

## 1. What is the link between ADR and LA to achieve Access to Justice?

As was explained during the introductions and welcome speeches, this Conference is organized as part of a project sponsored by the European Commission called 'Technical Assistance for Access to justice in Turkey' and supported by many organizations. I would like to focus on its 2 main components and how they are interconnected: Legal Aid (LA) and Alternative Dispute Resolution (ADR), and especially mediation.

The **Legal Aid** component aims at improving access to justice by increasing the utilization of the legal aid system. The **Alternative Dispute Resolution** component, focuses on making mediation more applicable in the justice system, strengthen the functioning of the judiciary, and increasing public awareness of the issue.

Now you might think that **mediation and LA are contradictory**: Mediation and **ADR** provides litigants with **alternatives outside of the court system**, whereas **LA encourages** people who do not have the means to **access the courts**.

Why this joint conference on ADR and LA as two important pillars to improve access to justice? Don't we try to achieve two different things with these components?

## 2. What is access to justice?

The **core targets of access to justice** can be stated succinctly:

- Avoidance of long trials,
- No postponements (and thus reducing the cost and uncertainty of the litigation process),
- Make it affordable,
- Reduce complexity and
- Getting a fair trial for all people (victims and civil parties, as well as defendants in civil cases) .

In fact the target is to give **every citizen the opportunity to stand up for his or her rights and to reach a beneficial outcome**.

**To accomplish this it is not enough to take actions like increasing** the number of civil courts, or to reorganize courthouses to make the workflow efficient, and introducing regimes for legal aid.

Especially if access to justice, is not viewed as **compliance with any particular benchmark** or benchmarks, but as a **form of human progress that has many stages**. The necessity for several associated actions become clear. When we look closely enough at the human progress we achieved to date, we can conclude that even the best developed countries in this respect still have a long way to go.

## 3. LA and Access to Justice

Let's first focus on Legal Aid. The **relationship of an efficient and effective legal aid system to access to justice for the poor** is so **obvious** as hardly to require mentioning. Lawyers go so far as to describe legal aid for criminal defendants as a key element in the "holiness of the defense."

Many accept – at least in theory- that the **society has a duty toward those who are defending their rights and interests in the face of much larger forces**. The sense that there is **something noble in fulfilling** this duty properly is **particularly powerful when the defendant is a minor or belongs to other vulnerable groups like women or the poor**. However, it also important to provide legal aid for **a victim**, who for different reasons is also often facing bleak circumstances. Or for a **witness** who doesn't dare to come forward.

Improving access to justice comes in many forms and I will just briefly mention a couple of ideas and examples:

- Support in litigation and access to lawyers.
- Open accessible courts, which are near to the people. Instead of just supporting citizens through the existing system, we can think about bringing courts with little barriers to enter into f.e. small villages to make them easy within reach. So some kind of open court policy.

- Support and protection for vulnerable groups.
- We can think about using modern technology like 24/7 access to e-justice online.
- Or educating people who don't know they have rights to stand up for, f.e. like a group of workers on a ranch in Latin America who had no idea that they had a right to receive wages for the work they did.
- Even listening to protestors or giving them a platform or start a dialogue with them is a way of improving access to justice.

#### 4. ADR and Access to Justice

So the link between LA and Access to justice is clear, what about mediation, which is the **most commonly used form of ADR. Mediation** is a way to provide possibilities for people regardless of their financial and other means to **redress their rights outside of the court system**. Its an alternative way to resolve disputes.

And with a **competitive edge**. Compared to other ways of resolving disputes like litigation and arbitration, mediation means:

- Less costs,
- Expedition,
- Maintaining relationships,
- Obtaining better quality of outcomes,
- Reduction in both average caseload and length of trials.
- Confidentiality.

A solution for the participant's dispute based on their individual and joint interests. A solution that fits best in their specific circumstances, including their financial situation. **And most importantly: while empowering the participants**, which will help them to deal better with disputes in the future.

Just like for citizens, **mediation is also beneficial for companies**. How many times have you as a legal counselor seen that - while trying for years to resolve disputes in court- your client lost important business relationships, time and money; even if you won the case in the end?

Did you also experience cases where your clients' costs of the dispute in the end where higher than its final advantages? How often have you realized that the best way to resolve the dispute would have been a transaction but you couldn't convince the counterpart to agree with your clients proposals?

So concluding we can say: **ADR gives parties –be it citizens or companies- an alternative to resolve their disputes outside of the courts**. And exactly therefore it **provides access to justice** as it gives everybody **another means** of access to justice.

#### 5. How to achieve access to justice?

Across the world it is now increasingly recognized that **courts alone are not enough to provide real access to justice**. In fact, one **consequence of improved access to justice** inside of the courts has been **increased case pressure on the courts**. We've seen this happening in a number of countries thus leading to **longer time** to finish court proceedings, **postponements** and other things that we specifically need to avoid if we want to improve access to justice. **So better access to the courts can paradoxically lead to less access to justice!** Therefore we need a system that can take away these potential problems, hand in hand with providing Legal Aid.

The advancement of ADR in many countries, and the documented history of trial rates in the earliest countries to adopt ADR on a wide scale, e.g. the US, attests to how widely understood this principle is now becoming. **When properly implemented, ADR reduces the pressure on courts** by diverting large numbers of cases to faster, less expensive, more consensual, more restorative processes – processes which also produce documented **higher satisfaction rates among parties than even winners of a case report after trials**. Prof. de Palo will share with you some remarkable data on this later on in his speech.

**Let me finish this introduction with article 6 of the European Convention on Human Rights, which encompasses the ideal of promptness and fairness.** If justice must be **prompt without being unjust**, it **must be efficient**. ADR helps citizens and companies to gain access to adequate dispute resolution.

Through ADR the number of disputes before the civil courts can be reduced and thereby lead to increased overall efficiency. Disputes can be negotiated quickly if litigants want to. So effective implementation of an alternative means of dispute resolution explicitly eases the citizens access to justice.

A famous description of ADR is "***bargaining in the shadow of the law***." I do not want to plead here that every dispute should be resolved by mediation or another ADR method solely. Alternative dispute resolution does not stand by itself; increasingly, countries recognize that what actually works for them and their citizens is to have a **strong justice dispensation system in which ADR plays one of several critical roles**, not least by attracting enough cases to reduce the pressure on the rest of the system to manageable levels.

**Contrary to how it might first appear, well-functioning ADR programs, are not lacking coherence from other parts of the system** like the need for **well-functioning Legal Aid** . Besides the just mentioned improvement in efficiency, there are other benefits, for example:

- **Victim-offender mediation** programs reduce, at least to a degree, the pressure on **criminal legal aid**.
- **Family mediation programs**, and other local mediation programs that address the types of cases in which ordinary people tend to access the legal system, reduce the pressure on **civil legal aid** (sometimes averting violence that results in a need for criminal legal aid, as well).
- **Better training of lawyers** and others in principles and techniques of negotiation reduces the **pressure on mediation programs** and systems as well as on trial time.  
That is one of the reasons why as part of this project many lawyers are trained. There is by the way a **2-day-training scheduled here in Istanbul at Bilgi University**, starting tomorrow. It's a **basic mediation skills training for lawyers** and if you are interested you are very welcome to join.

**So to conclude: The integrity of the legal aid system, the integrity of the ADR system, and the effectiveness of both are interrelated. The reality is that these 2 components LA and ADR work hand in hand to improve Access to justice.** In this Conference and also in practice, Legal Aid and ADR together are **2 pillars for the road to advancement to a further stage in human progress**.

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