



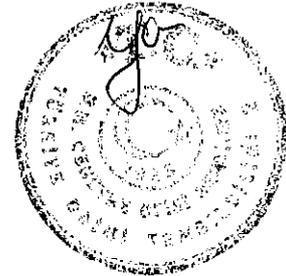
PERMANENT MISSION OF TURKEY
TO THE UNITED NATIONS
GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office at Geneva and other international organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Special Rapporteur on the independence of judges and lawyers Ms. Gabriela Knaul's letter dated 21 February 2014 (ref: AL G/SO 214 [3-3-16] TUR 1/2014), has the honour to transmit herewith an informative note obtained from the relevant Turkish authorities, regarding the allegations of interference and intimidation against members of the justice system, in particular judges and prosecutors, who have been investigating corruption cases.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 26 March 2014



Encl: As stated

Office of the High Commissioner for Human Rights
Palais Wilson
Geneva

1) Are the facts alleged in the above summary of the case accurate?

The allegations stated in the allegation letter sent by Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers are in part based on inaccurate and incomplete information. This is due to taking into account the initial version of the draft Law on the High Council of Judges and Prosecutors submitted to the Turkish Grand National Assembly instead of its latest version with the amendments made to the text by the Justice Commission and the General Assembly of the Parliament.

The allegation that the Minister of Justice filed a complaint against police officers and prosecutors in charge of the investigations is false. The Third Chamber of the High Council of Judges and Prosecutors initiated an investigation *ex officio* against some of the prosecutors. The Minister of Justice granted permission for investigation under Article 82 of the Law no. 2802 on Judges and Public Prosecutors.

Furthermore, it is also out of question that the Chief Public Prosecutor of İstanbul was pressured to terminate the corruption investigation. These allegations were refuted by the Minister of Justice on 28 December 2013. In addition, as per Article 18 of the Law no. 5235 on the Establishment, Duties and Competences of the Civil Courts of First Instance and the Regional Courts of Appeal, the distribution of tasks among the public prosecutors serving in a location lies with the chief public prosecutor of that location, who is entitled to take necessary measures in order to ensure the performance of tasks in a more efficient, harmonious, and organized manner. The reassignments in the course of investigation must be evaluated within this framework.

It should be noted that the information indicating that 115 prosecutors and judges serving at the İstanbul Courthouse were reassigned due to the corruption investigations does not reflect the truth. Judges and public prosecutors are appointed within the framework of the principles adopted by the “By-Law on Appointment and Transfer of Judges and Public Prosecutors” and the leading decisions issued annually by the First Chamber of the High Council of Judges and Prosecutors. The factors taken into consideration for the appointments include the requests of the persons concerned, terms of office in the relevant location, excuses, registration status, promotions, Performance Evaluation and Improvement Report issued by the inspectors and requirements of the service.

Furthermore, Article 35 § 5 of the Law no. 2802 on Judges and Prosecutors, providing that “without regard to fulfilment of the term of service in a region and to the length of service in the profession, judges and prosecutors who have been proven, by documents, to have become unsuccessful in their regions and to have failed to satisfy the requirements of the office may be appointed to another region or to a location equivalent to the one where they currently serve” and also Article 4 § 5 of the By-Law, which includes a similar provision, constitute the legal bases for the reassignment of judges and public prosecutors.

The decree dated 16.01.2014 and numbered 126, which was issued by the First Chamber of the High Council of Judges and Prosecutors, ordered the reassignment of 20 judges and public prosecutors, 3 of which due to excuses & upon request, 10 of which in view of the requirements of the service & *ex officio*, and 7 of which in view of the requirements of the service & based on personnel requirements.

The decree dated 21.01.2014 and numbered 159, which was issued by the First Chamber of the High Council of Judges and Prosecutors, ordered the reassignment of 79 civil judges and public prosecutors, 60 of which due to excuses & upon request, 9 of which in view of the requirements of the service & *ex officio*, and 10 of which in view of the requirements of the service & based on personnel requirements.

The decree dated 11.02.2014 and numbered 340, which was issued by the First Chamber of the High Council of Judges and Prosecutors, ordered the reassignment of 123 civil judges and public prosecutors, 117 of which due to excuses & upon request, 2 of which in view of the requirements of the service & *ex officio*, and 4 of which in view of the requirements of the service & based on personnel requirements.

Consequently, out of 222 civil judges and public prosecutors, in total, who were reassigned pursuant to three decrees;

180 were appointed to the requested locations in consideration of their requests and excuses,

21 were appointed *ex officio* to locations considered appropriate in view of the requirements of the service,

21 were appointed in order to fill vacancies arising from the above-mentioned appointments.

The following cases may be given as concrete examples for the situation of 21 judges and public prosecutors, who were reassigned without their request, pursuant to the aforementioned provisions,

As indicated in detail in the information note drawn up by the relevant inspector;

Having stated on 24 December 2013 that he had still not fully examined the file about which the chief public prosecutor requested information, the public prosecutor concerned submitted the police report consisting of 1005 pages to the court at 9.30 a.m. on 24 December 2013, without even opening the seals of eleven bags containing the investigation documents and transcripts of telephone conversations, and requested the court to order arrest, detention, and confiscation of the assets of the related companies, and

The letter of request for confiscation of the assets of a number of suspects was sent via National Judiciary Informatics System (UYAP) at 9.23 a.m. on 25 December 2013 and it was received at 10.30 a.m. by the office of the judge assigned under Article 10 of the Prevention of Terrorism Act. Then an order of confiscation of all the assets of the suspects and companies concerned was issued at 11.00 a.m., namely within half an hour after the receipt of the letter of request via UYAP, without offering any justification, in a way that would create the impression that no examination was made on such an extensive file and that would amount to an overall confiscation and bear responsibility in this regard.

Under these circumstances, due to the allegations that both the public prosecutor carrying out the investigation in question and the judge ordering confiscation of the assets had acted in a way that would lead to very serious grievances and engage their responsibility, without conducting sufficient and necessary examination and investigation, one public prosecutor was reassigned *ex officio* and the jurisdiction of one judge vested under Article 10 of the Prevention of Terrorism Act was lifted.

Moreover, one deputy chief public prosecutor was also reassigned on the grounds that it was revealed to the public that he had gone on a holiday where the relevant costs incurred had been covered by a businessman, and due to the fact that his failure to submit the invoices indicating that the costs of the holiday in question had been paid by himself did not comply with the requirements of his profession.

Apart from those in the above-mentioned examples, a number of judges and public prosecutors were also reassigned in view of the requirements of the service & *ex officio* and without request, since similar allegations were also raised against them, which made such reassignments absolutely necessary.

Furthermore, some of the powers vested in the Minister of Justice, as the President of the High Council of Judges and Prosecutors, by the law on the High Council of Judges and Prosecutors are not explained accurately in the allegation letter. Namely;

1- The allegation that the role of the Minister of Justice would be expanded over the election of members of the High Council of Judges and Prosecutors and the functioning of the Justice Academy:

Article 159 of the Constitution sets down the rules governing the election and qualifications of the members of the High Council of Judges and Prosecutors. Accordingly, three members shall be appointed by the General Assembly of the Court of Cassation; two members shall be appointed by the General Assembly of the Council of State; one member shall be appointed by the General Assembly of the Turkish Justice Academy ; seven members shall be appointed by civil judges and public prosecutors from among those who are first category judges; three members shall be appointed by administrative judges and public prosecutors from among those who are first category judges; four members shall be appointed by the President of the Republic. The Minister of Justice is the President of the Council; the Undersecretary to the Ministry of Justice shall be an *ex-officio* member of the Council.

The Law no. 6087 on the High Council of Judges and Public Prosecutors regulates the details regarding the election and qualifications of the members. No amendment related to the above mentioned issues has been made in the Law no. 6524. Therefore, the allegation that the role of the Minister of Justice as the President of the High Council of Judges and Prosecutors would be expanded over the election of members is not true.

The Law no. 4954 on the Turkish Justice Academy has been amended with the Law no. 6524. The organizational structure has been strengthened. In this context, the number of the deputy presidents has been increased to three and it has been set forth that the Academy shall perform its duties through the newly established six Chambers.

According to the Law no. 4954, the Turkish Justice Academy is “the relevant” institution of the Ministry of Justice. Therefore, it is natural that the Minister of Justice and the Ministry of Justice have a role in the functioning of the Academy. The aim of the amendment made with the Law no. 6524 is to strengthen the organizational structure of the Academy that assumes the duty of providing training for not only candidate judges and public prosecutors and judges and public prosecutors but also the other actors of the legal system, before and during the performance of their jobs and to perform these services effectively and efficiently.

2- The Minister of Justice’s power to appoint the Head and the Deputy Head of the Inspection Board, as well as the Deputy Secretary General:

It is true that the power to appoint the Head and the Deputy Head of the Inspection Board, as well as the Deputy Secretary General has been vested by the Law no. 6524 in the President of the High Council of Judges and Prosecutors. This power was initially used by the General Assembly of the High Council of Judges and Prosecutors (hereinafter the “General Assembly”).

According to Article 159 of the Constitution, the administration and representation of the Council are carried out by the President of the Council. Having regard to this Article of the Constitution, the President of the Council has the power to appoint the Deputy Secretary General. The reporter judges to be assigned in the Council shall be appointed by the General Assembly from among the nominees determined by the First Chamber. With the amendment, composition and functioning of the Secretary of the Council in a balanced manner is intended and the powers related to this issue shall be shared by the President, the related Chamber and the General Assembly.

With the aim of composing and functioning of the Inspection Board in a balanced manner, the power to appoint the President of the Inspection Board and deputy presidents has been vested in the President of the Council. The General Assembly keeps its power under the provision of the Constitution to appoint the Council Inspectors. The power to nominate has been vested in the First Chamber in order to share the power of appointment in a balanced manner. Prior to the amendment made to the law, the Chamber did not have the power to appoint inspectors.

With this amendment, it is intended to provide internal inspection among the President, the relevant Chamber and the General Assembly that are the bodies of the Council in the

composition of the Secretary General and the Presidency of the Inspection Board which are the service units of the Council and thus to materialize the principle of control and inspection.

3- The allegation that the Ministry of Justice would be empowered to initiate and decide on disciplinary action, including criminal investigations against Council members:

The Constitution does not regulate disciplinary actions against the Council members, nor personal offences and the offences related to their duties, and left these issues to the law. It is useful to examine both issues separately:

With the Law no. 6524, the power to initiate disciplinary action against the Council members has been vested in the President of the Council. Prior to the amendment, the General Assembly had this power.

The fact that the General Assembly inspects its own members in terms of disciplinary matters, in fact, means self-inspection. In such rare cases, judicial independence requires the Council to fulfil its duties. As the General Assembly is the decision making body with regard to the discipline issue, the aim is to settle the question of by which organ the disciplinary actions shall be initiated. With the amendment, the power to initiate disciplinary action against the Council members has been vested in the President of the Council. Once a disciplinary action is initiated, the General Assembly has the power to carry out the necessary proceedings and render a final decision on disciplinary action against the Council members as it previously had before the Law no. 6524. The allegations that the President of the Council would decide on disciplinary action against the Council members is not true.

In parallel with this regulation, the power to initiate the procedures for permission for instigation of criminal investigation concerning the Council members' personal offences and offences related to their duties has been vested in the President of the Council. The General Assembly has the power to carry out the subsequent procedure and give permission for prosecution as it previously had.

The President of the Council's power to initiate the procedures for disciplinary action and permission for instigation of criminal investigation cannot be considered to constitute an interference with the judicial independence. This regulation, which guarantees that the Council members should be bound by the law while performing their duties, is a necessity of the principle of allegiance to law. The power to decide on disciplinary action against Council

members has been vested in the General Assembly while the power to decide on criminal investigation has been vested in the Constitutional Court acting as the Supreme Court or the Court of Cassation, which is a legal guarantee granted to the Council Members.

4- The allegation that the Minister of Justice would be able to prepare the agenda of meetings of the High Council:

The procedure for preparing the agenda of meetings of the Chambers that are the organs of the Council and the General Assembly has been regulated by the Law no. 6087.

The power to prepare the agenda of meetings of the Chambers has been vested in the president of the related Chamber under Article 30 § 4 of the Law no. 6087. The President of the Council does not have a power as such.

The power to prepare the agenda of the meetings of the General Assembly has been vested in the President of the Council under Article 29 of the Law 6087. The only amendment made related to this issue with the Law no. 6524 has been to abolish the obligation to receive the opinion of the Deputy President while preparing the agenda of the meetings of the General Assembly.

Changing the agenda of the meetings of the General Assembly depends on the request of any member and absolute majority of the votes of the total member number of the General Assembly. The only amendment made related to this issue with the Law no. 6524 has been to impose the obligation to submit a written request to change the agenda of the meeting a day prior to the meeting.

5- The allegation that the Minister of Justice would be able to decide on the allocation of Council Members among the Chambers;

An arrangement regarding the determination of the Chambers where the members perform their duties has been introduced by the Law no. 6524.

The Council comprises three Chambers under Article 159 of the Constitution. Formation of the Chambers and the division of labour between Chambers are regulated by laws. According to the Law no. 6087, Chambers are composed of seven members. Article 8 § 1 of the Law no. 6087 sets out the sources from which the first, second and third Chambers are composed of. Accordingly;

The First Chamber of the Council is composed of seven members: the Undersecretary of the Ministry of Justice, one member elected from the Court of Cassation, three members elected from among the judges and prosecutors working at civil and criminal courts, one member elected from among the judges and prosecutors working at administrative courts, and one member assigned by the President of the Republic.

The Second Chamber of the Council is composed of seven members: one member elected from the Council of State, one member elected from the Court of Cassation, two members elected from among the judges and prosecutors working at civil and criminal courts, one member elected from among the judges and prosecutors working at administrative courts, and two members assigned by the President of the Republic.

The Third Chamber of the Council are composed of seven members: one member elected from the Court of Cassation, one member elected from the Council of State, one member elected by the General Assembly of the Turkish Justice Academy, two members elected from among the judges and prosecutors working at civil and criminal courts, one member elected from among the judges and prosecutors working at administrative courts, and one member assigned by the President of the Republic.

There is no amendment made in the above-mentioned provision.

Article 8 § 2 of the Law stated that the authority to determine the place of duty of these members was vested in the General Assembly. With the amendment by the Law no. 6524, this power has been granted to the President of the Council. The President of the Council, like the General Assembly, decides on the Chamber that the members perform their duty in accordance with the principles in Article 8 § 1. The President of the Council is not given the power to appoint a member to a Chamber arbitrarily and without abiding by any principle. In this respect, all of the members assigned by the President of the Republic or all of the members elected by the civil judges and prosecutors shall not be appointed to the same Chamber. As the sources and the qualifications of the members of the Council are determined by the Constitution, the composition cannot be amended by law. The Law no. 6524, introduces an amendment only regarding the procedure of determining the Chambers that the members perform their duties. It should also be noted that there is no superiority among the Chambers which do not have judicial activities but perform administrative functions as well as among the members of the Chambers.

6- The allegation that the president of each Chamber, the reporter judges and the inspectors would be recommended by the Minister of Justice and appointed by the General Assembly.

This allegation does not reflect the truth. The Constitution ensures that the Council elects the presidents of each Chamber among its own members. The provision of Article 8 § 3 of the Law no. 6087 which states “The General Assembly shall elect a member among the members of each Chamber as the president of that Chamber” has been amended by the law no. 6524 to read as follows: “the presidents of Chambers shall be elected by the General Assembly among two members determined by an absolute majority of the total number of the members in each of the Chambers”. Therefore, the allegation that the Minister of Justice as the President of the Council nominates the candidates for the presidents of the Chambers is out of the question.

Article 159 of the Constitution ensures that the reporter judges and inspectors of the Council are appointed by the Council. The Law no. 6087 regulates that the Council exercises this power through the General Assembly. With the amendment by the Law no. 6524, the First Chamber of the Council is empowered to nominate candidates in the appointment of both reporter judges and inspectors of the Council. Accordingly, candidates more than twice the number of vacant positions are presented to the General Assembly by the First Chamber and the General Assembly appoints the reporter judges and inspectors of the Council among these candidates. Because the First Chamber of the Council has the duty and power to appoint and transfer the judges and prosecutors under Article 9 § 1 of the Law no. 6087, and the personal files of the judges and prosecutors are under the responsibility of the First Chamber, the power to nominate candidates in the appointment of the reporter judges and inspectors to the Council has been granted to this Chamber. Therefore the allegation that the Minister of Justice as the President of the Council nominates candidates in the appointment of the reporter judges and inspectors to the Council is groundless.

7-The allegation that the staff of the Council would be appointed by the Minister of Justice:

There is no provision in the Constitution regarding the appointment of the administrative staff of the High Council of Judges and Prosecutors. Article 13 of the Law no. 6087 states that the administrative staff is appointed by the Deputy President upon a proposal by the Secretary-General.

According to Article 159 of the Constitution, administration and representation of the Council are carried out by the President of the Council. Accordingly, the staff is appointed by the President of the Council.

8. The allegation that the Head of the Inspection Board would be liable to the Minister of Justice:

Prior to the amendment made by the Law No.6524, the Inspection Board performed its duties under the supervision of the President of the Third Chamber, and the Head of the Inspection Board was responsible to the Council. With the amendment, it is provided that the Inspection Board performs its duties under the supervision of the President of the Council, and the Head of the Inspection Board performs its duties, being responsible to the President of the Council.

This arrangement has been made due to practical necessities that was ongoing for more than three years. The fact that the Inspection Board was responsible to all members of the Council had consequences that would impede the performance of proper inspection, examination, review and investigation, in respect of the judges and prosecutors by the inspectors of the Board. Moreover, ten members of the Council are elected by the judges and public prosecutors working at civil and administrative courts of first instance and the members are likely to be elected once more after the expiry of their terms of office. Therefore, an objective and proper inspection and investigation could not be carried out in respect of the judges and prosecutors, who have voted for or are likely to vote at the next election for the members of the Council, by the Inspection Board, which have responsibility to these members. This arrangement has been made in order to provide that the Inspection Board performs its duty effectively and efficiently.

Under the Constitution, it is impossible for the President of the Council *ex officio* to prompt the Inspection Board regarding the inspection, examination, review and investigation in respect of the judges and prosecutors. This can be realized upon a proposal by the Third Chamber. The authority of the President of the Council has a dependent and indirect nature. Furthermore, the President of the Council has no role in the appointment of the Council's inspectors which are appointed by the General Assembly among the candidates presented by the First Chamber. The fact that the Inspection Board performs its duties under the supervision of the President of the Council and that the Head of the Inspection Board

performs its duties, being responsible to the President of the Council is not incompatible with the principle of independence of courts.

It should be noted that the “grading procedure” applied by the high courts in the judicial review of the decisions of judges and prosecutors was abolished. Therefore, in the course of judicial review of decisions, no assessment can be made in respect of the judges and prosecutors who do not act diligently and properly in delivering their decisions. It is a known fact that there are complaints raised on every platform, stating that although a great majority of judges and prosecutors were granted “distinguished” promotion, justice could still not be secured in the decisions rendered, the case-files could not be concluded within a reasonable time and the public confidence in the judiciary has thus diminished. In this respect, the law amendment is intended for ensuring the composition of the Inspection Board in a more balanced manner, guaranteeing the effective performance of supervisory functions, and thereby increasing public confidence in the judiciary and it has introduced a rule that requires distribution of powers in this regard among the President, the relevant Chamber, and the General Assembly.

2) Please indicate how the law related to the High Council of Judges and prosecutors respects international principles, including the aforementioned standards, on the independence of the judiciary and the role of prosecutors. Please explain in particular how the new functions of the Minister of Justice in the High Council of Judges and Prosecutors will guarantee the independence of this institution.

The Government is of the opinion that the amendments introduced by the Law no. 6524 do not contradict with the principle of independence of the judiciary as stressed in the international instruments. Rather, these amendments comply with the principles of the rule of law, independence of courts, and tenure of judges. Furthermore, the amendments include provisions strengthening the concept of separation of powers with a view to developing a democratic system based on supervision and balance.

3) Please provide details about the current situation of the judges and prosecutors removed from their duties or relocated to other posts.

The judges and public prosecutors that had been assigned in the abovementioned investigation and were relocated to other posts by the High Council of Judges and Prosecutors continue to work in their new places of duty.

4) Please indicate which measures have been taken to ensure the independence of the justice system, prevent undue interference, pressure, threats and intimidations against judges and prosecutors and other members of the judiciary, and punish the perpetrators of any such interference.

The High Council of Judges and Prosecutors performs its functions in accordance with the principles of the independence of courts and the security of tenure of judges. The Council strictly complies with the democratic procedures which provide that the Minister of Justice shall not attend the meetings of the Chambers and the General Assembly concerning disciplinary matters with a view to maintaining the independence of the judiciary, that the Minister of Justice has only one vote like other members during the meetings which s/he is allowed to attend, that the Undersecretary of the Ministry of Justice shall not be elected as the president of a Chamber, and that decisions shall be taken by an absolute majority of the total number of members during the meetings of the Chambers and the General Assembly.