



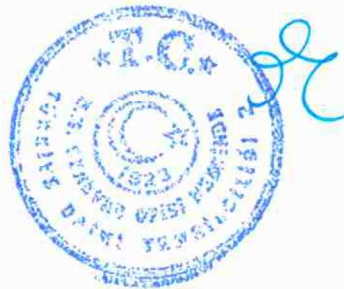
MISSION PERMANENTE DE LA RÉPUBLIQUE DE TURQUIE
AUPRÈS DE L'OFFICE DES NATIONS UNIES À GENÈVE

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La Mission Permanente de la République de Turquie auprès de l'Office des Nations Unies à Genève et d'autres organisations internationales en Suisse présentent ses compliments au Haut-Commissariat aux droits de l'homme et se référant à la communication transmise par Monsieur Diego García-Sayán, Rapporteur spécial sur l'indépendance des juges et des avocats, datée du 14 septembre 2020 (REF: OL TUR 15/2020), a l'honneur de joindre à la présente une note d'information fournie par les autorités compétentes turques, en réponse à la demande d'informations énoncée dans la communication susmentionnée.

La Mission permanente de la République de Turquie saisit cette occasion pour renouveler au Haut-Commissariat aux droits de l'homme les assurances de sa plus haute considération.

Genève, 08 octobre 2020



Encl: comme indiqué

Bureau du Haut-Commissaire aux droits de l'homme
Palais des Nations
1211 Genève 10

**INFORMATION NOTE IN REPLY TO THE COMMUNICATION FROM
THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND
LAWYERS DATED 14 SEPTEMBER 2020 (OL TUR 15/2020)**

Observations regarding the new structure of the Council of Judges and Prosecutors

1. The new structure of the Council of Judges and Prosecutors (“the CJP” or “the Council”) was introduced with amendments to the Constitution after a Constitutional referendum held in 16 April 2017. The changes introduced by Law No. 6771 are related to the number of members as well as the methods of work and election of the CJP.

The aim of these amendments was to prevent the judiciary from being politicized, to prevent its re-seizure by unlawful/terrorist organizations with ulterior motives¹ and to increase the effectiveness of the Parliament in the selection of members of the CJP in line with the recommendation of the Venice Commission in 2010.

2. These changes do not bring any amendments that may undermine CJP’s independence from the legislative or executive branches of the Government. No changes were made regarding the duties and powers of the institution or to its organizational structure apart from the decrease (from three to two) in the number of its chambers.

3. As a result of the amendment, the number of members of the CJP has been decreased from 22 to 13. Accordingly, the CJP is currently composed of four members selected by the President of the Republic, seven members appointed by the Parliament, as well as the Minister of Justice and his Deputy Minister.

4. The President of the CJP is the Minister of Justice. However, this is, to a large extent, a symbolic duty. Both the Constitution and Law No. 6087 on the Council of Judges and Prosecutors maintained the provisions which state that the Minister of

¹ With the Constitutional amendment made in 2010 regarding the organization and the structure of the High Council of Judges and Prosecutors (HCJP), the system was revised in such a way that the vast majority of its members were to be elected by judges and prosecutors serving in first instance courts. This situation led to the emergence of competition and, thus, political, religious and ethnic sub-identities became visible which in turn resulted in the erosion of trust in the judiciary as well as damaging of the working culture of the judiciary. The members of the Fetullahist Terrorist Organization (FETO) secretly seized the majority of the members of the HCJP by exploiting this system and FETO used the judiciary as a tool to seize all state organs. FETO, later on, perpetrated the bloody coup attempt on the night of 15 July 2016 that cost the lives of 251 Turkish citizens and injured 2.194 persons.

Justice, in his capacity of the President of the Council, cannot participate in chamber meetings and meetings of the Plenary Session related to disciplinary proceedings.

It is also important to stress that the ministers of justice serve as the president of equivalent institutions in a number of European Union (EU) and Council of Europe (CoE) member states.

5. As a result of the amendment to Article 159 of the Constitution, seven out of thirteen members of the CJP are elected by the Parliament. Accordingly, the Parliament is entitled to select three members from the Court of Cassation, one member from the Council of State and three members from among academics and lawyers. It should be stressed that members of the Court of Cassation and the Council of State have applied on their initiative to the Parliament in order to stand for election as members of the CJP. Thus, the Parliament has elected the members of the CJP among these candidates.

The increase of the role of the Parliament regarding the selection process is in line with European standards and, especially, with the recommendation of the Venice Commission in 2010.

6. Regarding the remaining four members of the CJP, three of them are selected among judges and prosecutors in civil and criminal jurisdictions and one member is selected among administrative judges and prosecutors by the President of the Republic. The fact that the President of the Republic can select a limited number of members of the CJP does not affect the independence of the judiciary. Similar practices exist also in other democratic countries.

7. Consequently, nine out of thirteen members (i.e. more than 2/3) of the CJP are judges and prosecutors by profession, a ratio higher than of many EU and CoE member states.

8. The constitutional amendment maintained the provision of the Constitution which ensures that the CJP exercises its functions in accordance with the principles of independence of the courts and security of the tenure of judges.

Similarly, the Council's inspectors continue to be in charge of supervising whether the judges and public prosecutors perform their duties in accordance with laws and other regulations, investigating whether they have committed offences in connection with, or in the course of their duties, whether their behaviour and conduct are in conformity with requirement of their status and duties.

9. The CJP has also issued a "Declaration of Ethics for Turkish Judiciary" in 6 March 2019, determining the fundamental principles by which judges and prosecutors must carry out their duty. The Declaration defines the code of conduct for judges and prosecutors and draws attention both to the importance of independence and impartiality as well as to the importance of being regarded as such. The CJP monitors and ensures that the code of conduct is respected by judges and prosecutors. The Council is also the guarantor that judges and prosecutors can deliver judgments impartially and independently according to their conscience.

10. Turkey aims to further strengthen the independence, impartiality and transparency of the judiciary. In this respect, the Judicial Reform Strategy which was made public on 30 May 2019, has set out an objective regarding geographical guarantee for judges and prosecutors that prohibits their transfer without their will in certain conditions. The Strategy also includes new remedies that extend the rights of judges and prosecutors regarding discipline procedures as another objective.

11. In light of the explanations provided above, it is clear that the CJP continues to be the primary guarantor of the independence and impartiality of all judges and prosecutors in Turkey. Therefore, the Government argues that the allegations asserted by the Special Rapporteur regarding the lack of independence and impartiality of the Turkish judiciary are unfounded.