



GAZIANTEP STUDY VISIT 23 – 26 JANUARY 2012-01-27
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OBSERVATIONS OF THE EXPERTS

The Court House in Gaziantep is the work place of 67 judges, 45 prosecutors and 150 clerks, as well as the 12 Enforcement Offices (EOs) and their staff. It is a new building, designed on the basis of the maximum separation for each category of staff (separate entrances, separate cafeterias etc.) and a minimalistic approach when it comes to common services, such as reception or information desk. Apparently, there has not been sufficient consultation with the EO staff regarding the configuration of their own working spaces. The constructor of the building went bankrupt when 90% of the works had been completed, which rendered any adjustment at the end nearly impossible.

Spaces are not sufficient for the EO staff and their files, which reach a total of approx. 300,000 (most cases are about unpaid bills of less than TL 800). It is the expectation of everybody, of course, that filing will be entirely electronic in due course of time; at present, it appears that electronic files do exist but because of the shortcomings and the general inadequacy of the system lawyers and, to some extent, the EO staffs still prefer use the hard copy files.

Overall, there are 5,000 Enforcement Officers in Turkey, handling approx. 14 million of cases.

Electronic filing is managed via the national UYAP system, which seems to be appreciated and, to some extent, utilised by the staff. The entire justice system and not only the EOs use UYAP, whereby different users have different levels of access. Lawyers, for example, also have passwords to enter the UYAP but their access is limited to the data of their clients. (There are 8,000 lawyers in Gaziantep).

Through the UYAP, EOs have the possibility to locate debtor assets and property, above all, cars and real estate. When it comes to bank accounts, the system only allows access to Post Office banking records. UYAP also does the distribution of new cases to the 12 EOs, which is done at random. In sum, the UYAP system allows:

- The beginning of an enforcement procedure
- Access to debtor's IDs and info; the enforcement officer can find car/real estate/all relatives/ post office check accounts
- A confiscation order of a debtor over a car, a house; on-line confiscation of assets within minutes
- Also, a person can find immediately whether a legal proceedings has been instituted against him/her

However, only a 15-20% of the staff are able to use the system UYAP.

Another issue is the lack of time to fill in information in the system. There is a general shortage of staff at all EOs; in some cases, not more than 20% of the necessary staff exists. This has an adverse impact on the maintenance of the electronic filing system: there is not enough staff to update the e-files regularly. Apart from getting more staff (including IT staff), the perception is that there is a need to lower the workload.

Each staff member at the EOs is currently working on an average of 5,000 files, which is ten times higher than what is considered as desirable. Also, each EO receives the visit of 100-150 persons per day (this includes lawyers and their clerks), which is a huge burden under the circumstances.

Lawyers have access to the UYAP; they can submit applications and enquiries on line and even prepare payment orders and other documentation, so that the EOs or the judges only need to sign them if they agree. EO staff complains, however, that lawyers rarely make use of the on-line system. Instead, they prefer coming to the EO premises in person or sending their clerks. Lawyers can make their initial applications on-line free of charge, but for each subsequent enquiry they will have to pay TL5.- Payment can be an issue for lawyers representing companies or large institutions, with hundreds or even thousands of files. It appears also that the modalities of payment can be cumbersome, since lawyers can only make payments through their Bar Association cards or the Vakif Bank, for those who have account in it. In any case, lawyers do not feel comfortable with the system as yet and they prefer the traditional modalities of payment.

On the other hand, lawyers would like to have unlimited access to the UYAP and they resent the fact that they are charged TL 5 for each transaction through it. They also resent the fact that they are obliged to use the transportation arranged by the Justice Foundation (they allege that they are not allowed to use any other means of transportation!).

During the first auction a thing may be sold for at least 60% of its initially estimated price. The debtor is notified by post office and has a week to object on price. The Enforcement Court will then decide the price of the auction.

When movable assets are auctioned VAT is added at 18% (EOs are of the opinion that this is too expensive and should not apply). In the case of real property, if less than 150 sq. metres VAT 1% is levied, if more, 18%. If the property is an office building, the rate of 18% is always applicable. In the case of movable things, an auction shall take place within a year (seizure is good for one year); in the case of immovable things, the period is two years.

Most payments take place in cash, at the EO offices. Bank checks are banned from use with the justification that unless they are cashed on the same day as issued the Enforcement Agency will have no control of the balance of their account with Vakir Bank.



The Chiefs of the EOs have keys to the archive rooms and are expected to inform about files taken out. There is no system to notify automatically where a missing file might be or who has taken it, except for those files that have been requisitioned by the judges. A big number of files is kept at the working premises of each EO: these are the active or pending files. Lawyers and/or their clerks seem to have nearly unlimited access to these files.

The experts also learned, during their three days of observations, that EO clerks receive a payment of TL 17 from each seizure or auction; that confiscation of salary takes place at source, through the accounting services of the employer; that EO offices can inform the parties via SMS on upcoming auctions, if the parties so wish; that there are plans to allow participation in auctioneering on-line in order to avoid the creation of mafias; and that EO staff and lawyers use the vehicles of the Justice Foundation or else take taxis whenever they organise auctions and seizures. It should be noted, however, that the lawyers complain that they are compelled to use the vehicles of the Justice Foundation even though sometimes it may be cheaper and more convenient to take a taxi.

EOs showed some resentment about the fact that they also have to deal with bankruptcies, although they have neither special knowledge nor a special section to deal with such cases; this necessitates the occasional use of a special consultant.

The general public also visits the EOs frequently, sometimes just to ask for information. Often they come to submit a request, which is not done at the individual 12 EOs but at the central bureau for such submissions. Thus, EO staff members often find themselves in the position to give information and information to the general public, which is definitely a burden, under-staffed as they are.

As such, the EO offices and, in particular, the filing spaces are kept in good order and basic decorum is maintained. The archive we saw in the basement was well ventilated, secure as one person has the key and neatly organized. The chief enforcement officer said that he usually needs files from the archives. The picture below is quite representative of all 12 EOs at the Gaziantep Court House:

The shortcomings to be remedied are related to procedural and organisational matters, such as the modalities of file access to lawyers and the public. Above all, there is an issue when files are opened or even taken out by lawyers and/or their clerks, the legal status and competence of which is not clearly stipulated in the Law.

Notifications are always done via the Post Office and the recipient of such notification has the possibility to object within seven days. EOs are of the view that they should have their own notifiers, because the procedure via the Post Office, although improved recently with bar codes and other tools, still does not fully comply with the requirements of the Law on notifications.

EO entrusts experts to appraise the value of things to be attached or seized. There are no official lists or tables for various categories of property, e.g., real estate.

There is no library at the EO premises and there is a difficulty to find information about the Law, Case Law and legal doctrine. Besides, it appears that the relevant Case Law on enforcement issues is often shifting. It should be noted, in this context, that EO staff are of the opinion that there should be more among them with legal education, and that everybody should undergo pre- and even in-service training.

EOs are also of the opinion that such special cases like transfer of child custody should not be done by them but by special services, trained and equipped for the purpose.

The various problems and difficulties be a more general issue, of course, than just the way EO is organised. For example, social welfare authorities demand from all 12 EOs a slip like the one featured below before paying out any welfare money to a single needy citizen:

(Interestingly, the slip contains three stamps and a signature, but no other text).

It goes without saying that this is a burden to the EO staff since all EOs will have to check in their records how far the individual in question has enforcement cases pending against him/her. Unless the social welfare offices can deal with such issues in a different manner, the EOs themselves should device a way of dealing such issues centrally.

The Enforcement Agency entrusts three private depositories in Gaziantep, however, the experts did not get the opportunity to visit anyone of them due to bad weather conditions.

IDENTIFICATION OF KEY ISSUES

1. The IT system of case management needs to be completed, upgraded and its shortcomings need to be addressed, so that it can enable EOs, lawyers and other actors to work in a paperless mode rather than using both IT and manual systems at the same time, thus duplicating work.
2. Payments, such as alimonies etc., should always be made on line, via bank transfer or bank check and not in cash at the premises of the EOs.
3. There is a need of training of the staff on the use of the UYAP in order to optimise its usefulness.



4. Too many people visit the EOs daily, sometimes just for information or just to have a paper scanned.
5. There has to be an information desk for all services at the entrance of the Court House, so that the public do not have to take valuable time from the EO staff for general information and directions.
6. The present system with a counter "separating" the public from the offices of the EO staff and the files encourages chaos and slows down work.

RECOMMENDATIONS

1. Instead of separating the working cum file depository space of the EO staff from the general public with a semi-open counter, whereby every visitor has the possibility to either talk loudly to the staff or even enter their working area, there should be one or more windows. Visitors should have no access to the staff's working area other than through such a window.
2. UYAP should be upgraded, its shortcomings addressed, and access to it should be regulated in a better way. For example, the social welfare authorities should have access to it rather than requesting 12 separate certifications from the 12 EOs.
3. Use different colours for the files of different years; this will minimize the risk of confusion and displacement of files.
4. On a more general level, the Turkish authorities might in the long term wish to reconsider the separations between different categories of staff (entrances, restaurants, cafeterias etc), in the interest of a better working atmosphere and communication/exchanges between judges, prosecutors and enforcement officers.

ADDENDUM

The European Directive on Personal Data Protection and the Information Systems of the Enforcement Offices in Turkey

Prepared by Maria Bottis

Turkey is not yet a member of the European Community but it has implemented a number of European Directives. Turkey has not yet implemented Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, but official authorities are working on its implementation, which is scheduled in the near future. The Directive is the main instrument for the protection of privacy and the human rights of people when it comes to the process of their personal data and it has been implemented by all the EU Member-States.

As the Enforcement Offices of Gaziantep (and of Turkey in general) use a detailed information system called "YUAP", which contains very extensive data of citizens, it is crucial to investigate whether this information system is in line with the data protection Directive, as in the opposite case, when the Directive will be implemented perhaps some changes should take place to comply with its provisions.

Under the Directive and as a general rule, personal data can only be processed for specified explicit and legitimate purposes and may not be processed further in a way incompatible with those purposes (Art. 6 b of the Directive). It follows that any data processing must be supported by a specific legitimate purpose; enforcement certainly falls within this class, so in general, Enforcement Offices may store and process citizen's data for enforcement purposes.

As we were informed, the chief and deputy enforcement officer, enforcement office staff have access to the national electronic filing information system, UYAP, using a password unique to every one of them. Lawyers also have restricted access to the system in order to be able to check data relevant to a case they are handling (data on their 'own' file, meaning the file of the debtor who owes money to their client, or data on the debtor whom they are representing as attorneys). But lawyers can see only the car registry data and the social security files (not the real estate information, the Post Office check accounts etc). Every one of app. The 8.000 lawyers in Gaziantep has her own password to enter the system and soon, in 2-4 months, lawyers will be able to access UYAP via their own office. It should also be noted that around 15-20% of the enforcement office staff is really able to use YUAP, as this is the percentage of the staff which is computer literate enough to use it.

The use of the system necessitates the use of a unique password for every legitimate user.

The UYAP electronic filing information system stores the following kind of citizen's data:

1. *Automobile registry*: the enforcement officer and the staff have access to the state's automobile registry. It is therefore possible to find whether a citizen owns a car, the details of this car and it is also possible to confiscate this car online, with an instant attachment. The notice of this attachment is sent to the Police, which can confiscate the car and take it into a parking lot until the debt has been paid.
2. *Real estate registry*: the enforcement officer and the staff have access to the state's real estate registry. The real estate registry contains information of both land and buildings belonging to citizens throughout Turkey. Within a matter of seconds, the enforcement officer can check whether a citizen-debtor has any real estate anywhere in Turkey, how many



- square meters this estate is and its exact location. It is possible, as in the case of a car, to enter an online attachment on the property of the debtor, which carries the relevant legal consequences (no sale without the clearance of the debt etc).
3. *Social security files*: the enforcement officer and the staff have access to the state's social security files on every citizen. Data in the social security personal file include name and location of employer, public or private (employer), current wages. It is possible to confiscate wages online, as in the case of a real estate property, irrespective of whether the wages come from a public employment contract or a private one.
 4. *Post Office check accounts information*: after a special agreement with the Turkish Post Office, the enforcement officers and the staff have access to the citizen's check accounts held in the Post Offices. This is not yet possible for the Bank accounts, although we were informed that the state is working on a deal with the Banks so that they also offer access to their account records to the enforcement officers.
 5. *Civil registry data*: the enforcement officer and the staff have access to the citizen's civil registry data. The civil registry stores extensive information on a person's civil condition, the person's relatives (mother, father, siblings, children etc). Data open to the enforcement officer and staff include the relatives' name and surname, date of birth, and other. We were informed that the enforcement office checks civil registry information on relatives only when the debtor is found deceased, in order to detect possible heirs to the debtor. In reality, though, the enforcement officer and the staff have unrestricted access to all this data of the civil registry and we were not informed on a procedure under which the enforcement officer should file a request to the civil registry in order to gain access to the debtor's relatives, as he has information that the debtor is no longer alive.
 6. *Legal proceedings data*: it is also possible to see in the system whether legal proceedings have been instituted against a person and up to what point.
 7. UYAP data also include a debtor tax registry number, her birthdate and the name of her legal representative (attorney).

Most documents which exist in the hard copy files of the enforcement offices are scanned and are stored with UYAP, under the file of every debtor. The only documents that are not scanned and filed are the mobile telephone operation files, which are impressively numerous: they comprise half of all enforcement office files. No mobile telephone bills are, therefore scanned and filed in the system.

Under the European Directive, data may be lawfully processed only under the following circumstances (art. 7 of the Directive): when the data subject has given his consent, when the processing is necessary for the performance of or the entering into a contract, when processing is necessary for compliance with a legal obligation, when processing is necessary in order to protect the vital interests of the data subject, processing is necessary for the performance of a task carried out in the public interest, or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed and when processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject. The data subject has the right to access all data processed about him. The data subject even has the right to demand the rectification, deletion or blocking of data that is incomplete, inaccurate or is not being processed in compliance with the data protection rules. (art. 12 of the Directive).

Personal data may be processed only insofar as it is adequate, relevant and not excessive in relation to the purposes for which they are collected and/or further processed. The data must be accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that data which are inaccurate or incomplete, having regard to the purposes for which they were collected or for which they are further processed, are erased or rectified; The data should not be kept in a form which permits identification of data subjects for longer than is necessary for the purposes for which the data were collected or for which they are further processed. Member States shall lay down appropriate safeguards for personal data stored for longer periods for historical, statistical or scientific use(Art. 6 of the Directive).

Under the above general principles of the European data protection Directive it appears that the UYAP system, especially when it will also include bank account information, will need a thorough legal examination in order to ascertain its compliance with the Directive. This system seems to contain even today an immense amount of citizen's personal data, from social security, current employer, relatives and relatives' data to detailed data on all kind of a debtor's assets except bank accounts (until now and towards including them as well). We have seen no procedure to delete data when the purpose of collecting them has ended, as the Directive provides and we did not see, as well, extensive security measures to ensure that unauthorized users will not have access to this huge database. Enforcement definitely qualifies as a legitimate purpose of personal data collection and the UYAP system appears indeed 'amazing', as described by the enforcement officers and staff uniformly, but the system must be again examined under the data protection Directive's standards and the human rights angle as well.