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(VENICE COMMISSION)

COMMENTS

ON THE DRAFT LAW ON THE HIGH COUNCIL FOR JUDGES AND PROSECUTORS OF TURKEY

by

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1. Introduction and scope of the study

The request from the Turkish Minster of Justice of 27th September 2010 to the Council of Europe calls for an assessment by the Venice Commission on the draft legislation that is being prepared in order to implement the constitutional reforms that were adopted with the referendum on the 12th September 2010. According to the request four draft laws are under preparation:

1. A law on the High Council of Judges and Public Prosecutors (HSYK)
2. A law on the Organisation of the Ministry of Justice
3. A law on Judges and Prosecutors
4. A law on the Constitutional Court.

So far only the first of these four drafts has been sent to the Venice Commission, on the High Council of Judges and Prosecutors (HSYK). The present opinion is therefore only on this. It must however be assessed within the context of the broader constitutional reform process, in which the draft law on the High Council is part of a broader reform package, which ties together with other elements.

The request from the Turkish authorities only asks for the opinion of the Venice Commission on the draft laws that are being prepared in order to implement the constitutional reforms of 2010, not on the new constitutional provisions themselves. However, when the Venice Commission is assessing the extent to which national law corresponds to European standards, it is not possible to draw a line between national constitutional and statutory law. Either the national rules are in compliance with European standards or they are not, regardless of which level of the legal hierarchy they are regulated at.

This is all the more clear when it comes to the Turkish reform of the High Council for Judges and Prosecutors, since the revised Article 159 of the Constitution now lays down the basic principles for this institution in some detail. The Draft Law is thus primarily a text which implements the principles already embodied in the Constitution, and makes them operational.

The present opinion must therefore necessarily cover both the new Article 159 and the Draft Law. Having said that, the Venice Commission should note that it is aware that the constitutional reform has already been adopted, and cannot at the moment be changed following our advice. However, this opinion should be seen as input in the broader and longer process of constitutional reform in Turkey, which will hopefully continue with further reforms being made in the years to come. For this reason the Venice Commission should also take the opportunity to give some more general comments on the ongoing constitutional reform processes in Turkey.

As for the Draft Law on the High Council of Judges and Prosecutors, the Venice Commission was in early October given a preliminary version dated 27th September 2010. This is the text on which our assessment has been based. We have later learned that this draft has now undergone some further revision, inter alia following the individual comments of the rapporteurs that were transmitted in November to the Turkish authorities, which have taken some of them into account and some not. Furthermore, the draft law is now in the Turkish Parliament, where it has passed the Committee on Legal Affairs and is awaiting adoption in the plenary, probably before the December 2010 session of the Venice Commission.

For this reason, it is in my view not now necessary or constructive for the Venice Commission to go into all the provisions and finer details of a statute that will already have been passed by parliament before we can adopt our formal opinion. Instead, our opinion should concentrate on issues that are of a more general interest and which raises questions of principle, with potential implications also for future revisions and reforms in the years to come.

2. European standards for judicial councils

Our report should start with a concise overview of the existing European standards on the independence of the judiciary in general and judicial "councils" in particular, citing the most relevant and important passages. Such an overview can be drafted by the secretariat, and the following are therefore just a few provisional remarks.

I think our opinion should be open on the fact that there is not much European hard law on the subject. There is Article 6 of the ECHR, which has been developed and interpreted in detail by the ECtHR, and which provides a legal basis for assessing whether national judicial structures and procedures satisfy requirements of fair trial. But the present request does not really raise questions with regard to Article 6, at least not as far as the national legal provisions are concerned, which is not to say that the application of the rules may not raise such questions in the future.

The basis for the following assessments is therefore of a soft law nature. Here, however, there are several important texts, which are of direct relevance for the present reform of the Turkish judicial structure, and to which the Turkish authorities have themselves repeatedly referred as standards for their reform.

The most relevant Council of Europe document is the brand new Recommendation No. (2010) 12 of 17th November 2010 on judges: independence, efficiency and responsibilities by the Committee of Ministers, which replaces the earlier Recommendation No. R (94) 12. As for relevant Venice Commission documents there are several, both reports of a general nature and opinions on national legislation. The two most important general studies are the Report on judicial appointments (CDL-AD(2007)028) and the recent Report on the independence of the judicial system, Part I: the independence of judges (CDL-AD(2010)004).

3. General comments on the constitutional reform process in Turkey

In recent years there has been increasing debate in Turkey on the question of a full constitutional reform, in order to replace the 1982 constitution with a new constitution more suitable for and better reflecting the modern democratic state that Turkey has become. In its 2007 Report on the prohibition of political parties in Turkey the Venice Commission stated its support for the idea of constitutional reform, and stands ready to assist with in such a process if called upon to do so.

Although there have attempts to launch a full constitutional reform process, this has so far not received the necessary political backing. Instead the government in March 2010 presented a partial reform package to parliament, which was put to the vote in May. The result was that none of the amendment proposals received the necessary 2/3 majority (367 votes) needed to pass directly, but all except one passed the threshold of a 60 % majority (330 votes) necessary to be put to a referendum. The only part to fail this threshold was the proposal to change Article 69 on prohibition of political parties. The rest of the reform package was approved by the President in May, and then submitted to a referendum set for the 12th September 2010. In July the Constitutional Court gave a ruling annulling a few elements in the package, but accepting the rest. The referendum process

then went ahead, with a heated political campaign process. On the 12th September the proposals were put to the voters, as a single package, with one yes/no alternative. Voter turnout was 74 % and the result was that 58 % voted in favor and 42 % against. The constitutional amendments then entered into force, although some of the changes need legislative implementation in order to become fully operational.

The constitutional reform package adopted consists of a number of different elements, involving revision of altogether 23 articles of the Turkish Constitution. Key elements are the reform of the judicial system (civilian and military), the introduction of an Ombudsman system, collective bargaining rights for public servants, positive discrimination for women, children and the elderly, and the lifting of protection for previous military coup leaders.

The most discussed and controversial element of the 2010 reform package was the issue of judicial reform. This involved a number of articles in the constitution, regulating inter alia the Constitutional Court, the High Council for Judges and Prosecutors, the relationship between military and civilian courts, and the administration of the judicial sector (articles 144, 145, 146, 147, 148, 149, 156, 157 and 159). The present opinion deals only with the changes made to Article 159, but it is important to note the context in which this provision has been revised.

The Venice Commission should in general support the recent constitutional reform package, as a clear step in the right direction. Having said that, the Venice Commission should note that there is still need for broader constitutional reform. In particular the Venice Commission should express regret that the government did not obtain the necessary qualified majority in parliament to amend the constitutional provisions on party prohibition in line with the Venice Commission criteria. It should be hoped that this reform initiative will be taken up again in the future.

The Venice Commission should note that the issue of constitutional reform has been very high on the political agenda in Turkey for years, and that it still attracts great political and public attention. To some extent this is good, and reflects the vibrant and dynamic democracy that Turkey has become. At the same time, the Venice Commission cannot help noting that Turkish society appears to be quite polarized on many of the most basic issues, with mutual suspicion on the part of the political parties involved. This is to be regretted. When contemplating broad constitutional reform a certain amount of broader consensus is desirable on the most fundamental principles for the organization of society. This element seems at the moment to be lacking in Turkey, although this is clearly not an inevitable situation.

It is not for the Venice Commission to take a position on who is to blame for the present polarization, which is anyway certainly a complex question. But the Venice Commission should call upon all the responsible parties to participate in a constructive manner. For the governing party this means a political and moral obligation to organize the future constitutional processes in a manner as inclusive and comprehensive as possible, taking into account the interest and arguments of the opposition, the civil society, NGOs and public opinion. For the opposition it means a corresponding political and moral obligation to participate constructively and with a view to the broader interest of society in reaching consensus on basic principles, so as to make the constitution a proper updated social contract for the whole of Turkish society.

4. The draft law on the High Council for Judges and Prosecutors

4.1. The system for organization of the judiciary in Turkey

In order to understand the new reform of the High Council for Judges and prosecutors, it is necessary to understand the general organization of the judiciary in Turkey, and in particular the system for qualification, appointment, transfer and dismissal of judges and prosecutors, as well as supervision, complaints, inspection and disciplinary measures. As compared to most other European countries, the system for this in Turkey is highly centralized, and also quite strict, with wide powers of supervision and inspection, and a large institutional framework. Combined with a certain tradition for politicizing the administration and control of the judiciary, this serves to explain why the issue of the composition and competences of the High Council is of such paramount importance not only to the Turkish judiciary itself but also to political and public life in general.

Under this system most aspects of the organization of judges and prosecutors have been handled directly by the authorities in Ankara, including qualification, appointments, transfers, dismissals, complaints, disciplinary actions, etcetera.

There can clearly be many reasons for the particular system of judicial organization and control in Turkey. One is a general Turkish tradition of strongly centralized administration and control, which applies to many sectors including the judiciary. Another is the fact that most Turkish courts do not have court presidents, with the same kind of supervisory and disciplinary powers as in many other European countries. Yet another factor may be that in Turkey there is yet no fully fledged system of courts of appeals, which in many other countries can hear also complaints against judges and judicial proceedings as part of their normal procedures.

In addition to these factors it seems clear that there has been strong political interest in keeping centralized control over judges and prosecutors, and that the High Council has traditionally had a more political function that what is usual for judicial councils of this kind in most other European countries. Thus the High Council has been able to control the appointment of judges and prosecutors, and also to initiate or block or otherwise influence controversial investigations and judicial proceedings. In recent years there appears to have been growing criticism of the way in which the High Council has functioned.

Up until the present reform the competences to administer and supervise the judiciary and prosecution service were to a large extent divided between the Ministry of Justice and the High Council of Judges and Prosecutors, with the Ministry itself responsible for many of the tasks. The 7-member High Council was also itself under considerable influence from the Ministry, with the Minster acting as president, with wide powers. The undersecretary was also an ex officio member, while the 5 other members coming from the two ordinary high courts, the Court of Cassation (3) and the Council of State (2).

This system has now been substantially reformed. The number of members of the High Council has been extended from 7 to 22 (with 12 substitutes), with a much broader and more pluralistic composition. The High Council has been given status as a separate and independent public legal entity, with its own budget, administrative staff and premises. Most of the relevant competences formerly belonging to the Ministry have been passed exclusively to the High Council as an independent institution (formally within the executive branch).

To understand the new changes, it is important to note that this is an *institutional* reform, which for the most part concerns the top layer of the judicial administrative structure in Turkey. It is the top management of the judicial administration that is being moved from

the Ministry of Justice and the old High Council to the much more independent and pluralistically composed new High Council.

The underlying administrative structure appears not to be much changed, except from the fact that it is moved formally and physically from the Ministry to the High Council. This includes the existing judge rapporteurs, the Inspection Board and the rest of the administrative staff.

The result is that the new High Council has been established as a strong and separate new institution not only in legal but also in actual terms. It is large, consisting of the 22 members (of which 20 full time), some 40 judge rapporteurs, the Inspection Board with approximately 160 inspectors (judges by training), and ordinary staff numbering around 380. Altogether this is now an institution with around 600 people, in a large 15-story building in central Ankara.

Seen from a political science perspective it is clear that the new institutionalization of the High Council will be at least as important for its future role and function as the formal rules. Much will depend on the institutional culture, dynamics and context, which is difficult to assess and predict from the outside. It is only to hope that it will develop in an independent, impartial, professional and efficient way.

As for the *substantive* side of the administration of the Turkish judiciary it appears that this is not formally changed by the recent reform. As far as the Venice Commission has been able to ascertain, the rules for appointing, transferring and removing judges and prosecutors are not substantially altered, and neither are the procedures for handling complaints and the wide powers of supervision and inspection of the judiciary. The interpretation and application of these competences may of course change under the leadership of new High Council, especially over time, but this is not in itself part of the formal revision. These wide powers raise some concerns, as further elaborated in section 4.5 below.

4.2. General observations on the new reform of the High Council

The new reform of the High Council is regulated in Article 159 of the Constitution, which has been totally revised. It is now a rather lengthy provision, which regulates all the basic principles of the new institution. The draft Law mainly implements these principles and makes them operational. Still it is a quite detailed piece of legislation, containing 49 articles divided into 6 parts.

When studying Article 159 and the Draft Law it is apparent that the Turkish authorities are familiar with the European standards laid down by the Committee of Ministers of the Council of Europe and by the Venice Commission in its earlier reports and opinions. The new Turkish draft reflects the criteria of the Venice Commission on a number of points, and should in general be welcomed as a substantive and definite step in the right direction. In particular, the Venice Commission should welcome:

- The broadening of the High Council from 7 to 22 members.
- The new pluralistic composition of the High Council, which ensures participation from all levels of the Turkish judiciary, with 10 of the members elected by the ordinary judges and prosecutors.
- The institutionalization of the High Council as a separate legal entity with public law status, administrative autonomy, and with its own budget, premises and staff.
- The wide transfer of power from the Ministry of Justice to the High Council, both as regards legal competences and staff and resources.

- The substantial reduction in the power and position of the Minister of Justice as President of the High Council.
- The creation of an internal appeal system, and the introduction of judicial review against those decisions still made by the President (Minister).

The Venice Commission should conclude that the new High Council for Judges and Prosecutors is formally a much more independent institution than the old one, and that the new system formally fulfills most European standards.

At the same time, the Venice Commission has noted that there is considerable controversy in Turkey as to whether the new High Council will in fact prove to be a more independent and impartial institution. The supporters of the reform, who extend far beyond the governing party, claim that it will. The critics however argue that the organization and election system has been designed and applied in such a way as to ensure that the ruling AK Party has taken over substantial influence of the Council, and thus "stormed the last bastion" of the Kemalists, making it their own. It is not the task of the Venice Commission to try to judge who is right or wrong on this issue, which is anyway difficult to assess from the outside, and which will have to be seen in the time to come. But the Venice Commission must nevertheless be aware of the underlying sensitivities and controversies when conducting its assessment of the legal provisions.

While most of the new rules on the High Council are clearly in line with European standards, there are some issues that still require attention, and which will be dealt with in the following.

4.3. Composition and elections of the High Council

Under the new system, the High Council is now composed of 22 members (with 12 substitutes). Two of these are the Minister of Justice and the Undersecretary, who sit ex officio. For the other 20 members their work on the High Council is a full-time occupation, and they no longer have formal ties to their original institutions. Of the 20 members, 4 are appointed by the President, 3 are elected by the Court of Cassation, 2 by the state Council, 1 from the Turkish Justice Academy, 7 are elected from the first class civilian judges and prosecutors and 3 from the first class administrative judges and prosecutors.

This composition means that the representation of the old 7-member High Council is kept, with 2 ex officio politicians from the Ministry of Justice, the 3 members from the Court of Cassation and the 2 from the State Council. But these are now supplemented by 15 more members, of which 10 (and 6 substitutes) are directly elected by the judges and prosecutors of Turkey.

The Venice Commission should in general welcome the new composition of the High Council, which ensures broad representation from a number of institutions, and which is in line with European standards.

On two points the Venice Commission may still voice some reservations as to the composition. One is the position of the Minister and the Undersecretary, as explained in the section below. The other is the fact that Parliament is not included in the processes for appointing members to the council. The Venice Commission should hold that it is advisable for high judicial councils to include members who are not themselves representatives of the judicial branch. But such members should preferably be appointed by the legislative branch, rather than the executive. The Venice Commission should therefore advise the Turkish authorities to reconsider whether the 4 positions that are now appointed by the President may not more suitable by appointed by Parliament, preferably

with a qualified majority, ensuring a process that will lead to representation of different political interests.

As regards the 10 members and 6 substitutes that were elected by the ordinary judges and prosecutors of Turkey, the Venice Commission should emphasize that rules on the election of judicial high councils like these should preferably be construed in such a way as to ensure that dominant majority interests do not get all the members and that minority interests also have a chance of representation. In the original proposal of the government for a new Article 159 it was stated that each voter could vote for only one candidate, which is a way of promoting a pluralistic composition. In its judgment of July 2010 the Constitutional Court however struck this down as unconstitutional, which meant that the voters instead voted for the total number of 10 plus 6 candidates.

The Venice Commission has not seen the reasoning for this judgment, which from an outside legal constitutional perspective is difficult to understand. The actual effect however appears to have been to open the way for a number of unofficial "lists" each with 16 nominees. Of these it is said to be the "list" endorsed by the governing party that won, with 60 % of the votes in an election in which altogether more than 11.000 judges and prosecutors participated. The list is also said to be relatively broadly composed, including persons not normally affiliated with the ruling party. However it also includes former high-ranking officials from the Ministry of Justice. Indeed, meeting in November 2010 with a group of seven of the new members of the Council, the delegation of the Venice Commission could not help noticing that the most active appeared to be the member who had until a month before been Deputy Undersecretary of the Ministry of Justice.

It is not for the Venice Commission to assess the outcome of the election of the High Council, but it should note that the process in itself has been controversial, which is regrettable for elections such as these. The Venice Commission might also state that the original electoral procedure proposed by the government would have been better in line with European standards.

For the future the most important thing is that the High Council is composed and functions in a way that ensures authority, confidence and legitimacy, both within the Turkish judiciary and in the public at large.

4.4. The position of the Minister on the High Council

One of the most controversial aspects of the reform is the continued presence of the Minister of Justice as ex officio President of the High Council, as well as the Undersecretary as ordinary member. This has been criticized by a number of commentators. At the same time, it should be noted that the formal competences and position of the Minister as President of the High Council have been radically diminished and circumscribed as compared to the previous system.

Under the new rules, the President (Minister) appears from a legal point of view to have mostly a ceremonial position, although he does retain some substantive powers, most notably with regard to the setting of the agenda, the appointment of the Secretary General and the fact that he has to approve all investigations proposed by the relevant body of the council (the 3rd Chamber), which in effect gives him the power of veto over investigations of judges and prosecutors.

The Venice Commission should first and foremost welcome the sharply reduced role of the Minister and Undersecretary as a substantial improvement compared to the earlier system. At the same time the continued ex officio presence of two leading politicians of the executive branch on the Council is not unproblematic. According to Opinion No. 10 of

the Consultative Council of European Judges (the CCJE) the executive should not be represented on judicial councils. The Venice Commission, however, has taken the more nuanced position that such representation is not necessarily in principle illegitimate as long as it does not threaten the independence and legitimacy of the council. In its recent Rec(2010)12 the Committee of Ministers of the Council of Europe stated that judicial councils must be independent bodies, demonstrating the highest degree of transparency, which serve to safeguard the independence of the judiciary.

On this basis I suggest that the Venice Commission should at the present stage not declare itself against the membership of the Minister and the Undersecretary as a matter of principle. The Commission should however stress that the real test lies in the actual functioning of this arrangement in the time to come. If the position of the two members of the government is used as a basis for exerting undue pressure and influence on the functioning of the High Council then the model should be reconsidered, and if necessary changed in the next phase of constitutional reform.

As for the substantive powers of the President (Minister) the Venice Commission should advocate that the competence to set the agenda for plenary meetings should be altered so as to give more power also to the Vice President. In meetings with the Ministry of Justice in November 2010 the delegation from the Venice Commission was given to understand that such a change would probably be put into the draft law before its adoption, and if so this is to be welcomed.

As for the power of veto of the President (Minister) over proposals for investigations by the competent body of the High Council (the 3rd Chamber), the Venice Commission could note that the legitimacy of this arrangement will depend on how it is exercised. The idea of giving a certain influence over investigations to somebody who is politically accountable is in itself not necessarily a bad idea. However there is a clear possibility that such a competence for the Minister can also be misused in order to block legitimate investigations that are uncomfortable to the government. In many countries this threat would be countered by unwritten political norms and traditions, which would in effect make it politically impossible for a minister to interfere in legal proceedings of this kind. In Turkey the same cannot as yet be taken for granted. The way in which this competence is used in the time to come should therefore be closely followed, and if necessary reevaluated and reformed in the next constitutional revision.

It is stated in Article 159 of the Constitution and the draft law that the decision of the President (Minister) to approve or reject an investigation is subject to judicial review. There is no mentioning of how this review should be conducted, but the Venice Commission has been given to understand that it will be treated as an ordinary administrative decision, to be handled by the administrative court of first instance according to the ordinary general criteria for reviewing decisions. The case will probably have to be raised by the original complainant. How this will function in practice is difficult to assess from the outside, but the Venice Commission may note some concern as to whether such an arrangement is really sufficient to provide effective control and review of what is in effect a ministerial decision not to open an investigation proposed by the relevant Chamber of the High Council.

4.5. Inspection and supervisory powers of the High Council

The main concern of the Venice Commission with regard to the High Council for Judges and Prosecutors in Turkey should in my view not so much be with the institutional framework, which is now clearly improved, but with its *substantive* powers of supervision and control. These powers seem not to have been much changed in the reform, though

they are now to be exercised under the management of a more representative and pluralistic council, with higher legitimacy.

In a comparative perspective it is clear that the powers of the High Council to supervise and control the judges and prosecutors of Turkey is not only greater than in most other European countries but that they have also traditionally been interpreted and applied in practice so as to exert great influence also on core judicial and prosecutorial powers, in a politicized way that has been hugely controversial.

The core issue with regard to the future independence, efficiency and legitimacy of the Turkish judiciary is whether the recent institutional reform will lead to a change in the way the substantial powers of the High Council are used, or whether the tradition for political interference will be continued within the new framework.

From a legal perspective the crucial provision in this regard appears to be Article 17 of the Draft Law, which lays down the "Duties and Powers of the Council Inspectors". The general competence given in art 17 (1) is very wide, stating inter alia that the inspectors have the right and duty to "supervise whether judges and prosecutors perform their duties in compliance with laws, regulations, by-laws and circulars". This is then limited by art 17 (4), which states that the inspectors "performing in accordance with the principles of independence of the courts and tenure of judges cannot interfere with the judicial power and judicial discretion during inspections, cannot make recommendations and suggestions".

The Venice Commission should state that although the very wide powers of supervision in Article 17 (1) is in principle countered by 17 (4), it would be preferable to regulate the inspection powers in a more restricted and detailed manner, with greater precision and predictability. Pending such regulation, it is all the more important that Article 17 is interpreted and applied in a restrictive manner, which neither directly or indirectly infringes upon judicial independence.

4.6. The relationship between judges and prosecutors on the High Council

In the Turkish system the prosecution service is part of the judicial branch, and the High Council oversees both judges and prosecutors. There is no distinction between the two groups in Article 159 of the Constitution, and also very little distinction in the Draft Law. On this point I agree with those of the other rapporteurs who have pointed out that this may lead to problematic situations, both as regards the composition of the High Council and the Chambers, and as regards the procedures and substantive work of the institution. The Venice Commission should point this out, and emphasize that even in legal systems that place the prosecution service with the judiciary these are still two distinct and different functions, which should not be regulated in the same way in all respects.

The Turkish system at present does not reflect these differences, and should be reassessed in order to do so, both as regards organizational and substantive rules. One such reform might be to establish different Chambers within the High Council for judges and prosecutors respectively.

4.7. Other aspects

The elements mentioned so far are those on which I think it is most important for the Venice Commission to give an opinion. But there are several other aspects of the system laid down in Article 159 and the Draft Law that may be assessed, many of which are elaborated in the written comments of the other rapporteurs. Such issues include inter alia the relationship between articles 144 and 159 (two different inspection services), the

question of judicial review of the decisions of the high Council, and the very detailed provisions on the legal status and investigation of the members of the High Council themselves. I have not much to add on these issues, but I am of course fully comfortable with our opinion expanding on them.

5. Summary and conclusions

On this basis I suggest that the Venice Commission should welcome the 2010 constitutional reform process as a step in the right direction, in what should be seen as an ongoing process towards modernization of the Turkish Constitution. The Venice Commission should encourage the Turkish authorities to continue on the path of constitutional reform, and in doing so to broaden the process by inviting the active participation of the opposition parties, civil society, NGOs and the general public - in a process that should be as inclusive and transparent as possible.

As regards the reform of the High Council for Judges and Prosecutors, the Venice Commission should welcome the present procedural and institutional reform of Article 159 of the Constitution and the Draft Law as a clear improvement compared to the previous system. The reform is to be recommended on a number of points, including the transfer of competences from the Ministry to the High Council, the broadening of the composition of the High Council, the increased independence both in law and actual resources, and a number of other points.

However, there are still some elements of the system that the Venice Commission should advice the Turkish authorities to reconsidered, and which could be improved in future revisions of the law and preferably also of Article 159 of the Constitution. These include:

- A revision of the position of the executive in the High Council, through the ex officio membership of the Minister and the Undersecretary and the four members appointed by the president, which might be replaced by members appointed instead by the legislative branch.
- A revision of the very wide powers of inspection and supervision as laid down in Article 159 of the Constitution and Article 17 of the Law, in order to ensure that these do not infringe upon judicial independence
- A revision of the relationship between judges and prosecutors, taking into account their different functions and the need to distinguish procedurally between them as well as ensure that both categories are represented
- A revision of the rules and practices for election of Council members, which should be designed so as to ensure broad and pluralistic representation

The Venice Commission should also stress that the eventual success of the new High Council rests not only on the new legal provisions but even more on the way in which they are implemented and applied in the years to come. The considerable powers of the new High Council should be exercised in a manner as objective and impartial and professional as possible, so as to prove unfounded the criticism that the new system still remains under political control, and to ensure that the judiciary in Turkey is an organ for society at large and not only for the state.

Finally, the Venice Commission should also recommend that the Turkish authorities and legislator should not confine themselves to institutional reform, but should also revise and reform the *substance* of the strict and centralized system of judicial supervision and control. In particular it should be reconsidered to what extent there is need for the very wide powers of inspection, and steps should be taken to ensure that this supervision neither directly nor indirectly infringes the independence of the judiciary. Furthermore it

should be considered to what extent the very centralized system could in part be decentralized and made more flexible, leaving some supervisory tasks to the courts themselves as part of their ordinary work. In particular it should be considered whether to create a system of court presidents, with responsibility for the daily administration of the courts and with certain disciplinary functions and powers.

Furthermore, the Venice Commission should encourage the authorities to speed up the process of judicial reform in general, including the establishment of regional courts of appeal, which should serve to strengthen the quality of the judicial procedures and results. The overall aim should be a system that is perceived as legitimate by the parties concerned and which renders good judgments. In such a system, the need for centralized inspection will be less, and disagreement with the rulings will be channeled more through appeals in the ordinary system, instead of as complaints to a central authority in the capital.