the capacity to take a legal action. This requirement is closely associated with the capacity to act. Under Turkish law, any person who has the capacity to act is also considered to have the capacity to take a legal action.

Persons lack “legal capacity” if they have not attained the age of majority or lack the ability to discern (i.e. the ability to act rationally and distinguish right from wrong) as a result of a mental illness, weakness of mind, intoxication or as a result of other similar reasons. In addition, under Turkish law, the capacity to act may be restricted by the order of a court. Similarly, adults who have been sentenced to a penalty restricting their liberty for 1 year or more are also restricted from their capacity to act.

Please be aware that, as a rule, persons lacking “legal capacity” and thus “the capacity to take a legal action” must be represented by their legal representatives. Under Turkish law, the term “legal representatives” means a parent or both parents for minors and a legally appointed guardian for other persons lacking legal capacity.

Do I have to retain a lawyer?

Not every legal dispute or matter requires the participation of a lawyer. With the exception of specific instances (such as mandatory defense counsel for some criminal matters), any person who has the capacity to sue can file a complaint or claim in person and conduct his/her own case or claim before courts or public bodies. Thus, apart from the limited exceptions, hiring a lawyer is not obligatory in Turkey.

What services can a lawyer provide for me?

A lawyer can help you with the settlement of all legal matters and disputes. Thus, a lawyer can provide legal counselling or advice, or if provided in the power of attorney, file a lawsuit or claim before a competent court on your behalf, or represent you throughout the legal proceedings. In addition, with the exception of procedures where you are legally required to take action yourself, a lawyer can also follow any procedure and appear before official bodies on your behalf. Finally, a lawyer can also act as a mediator or a reconciler between parties.

How can I gain access to a lawyer?

You can access a lawyer by approaching a lawyer's office or a law firm. Or as outlined below, you may also approach a bar association for a lawyer through the Legal Aid Scheme.

I want to retain a lawyer. What should I do?

Anyone who wants to retain a lawyer should execute a contract with that lawyer. There is no formal requirement for such contracts. Thus, it may be created verbally or in writing. However, where possible, it will be more advantageous for both parties to conclude the contract in writing.

Are there any other requirements for retaining a lawyer?

As a general rule, you should grant a power of attorney to your lawyer. This will grant the authority to your lawyer to act on your behalf. It will be more advantageous for both parties to notarize the power of attorney.

Should I pay my lawyer?

Lawyers are legally entitled to a fee for all legal services including legal counselling. In Turkey, the Union of Turkish Bar Associations publishes the “Minimum Attorney Fee Scale” every year. Rates in this scale are binding and lawyers are not permitted to accept lower rates than those specified in the scale.

Thus, an attorney’s fee may be the rate indicated in this scale or parties may also agree up to 25% of the value of the claim or the final judgment. It is therefore possible to discuss and negotiate an attorney’s fee under the freedom of contract provided that the final agreed amount is not lower than the rate indicated in the scale for that specific service or work.

Are there any other costs or expenses beyond the attorney’s fee?

It is your responsibility to bear the litigation costs including application fees, notary fees, and where required, expert or witness fees. In addition, if agreed in the contract, you may be also required to cover travel costs of your lawyer. Finally, please be aware that litigation costs and attorneys’ fees of the opposing side with whom you are in dispute are also to be borne by the losing party.

I cannot afford a lawyer. What can I do?

Under Turkish law, persons who cannot otherwise afford to pay an attorney and associated court fees without putting a considerable financial duress on the individual or their family may benefit from the state-funded free Legal Aid scheme called “Adli Yardım” in Turkish. Thus, persons satisfying this criteria may benefit from the scheme.

How can I access the Legal Aid scheme?

Legal aid in Turkey is rendered by bar associations. You may therefore approach the legal aid service at a bar association.

Both the Law on Foreigners and International Protection and applicable legislation reiterate the right to benefit from free legal aid under the

state funded Legal Aid scheme for international protection applicants and other vulnerable migrants.

The Legal Aid scheme is primarily based on request. You must approach the legal aid service in person. However, some bar associations in Turkey may also appoint lawyers under the Legal Aid scheme upon notifications or referrals made by family members or civil society organizations.

I am in a removal center. Can I access the Legal Aid scheme?

Being in a removal center or any other place of detention is not a barrier to the right to access the Legal Aid scheme. In such cases, you are required to approach the bar association in the locality where you are detained and request legal aid. You also have the right to submit a petition to the authorities at the facility for referral to legal aid. As stated above, some bar associations in Turkey may also appoint lawyers under the Legal Aid scheme upon notifications or referrals made by family members or civil society organizations. Please be informed that the bar association will make an inquiry about your condition and the problem that you have presented and decide whether or not they will be able to offer you free legal aid.

What are the areas covered by the Legal Aid scheme?

The Legal Aid scheme covers personal and family law (such as marriage, divorce, domestic violence, custody, and guardianship), other civil and employment law, legal actions against administrative acts and actions, and insolvency and bankruptcy law.

Please be aware that matters regulated under the Law on Foreigners and International Protection and the Temporary Protection Regulation also fall under the Legal Aid scheme. These may include appeals against decisions on international protection applications, deportation orders, administrative detention, or residence permits.

Some bar associations may also provide legal advice and counselling under the Legal Aid scheme.

How do I qualify for the Legal Aid scheme?

Please be aware that if you already have a lawyer, you will not be able to benefit from the Legal Aid scheme.

The bar association will initially carry out an assessment with respect to your financial condition. Thus, you may be required to submit documentary evidence such as official deeds or a poverty certificate issued by the mukhtar. The bar association will also investigate whether there are grounds to reasonably consider a successful outcome for which the grant of legal assistance is sought. Based on these assessments, the bar association may decide to grant legal aid.

Which costs shall be covered by the Legal Aid scheme?

The Legal Aid scheme primarily covers lawyer's fees. In addition, some travel costs of your lawyer may also be covered under the Legal Aid scheme. For litigation costs (such as application fees and other court fees) your lawyer may also request a separate legal aid from the court. The Court has wide discretion in granting legal aid.

I do not speak Turkish. Are there interpretation services available?

Due to resource constraints, the majority of legal aid bureaus do not have a permanent and/or part-time interpreter. We therefore recommend you to ensure that a Turkish speaker can assist you during your application.

Are there any other issues that I must be aware of about the Legal Aid scheme?

If you are seeking to benefit from the Legal Aid scheme to obtain a material benefit (such as collecting a debt) or if you are granted a material benefit (such as a pecuniary compensation), you will be required to pay 5% of this material value as well as fees paid to the assigned lawyer to the bar association.

If a person has knowingly made a false statement or given false information about their financial situation to benefit from the Legal Aid

scheme or if it has been understood that the claim of which the legal aid is sought is frivolous, he/she shall be required to pay double the amount of the fees paid to the assigned lawyer and any other costs covered by the legal aid, and the legal aid shall be terminated.

I am a suspect/accused. Can I benefit from legal aid?

If you are a suspect of a crime, you may benefit from legal aid at any stage provided that you cannot afford and have not already retained a lawyer. Please be aware that you have the right to communicate with your legal aid request at the police or gendarmerie station or to the Public Prosecutor's Office or at the courthouse and even to the upper courts.

Upon your request, authorities must contact the bar association in the province and the bar association will assign you a free-of-charge defense counsel. Although this is also a form of legal aid, this assignment will be made under the Criminal Procedure Code.

Please be aware that if the suspect or the accused is under the age of 18, has a disability to such an extent that he/she cannot make his own defense, is deaf or hard of hearing or when the charges carry a potential sentence of 5 years or more, a free of charge mandatory defense counsel will be automatically assigned provided that the victim has not already retained a lawyer.

I am a victim of a crime and I cannot afford a lawyer. Can I also benefit from legal aid?

If you are a victim or complainant of sexual abuse or assault, or a victim of another crime which carries a potential sentence of 5 years or more, you may also apply for legal aid.

Please be aware that for victims who are under the age of 18 or have a disability to such an extent that he/she cannot make his own defense, or are deaf or hard of hearing, a free of charge legal aid lawyer will be automatically assigned provided that the victim has not already retained a lawyer.

I am a suspect/accused or I am victim/complainant. Can I receive interpretation assistance?

Under the Turkish Criminal Procedural Code, a free-of-charge interpretation assistance is provided at the initial investigation stage and at the hearing. Similarly, witnesses are also provided free-of-charge interpretation assistance at the initial investigation stage.

What are the duties and responsibilities of a lawyer?

Duties and responsibilities of a private lawyer or a defense counsel or a lawyer appointed under Legal Aid are always the same. In other words, there is no difference in this regard between a paid lawyer and an appointed lawyer.

The key duty of your lawyer is to carry out his/her services with care, accuracy, and integrity. Duties and responsibilities of your lawyer also include preservation of the client's confidential information, safekeeping documents and files, following the commissioned job through to its completion in accordance with statutory provisions, avoiding conflicts of interest, communicating adequate and appropriate information and explanation, and promoting your best interest.

Your lawyer may also share his/her legal opinion on a range of potential outcomes. However, lawyers are prohibited from making promises or guaranteeing any specific results.

I want to benefit from legal aid, but I have a disability. Can I receive interpretation assistance?

There are sign language interpreters in some bar associations and courthouses in Turkey. Please be aware that you also have the right to benefit from interpretation assistance in sign language at the initial investigation stage or at the hearing.

Similarly, you may also seek assistance from civil society organizations working in the field of rights of persons with disabilities for speech as well as visual and other types of disabilities.

Are there any other persons or organizations that can provide me assistance?

As stated above, the practice of law and representing persons before the courts are exclusive to licensed lawyers. However, the Law on Foreigners and International Protection as well as other applicable legislation reiterate your right to receive information or support from your legal representative, United Nations High Commissioner for Refugees or civil society organizations. These persons or organizations can also provide support in ensuring your access to the legal aid system.

How can Refugee Rights Turkey help me?

Refugee Rights Turkey provides free information and assistance to persons seeking international protection and those under temporary protection in Turkey. You may approach our office with your questions on the right to access protection mechanisms in Turkey and fundamental rights and freedoms.

Is Refugee Rights Turkey related to the Turkish government or to the United Nations High Commissioner for Refugees?

No. Refugee Rights Turkey is an independent civil society organization. It is not an implementing partner of the Turkish government or the United Nations High Commissioner for Refugees. However, Refugee Rights Turkey cooperates with the relevant Turkish authorities and the United Nations High Commissioner for Refugees to ensure the legal protection of persons seeking international protection and those under temporary protection in Turkey.

Do I need to pay for Refugee Rights Turkey's services?

All services provided by Refugee Rights Turkey are free of charge. Should you become aware of any person or entity claiming to be acting in our name who requests money or other financial benefits, please report them immediately to our organization. We will maintain your confidentiality.

Will Refugee Rights Turkey keep my information confidential?

Refugee Rights Turkey operates under a principle of strict confidentiality and respects the confidentiality of individuals. Thus, we do not share your information or documents with any third parties without your explicit and informed consent.

How can I reach Refugee Rights Turkey?

Wherever you may be in Turkey, you are welcome to get in touch with us all weekdays (Monday to Friday) from 10:00 AM to 5:00 PM to discuss your questions or concerns regarding asylum procedures.

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You can access all of our information booklets and videos for refugees and asylum seekers in Turkey via the Publications section at our official website:

<https://www.mhd.org.tr>

Or via our new “Information Portal for Refugees in Turkey”, launched as of April 2019:

<https://multecihaklari.info>
<https://refugeerights.info>