

Standard Summary Project Fiche – IPA decentralised national programmes

1. Basic information

1.1 CRIS Number: TR080101

1.2 Title: Enhancing the Role of the Supreme Judicial Authorities in respect of European standards

1.3 Sector: 36- Political Criteria

1.4 Location: Turkey

Implementing arrangements:

1.5 Implementing Agency:

The Central Finance and Contracting Unit (CFCU) will be the Implementing Agency and will be responsible for all procedural aspects of the tendering process, contracting matters and financial management, including payment of project activities.

The Head of the CFCU will act as Programme Authorising Officer.

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1.6 Beneficiary (including details of SPO):

The Turkish Constitutional Court, the Turkish Court of Cassation, the Turkish Council of State and the High Council of Judges and Prosecutors will be the beneficiaries.

Details of the Senior Programme Officer (SPO) are as follows:

Mr. Ahmet Ceylani TUĞRUL

Secretary General and Member of the Court of Cassation

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Fax: 425 9814

Project Contact Person for the Court Cassation and High Council of Judges and Prosecutors

Mustafa Özmen

Judge

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Since the members of the High Council of Judges and Prosecutors are also members of the other beneficiary high courts a contact point has not been appointed particularly for that institution.

Project Contact Person for the Council of State

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Judge
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1.7 Overall cost: 3.3 M €

1.8 EC contribution: 3 M €

1.9 Final date for contracting: 2 years after the signature of the Financing Agreement

1.10 Final date for execution of contracts: 2 years following the end date for contracting

1.11 Final date for disbursements: 3 years following the end date for contracting

2. Overall Objective and Project Purpose

2.1 Overall Objective:

To contribute to the enhancing of the role of the superior judiciary in Turkey in initiating new changes in the normative framework and its implementation in line with the *acquis*, the rights and freedoms guaranteed by the ECHR, the provisions of the ESC and other European standards shared by the EC and the CoE through its interpretative decisions.

2.2 Project purpose:

To enhance the respective roles of the High Council of Judges and Prosecutors and of the Higher Courts (Constitutional Court, Court of Cassation and State Council) as the superior judicial authorities in the accession process and in the adoption of the European high judicial standards.

2.3 Link with AP/NPAA

This project proposal addresses the areas defined in the revised Accession Partnership (AP) and the National Programme for the Adoption of the *Acquis* (NPAA) for Turkey's accession to the EU, as follows:

2.3.1 AP Priority (2008)

In the Short-term priorities of the AP Document concerning Political Dialogue, Democracy and the rule of law section within the “Judicial System”, strengthening the efforts, including through training, to ensure that the interpretation by the judiciary of legislation related to human rights and fundamental freedoms in line with European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) with the case law of the European Court of Human Rights (ECtHR) and with Article 90 of the Turkish Constitution and strengthening the efficiency of the judiciary through, in particular reinforcing its institutional capacity and under title of European Court of Human Rights, to comply with the ECHR, and ensure full execution of the judgments of the ECtHR has been emphasized.

2.3.2 NPAA priority (2003)

In the Political Criteria Section of the NPAA, under Title 5 “Functioning and the Efficiency of Judiciary”, it is stated that “The overriding goal of the Government is the entrenchment of the principle of the rule of law in Turkey, as it exists in modern nations that embrace such universal values, and which constitutes a leading pillar of the State. Furthermore, the provision of effective justice required by modern society is also a priority”.

Also, in the Justice and Home Affairs Section under 24.14 of the NPAA, “Functioning of the Judiciary and Capacity Building for the Establishment of an Effective Judicial System” is emphasised as a priority.

2.3.3 Progress Report (2007)

Under title 2.1 “Democracy and the rule of law- Judicial System” it has emphasized that some progress has been made in terms of efficiency of the judiciary. But it has stressed that concern remain as regards the independence and the impartiality of the judiciary. As a overall result it has been stressed that there has been some progress as regards the efficiency of judiciary through the implementation of the adopted legislation and continued use of IT (Information technologies) but the tensions in the relations between government and the judiciary have been evaluated not to be conducive to the smooth and effective functioning of the system. And it has been emphasized that here are more needs to be done in terms of the strengthening the independence and impartiality of the judiciary

2.3.4 MIPD priority (2008-2010)

The Transition Assistance and Institution Building Component translates the priorities set out in the European Partnership in 3 sub-components: Political requirements where EC assistance will be used to support a stable, modern, democratic, open society based on the rule of law. Special impetus will be given to Public Administration and Judiciary Reform

Within the *Institution Building* component the focus of assistance in the area of the political criteria will be on the institutions that are directly concerned by the reforms: the judiciary and the law enforcement services

2.5 Link with National Development Plan (where applicable)

N/A

2.6 Link with national/ sectoral investment plans (where applicable)

N/A

3. Description of project

3.1 Background and justification:

Turkey has been a member of the Council of Europe (CoE) since 1949 and a candidate for full membership of the European Union since 1999. Both organisations attach a high importance to common and democratic principles based on human rights and the rule of law. As a Member State of the CoE, these principles have a significant importance for the Republic of Turkey.

In the course of progress towards accession to the European Union and in response to the obligations of the Acquis of the EU and its Member States, the Turkish Government is actively following the NPAA. However, the objective of the process of law approximation is not only implementing the relevant amendments to existing legislation but as importantly, to strengthen those institutions responsible for the enforcement or implementation of the new procedures and processes. This process of “institution building” to enhance administrative capacity is seen as crucial in ensuring the successful transition for Turkish institutions to the standards, norms and achievements of similar EU Member States’ administrations.

In this regard, Turkey has been going through a reform process in recent years. As indicated in the 2007 Progress Report of the European Commission, Turkey has made progress on the ratification of international human rights instruments and on the execution of the judgments of the European Court of Human Rights (ECtHR).

However, it is also necessary to support the High Council of Judges and Prosecutors and the Higher Courts in the improvement and the strengthening of their capacity to apply human rights standards, and thereby to facilitate a higher degree of human rights protection in Turkey.

Accordingly, this Project is to be considered as an important means to improve the knowledge of these institutions as regards the European Convention on Human Rights (ECHR), the case-law of the ECtHR and the execution of its judgments, as well as the European Social Charter (ESC). In addition to the seminars and conferences, a certain number of study visits and placements in other EU institutions and the CoE will be essential in order to bring human rights into the public domain and interpret them correctly. The project will also take stock of and build on the successful experiences gained under the former project “Support for the Implementation of Human Rights Reforms” (30 November 2006-30 November 2007), under which 450 judges and prosecutors were trained and key decisions of the Turkish Constitutional Court, the Court of Cassation and the Council of State related to human rights issues and referring to the provisions of the ECHR and the case-law of the ECtHR.

The aim of the project is to enhance the commitment level of the Turkish Superior Judiciary to the EU accession criteria by raising the awareness of the leading judicial actors and establishing stronger relations with the EU and with its member states’ judicial institutions with a view to benefiting from their experience in the harmonisation of legislations and judicial practices.

It will build upon the steps already taken to harmonize the Turkish judicial system with those of the EU member states which included technical assistance activities such as training of personnel, preparation of training materials, etc.

Given that the beneficiaries of this project supervise the services rendered by the other judicial institutions, the outcomes of previous technical projects as well as those obtained from current projects will contribute to establishing a pool of high-ranking judicial authorities genuinely committed to the adoption of the EU acquis.

3.2 Assessment of project impact, catalytic effect, sustainability and cross border impact (where applicable)

Beyond the differences in their roles and procedures, the common aim of the High Council of Judges and Prosecutors and Higher Courts is to guarantee the rights and individual freedoms and to ensure the proper administration of justice, which constitute the basis of democratic legal systems. In this respect, there is no doubt that the enhancing of the role of the Higher Courts as the superior judiciary in the EU accession process plays a vital role.

According to Article 90 of the Turkish Constitution, in case of a conflict between the ECHR and the ESC and the domestic laws due to differences in provisions regulating the same matter, the provision of these international treaties shall prevail. In this manner, the international provisions on human rights have a crucial role in the Turkish Judicial System. The importance of the effect of Article 90 in Turkish law should be emphasised here.

It should also be noted that the machinery of protection established by the ECHR is subsidiary to the national systems safeguarding human rights. The Convention leaves to each Contracting State, the primary task of securing the rights and liberties it enshrines.

The inherent limits of written law make necessary its interpretation by the judges in solving individual cases. The unification of jurisprudence is a factor ensuring security and legal certainty and contributes to the efficiency of justice.

The general criteria of interpretation of law provided by the precedents established by higher courts have the merit of ensuring consistency in interpretation. This aim is generally obtained by the moral authority of the decisions of the Court of Cassation. A homogenous jurisprudential doctrine is thus achieved, through the decisions of the Higher Courts in their respective areas of jurisdiction.

In this respect the High Council of Judges and Prosecutors and the Higher Courts, by virtue of the position they occupy as leading actors of the judiciary, are able to make an essential contribution to the development of the rules of functioning of democracy.

The project aims to introduce the Turkish superior judiciary to the acquis, raise its awareness of the expectations of the EU and the Council of Europe and provide the favourable environment necessary for a fruitful and substantive exchange of experience with its counterparts in other European judicial institutions.

3.3 Results and measurable indicators

The outputs to be delivered and the guaranteed results achieved by this project include:

3.3.1 Greater awareness of the members of the beneficiary institutions on the EU institutions, their decision making processes and the acquis, as well as on the implications of Article 90 of

the Turkish Constitution, the ECHR, the case-law of the ECtHR and the execution of the ECtHR's judgments, and the ESC (Activities 3.3.1.1, 3.3.1.2 and 3.3.1.3)

Indicators of achievement: To reinforce the capacity of the High Council of Judges and Prosecutors and of the Higher Courts (Constitutional Court, Court of Cassation and State Council) as superior judicial authorities to apply correctly the *acquis*, the rights and freedoms guaranteed by the ECHR and provisions of the ESC, with a view to the fulfilment of EU membership conditions. References to the ECtHR case-law, the ESC and the EU *acquis* in the higher courts' decisions increase. Establishment of relations between the High Council of Judges and Prosecutors and the Higher Courts on specific human rights and rule of law issues, common concerns and identification of best practices. New approaches and practices evidenced by the case-law, the supervisory decisions and other judicial outputs, with a view to successfully meeting Turkey's international obligations.

3.3.2 To promote the co-operation of the High Council of Judges and Prosecutors and of the Higher Courts (Constitutional Court, Court of Cassation and State Council) as superior judicial authorities with equivalent European institutions (Activity 3.3.2.1)

Indicators of achievement: Inter-institutional relations between the beneficiaries and their equivalent European counterparts on specific human rights and rule of law issues, common concerns and identification of best practices result in new approaches and practices with a view to successfully meeting Turkey's international obligations. References to the decisions of similar instances of other EU/CoE Member States in the higher courts' decisions increase.

3.4 Activities:

Activities will be held by the contribution of CoE and national public contribution. A 150.000 € is allocated from the budget of Court of Cassation in this regard. This amount makes the 4.55 % of the total budget. The other 4.55% (150.000 €) of the budget will be financed by the CoE. The direct grant contract will be used during the implementation of the activities.

Activities to be held through:

- 1- Roundtable seminars on the ECHR and the European Social Charter
- 2- Study visits to EU and CoE institutions
- 3- Conferences in Turkey
- 4- Placements

3.4.1. Roundtable seminars on the ECHR and the European Social Charter

207 members of the High Council of Judges and Prosecutors, the Constitutional Court, the Court of Cassation and the Council of State will hold meeting to share and exchange experiences on the ECHR and the European Social Charter.

5 roundtable seminars to be held in Ankara on the following topics:

- Right to a fair trial
- Specific aspects of the right to a fair trial in criminal matters : use of illegal evidence, right to silence, conviction in *abstentia*
- Positive obligations under article 2 and 3 of the ECHR
- Right to liberty and security

Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

- Freedom of expression
- Freedom of thought, conscience and religion
- Freedom of peaceful assembly and association
- Property rights
- Protection of social rights
- Protection of the environment

3.4.2 Study visits to EU and CoE institutions and to institutions exercising similar tasks in other European countries

EU-related study visits

The Project Representatives of the High Council of Judges and Prosecutors, the Constitutional Court, the Court of Cassation and the Council of State will have meetings with experts from the European Parliament, the Council of the EU, the European Commission and the European Court of Justice on their working procedures and the expectations of the EU institutions from the Turkish superior judiciary during the accession process.

4 study visits of 4 days each to be organised (one for each beneficiary) to the following EU institutions in Brussels and Luxembourg:

- The Council of the EU
- The European Parliament
- The European Court of Justice

And to other relevant bodies (European Network of Councils for the Judiciary, EUROPOL and EUROJUST in The Hague).

CoE and ECtHR-related study visits and to institutions exercising similar tasks in other European countries

High Council of Judges and Prosecutors

1 study visit for 15 persons for an exchange of views with representative of the CoE Secretariat and the Registry of the ECtHR on the following topics:

- Strengthening judicial independence
- The European human rights and rule of law standards
- Introduction to judicial ethics.
- Raising public confidence in the judiciary

Constitutional Court

1 study visit for 32 persons for an exchange of views with representatives of the CoE Secretariat and the Registry of the ECtHR on the following topics:

- Effects of Constitutional Court decisions
- The role of the constitutional court in the implementation of the ECHR and its execution mechanism
- Access of citizens to constitutional justice in Europe
- Freedom of expression
- Gender equality
- Property rights
- Protection of social rights

Court of Cassation

6 study visits for 20 persons each for an exchange of views with representatives of the CoE Secretariat and the Registry of the ECtHR and to institutions exercising similar tasks in other European countries on the following topics:

- Right to a fair trial
- Specific aspects of the right to a fair trial in criminal matters : use of illegal evidence, right to silence, conviction in absentia
- Positive obligations under article 2 and 3 of the ECHR
- Right to liberty and security
- Freedom of expression
- Freedom of thought, conscience and religion
- Freedom of peaceful assembly and association

Council of State

2 study visits for 20 persons each for an exchange of views with the representatives of the CoE Secretariat and the Registry of the ECtHR and to institutions exercising similar tasks in other European countries on the following topics:

- The possibility and scope of judicial review of administrative decisions
- European practices related to the enforcement of judicial decisions in the field of administrative law
- Administrative justice and emergency situations
- Right to a fair trial in proceedings before administrative courts
- Freedom of expression
- Freedom of thought, conscience and religion
- Freedom of peaceful assembly and association
- Protection of property
- Protection of the environment

3.4.3 Conferences in Turkey

Constitutional Court

- The constitutional court as a “domestic remedy to be exhausted or effective” within the meaning of the ECtHR
- The prohibition and dissolution of political parties and associations
- Financing of political parties and election campaigns

Court of Cassation

- Relations between the supreme courts and the courts of appeals
- Performance evaluation of the judiciary
- Court management within supreme courts
- Possible solutions to the workload of supreme courts
- Access of citizens supreme courts

Council of State

- Relations between the superior courts and the administrative courts of appeals
- Social Rights
- Gender equality

- Immigration and asylum
Expropriation procedures

3.4.4 Placements

During this phase members to be selected from within the beneficiary institutions on the basis of their foreign language skills, the labour division and a professional interest will be sent to the following institutions:

- Constitutional Court :
 - Placement of 3 rapporteurs with a EU institution/the CoE during 1 month
 - Placement of 3 rapporteurs within European courses related to the protection of fundamental rights and freedoms
- Court of Cassation :
 - Placement of 5 rapporteurs with a EU institution /the CoE during 1 month
 - Placement of 8 rapporteurs within European courses related to the protection of fundamental rights and freedoms
- Council of State :
 - Placement of 5 rapporteurs with a EU institution/the CoE during 1 month
 - Placement of 8 rapporteurs within European courses related with the protection of fundamental rights and freedoms

3.5 Conditionality and sequencing

There is no pre-condition for the start of the project.

3.6 Linked activities

N/A

3.7 Lessons learned

3.7.1 Experts running the project activities should take into account any cultural and perception differences and must aim to run the activities in peaceful atmosphere.

3.7.2 Full contribution of beneficiary country personnel in the project must be provided, and the workshops and other activities must be held out of the facilities where they are in charge. This would prevent the lack of concentration stemming from the unexpected interruptions of their daily occupations.

3.7.3 The budget of this project should cover not only the costs of implementing the programmes but the costs of sufficient staff at the headquarters of the implementer and in the field.

4. Indicative Budget (amounts in €)

		SOURCES OF FUNDING
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Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

			TOTAL EXP.RE	TOTAL PUBLIC EXP.RE	IPA COMMUNITY CONTRIBUTION		NATIONAL PUBLIC CONTRIBUTION					PRIVATE CONTRIBUTION (CoE)	
ACTIVITIES	IB (1)	INV (1)	EUR (a)=(b)+(e)	EUR (b)=(c)+(d)	EUR (c)	% (2)	Total EUR (d)=(x)+(y)+(z)	% (2)	Central EUR (x)	Regional/Local EUR (y)	IFIs EUR (z)	EUR (e)	% (3)
Activity 1													
contract 1.1	X	-	<u>3.300.000</u>	3.300.000	3.000.000	94.6	172.500	5.4	172.500	0		127.500	
.....													
TOTAL IB			<u>3.300.000</u>	3,300,000	3,000,000	94.6	172.500	5.4	172.500	0		127.500	
TOTAL INV			-										
TOTAL PROJECT			<u>3.300.000</u>	3.300.000	3.000.000	94.6	172.500	5.4	172.500	0		127.500	

5. Indicative Implementation Schedule (periods broken down per quarter)

Contracts	Start of Tendering	Signature of contract	Contract Completion
Direct Grant Contract		Q1 2009	Q2 2011

Duration of the project: 30 months

1. Final payment: 3 years following the end date for contracting
2. Completion of activities: 2 years following the end date for contracting

All projects should in principle be ready for tendering in the 1ST Quarter following the signature of the FA

6. Cross cutting issues (where applicable)

6.1 Equal Opportunity

Participation in this project will be open to both males and females involved in the sector. Records of professionals' participation in all project-related activities will reflect this and will be kept with the project documentation.

6.2 Environment

N/A

6.3 Minority and vulnerable groups

According to the Turkish Constitutional System, the word minorities encompass only groups of persons defined and recognised as such on the basis of multilateral or bilateral instruments to which Turkey is a party. This project has no negative impact on minority and vulnerable groups. The project will apply the policy of equal opportunities for all groups including vulnerable groups. Programmes and workshops will be held in buildings where access to buildings for handicapped people is possible.

ANNEXES

- 1- Logframe in Standard Format
- 2- Amounts contracted and Disbursed per Quarter over the full duration of Programme
- 3- Reference to institutional framework
- 4- Reference to laws, regulations and strategic documents:
Reference list of relevant laws and regulations
- 5- Details per EU funded contract (*) where applicable:
For *TA contracts*: account of tasks expected from the contractor
For *twinning covenants*: account of tasks expected from the team leader, resident twinning advisor and short term experts
For *grants schemes*: account of components of the schemes
For *investment contracts*: reference list of feasibility study as well as technical specifications and cost price schedule + section to be filled in on investment criteria (**)
For *works contracts*: reference list of feasibility study for the *constructing works* part of the contract as well as a section on investment criteria (**); account of services to be carried out for the *service part* of the contract

(*) non standard aspects (in case of derogation to PRAG) also to be specified

(**) section on investment criteria (applicable to all infrastructure contracts and constructing works):

- Rate of return
- Co financing
- compliance with state aids provisions
- Ownership of assets (current and after project completion)

Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

ANNEX 1: Logical framework matrix in standard format

LOGFRAME PLANNING MATRIX FOR Project Fiche for		Programme name and number	
Enhancing the Role of the Supreme Judicial Authorities in respect of European standards		Contracting period expires 2 years after the signature of the Financial Agreement	Disbursement period expires 3 years after end date for contracting
		Total budget : 3.300.000	IPA budget:3.000.000
Overall objective	Performance indicators	Sources of Verification	
To contribute to the enhancing of the role of the superior judiciary in Turkey in initiating new changes in the normative framework and its implementation in line with the acquis, the rights and freedoms guaranteed by the ECHR, the provisions of the ESC and other European standards shared by the EC and the CoE through its interpretative decisions.	The capacity of the beneficiaries to contribute to the inclusion of the acquis, the ECHR and the ESC within the higher courts' decisions is increased.	<p>Evaluation of the EU Regular Report on Turkey's progress towards accession</p> <p>Evaluation of the progress in the implementation of the Turkish National Programme for the adoption of the Acquis.</p>	
Expected result 1			Assumptions
Greater awareness of the members of the beneficiary institutions on the EU institutions, their decision	To reinforce the capacity of the High Council of Judges and Prosecutors and of the Higher Courts (Constitutional Court,	EU Commission's: - Regular Reports, -Advisory Visit Reports on	Continued political support for the reform of the justice system of the Republic of Turkey

Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

<p>making processes and the <i>acquis</i>, as well as on the implications of Article 90 of the Turkish Constitution, the ECHR, the case-law of the ECtHR and the execution of the ECtHR's judgments, and the ESC</p>	<p>Court of Cassation and State Council) as superior judicial authorities to apply correctly the <i>acquis</i>, the rights and freedoms guaranteed by the ECHR and provisions of the ESC, with a view to the fulfilment of EU membership conditions.</p> <p>Establishment of relations between the High Council of Judges and Prosecutors and the Higher Courts on specific human rights and rule of law issues, common concerns and identification of best practices.</p> <p>New approaches and practices, evidenced by the case-law, the supervisory decisions and other judicial outputs, with a view to successfully meeting Turkey's international obligations.</p>	<p>Functioning of the Judicial</p>	
	<p>References to the ECtHR case-law, the ESC and the EU <i>acquis</i> in the higher courts' decisions increase.</p>	<ul style="list-style-type: none"> -Periodical Evaluation Reports -In-depth Assessment Reports -Advisory Visit Reports -Monitoring Reports - Case-law 	<p>Sustained support for project by the beneficiary Institutions</p> <p>Active involvement commitment of the participants</p> <p>Availability of experts</p> <p>Availability of host countries</p>

Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

<p>Activities</p> <p>1- 207 members of the High Council of Judges and Prosecutors, the Constitutional Court, the Court of Cassation and the Council of State to participate in round tables on the ECHR and the ESC.</p> <p>2- 10 Study Visits (207 people in total) from the beneficiaries to the CoE and the ECtHR to have meetings with the Secretariat thereof and to institutions exercising similar tasks in other European countries and 4 study visits for 4 Project representatives to the EU institutions</p> <p>3- Conferences in Turkey with the participation of representatives and experts of the beneficiary institutions, the EU, the CoE and EU/CoE Member States</p>			
<p>Expected result 2</p>	<p>Performance indicators</p>	<p>Sources of Verification</p>	<p>Assumptions</p>
	<p>Inter-institutional relations between the</p>	<p>EU Commission's:</p>	<p>Continued political support for the</p>

Enhancing the Role of the Supreme Judicial Authorities in respect of European standards
FINAL 03.09.2008

<p>To promote the co-operation of the High Council of Judges and Prosecutors and of the Higher Courts (Constitutional Court, Court of Cassation and State Council) as superior judicial authorities with equivalent European institutions.</p>	<p>beneficiaries and their equivalent European counterparts on specific human rights and rule of law issues, common concerns and identification of best practices result in new approaches and practices with a view to successfully meeting Turkey's international obligations.</p>	<ul style="list-style-type: none"> - Regular Reports, - Advisory Visit Reports on Functioning of the Judicial 	<p>reform of the justice system of the Republic of Turkey</p>
	<p>References to the decisions of similar instances of other EU/CoE Member States in the higher courts' decisions increase.</p>	<ul style="list-style-type: none"> -Periodical Evaluation Reports -In-depth Assessment Reports -Advisory Visit Reports -Monitoring Reports - Case-law 	<p>Sustained support for project by the beneficiary Institutions</p> <p>Active involvement commitment of the participants</p> <p>Availability of experts</p> <p>Availability of host institutions</p>
<p>Activities Placement of 32 persons from the beneficiaries (6 from the constitutional court, 13 from the Court of Cassation and 13 from the Council of State) in EU and CoE institutions</p>	<p>Means Direct Grant Contract</p>	<p>Costs 3.300.000</p>	<p>Assumptions</p>