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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

COMMENTS

ON THE LAW ON THE ESTABLISHMENT AND RULES OF PROCEDURE OF THE CONSTITUTIONAL COURT

OF TURKEY
(LAW NO: 6216, ADOPTED 30 MARCH 2011)

by

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I. Introduction

1. By a letter of 27 September 2010, Mr Sadullah Ergin, Minister for Justice of Turkey, requested an opinion on draft laws implementing the constitutional amendments approved by referendum on 12 September 2010. The letter referred in particular to four draft laws: (1) on the High Council for Judges and Prosecutors, (2) on the Organisation of the Ministry of Justice, (3) on the Organisation of the Constitutional Court and (4) on Judges and Prosecutors. The present opinion deals with the Law on the establishment and rules of procedure of the Constitutional Court (hereinafter referred to as "CCL"). The Venice Commission has already adopted an Interim Opinion on the draft Law on the High Council for Judges and Prosecutors of Turkey[1] as well as an Opinion on the Draft Law on judges and prosecutors[2].

2. The Venice Commission asked Messrs. van Dijk (the Netherlands), Grabenwarter (Austria), Hoffmann-Riem (Germany) and Paczolay (Hungary) to act as rapporteurs.

3. Preliminary Comments were prepared on Articles 45-51 of the draft law and exchanged prior to the adoption of the CCL on 30 March 2011.

II. Relevant constitutional provisions

4. On the constitutional level regulation regarding the Constitutional Court can be found in Articles 146-153 of the Constitution of Turkey while rules for the judiciary in general, especially the principle of judicial independence, are enshrined in its Articles 138 *et. seq*.

III. European Standards in the field of constitutional justice

5. At the European level there is no comprehensive set of standards that must be obeyed regarding constitutional justice. National systems are manifold and provide for a wide range of different solutions. Nevertheless, certain aspects, namely, the right to an independent and impartial tribunal, are guaranteed by Article 6 ECHR[3]. Furthermore, the case-law of the ECtHR sheds light on a number of important aspects of judicial independence but, by its very nature, does not approach the issue in a systematic way. Apart from the ECHR, the most authoritative text on the independence of the judiciary in general at the European level is the recent Recommendation (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities.

6. The Venice Commission has often analysed national legislation dealing with the organisation and the rules of procedure of constitutional courts. This caseload has been compiled by the Sub-Commission on Constitutional Justice in the *Vademecum* on Constitutional Justice[4]. Certain aspects of good practice in this field have moreover been laid down in the Study on the individual access to constitutional justice[5].

7. Furthermore, especially the principle of independence is specified and amended in numerous documents supplying standards for regulations on the judiciary in general, in particular for the European level both in the Venice Commission's Report on the independence of the judicial system, Part I: The independence of judges[6] and the Opinions of the Consultative Council of European Judges (CCJE), namely Opinion No 1 "On

[1] CDL-AD(2010)042
[2] CDL-AD(2011)004
[3] "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."
[4] CDL-JU(2007)012.
[5] CDL-AD(2010)039rev.
[6] CDL-AD(2010)004.

Standards Concerning the Independence of the Judiciary and the Irremovability of Judges"[7] as well as for the international level in the UN's "Basic Principles on the Independence of the Judiciary"[8] and the "Bangalore Principles of Judicial Conduct of 2002"[9].

8. A Constitutional Court forms a specific judicial power, which is separate from the courts of general jurisdiction. It should be noted, that some of the principles laid down in the instruments mentioned above are applicable to the ordinary judiciary only, while Constitutional Courts are out of their scope.[10] Nevertheless there are other principles, *e. g.* the independence of judges, which apply to both the judges of the ordinary judiciary and those of the Constitutional Courts. In fact the adherence of these has to be observed even closer as far as judges of Constitutional Courts are concerned.[11]

9. Finally, the Constitutional Court Laws of the Venice Commission's member states may function as comparative pattern for assessing the CCL.

IV. Preliminary remarks

10. The following comments are based on an English translation of the Law on the establishment and rules of procedure of the Constitutional Court of Turkey. The translation may not accurately reflect the original version on all points and, consequently, certain comments can be due to problems of translation.

11. These comments essentially focus on the wording of the provisions of the Law under consideration and do not constitute a full and comprehensive review of the entire relevant legislation.

V. Consideration of the Law

12. It may well be due to a translation misunderstanding, but the term "or have reviewed" in Article 3 lit. e) CCL does not seem to make sense. The duties and powers of the Court can only relate to future activities, not to those already concluded.

13. The **requirements for a candidate** for judge of the Constitutional Court are set out in Article 6 CCL. They largely repeat the conditions enlisted in Art. 146 of the Constitution. It ought to be stressed, that the selection of judges must be based on objective criteria pre-established by law or by the competent authorities and should primarily focus on merits.[12]

14. To be welcomed is, that the CCL allows for a Court composed not only of career judges and prosecutors, but open as well to lawyers, professors etc.[13] Such a composition will certainly have a positive effect on court deliberations and judgments. Moreover, even experts from the branches of economics and political sciences are admitted. While this is in principle seen as a progressive approach, there seems to be a lack of consequence, as long as other branches, social sciences in particular, are excluded. The Venice Commission holds, that the Constitutional Court should be open to candidates from all branches as long as judicial qualification is guaranteed, for instance via the requirement of general admission to the profession of a judge as in Article 6.2 lit. c CCL. This true with respect to rapporteurs in Article 24.2 lit. b), too.

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[7] CCJE (2001) OP No 1.
[8] GA resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.
[9] http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.
[10] *Cf.* CDL-AD(2010)004, § 11.
[11] CDL-AD(2009)042, Opinion on draft amendments to the Law on the Constitutional Court of Latvia.
[12] Rec.(2010)12, § 44.
[13] *Cf.* CDL-AD(2006)006, Opinion on two draft laws amending Law No. 47/1992 on the organization and functioning of the Constitutional Court of Romania, § 17.

15. Nevertheless, there still exist different groups of candidates under the CCL. The first group consists of members of the higher courts, which are not subject to further exigencies. The second group is formed by rapporteurs at the Constitutional Court, who must have been in duty for a minimum of five years. Finally, the third group (professors and assistant professors, private lawyers, functionaries of the public education sector and first class judges and prosecutors) faces three major requirements: a minimum age of 45, a degree in higher education as well as the ability to be nominated for office of a judge in general. Although these criteria are as such in line with European standards[14], the regulatory approach with different criteria for different groups might lead to discriminatory consequences. Thus, the Venice Commission recommends to extend the general criteria of age, education and eligibility for the office of a judge on all candidates. At least the age requirement seems to be set out for all candidates in Article 146 of the Constitution, anyhow. In addition, it should be pointed out, that the introduction of a criterion of Turkish nationality would not be seen as discriminatory.[15]

16. The procedure of the **election of members** of the Constitutional Court is laid down in Article 7 CCL. It pretty much takes over the wording of Article 146 of the Constitution. Nevertheless, the procedure provided for the Grand National Assembly in the Constitution could be improved. Whereas in the first round of voting a majority of two thirds is required, an absolute majority suffices in the second round of voting. The majority regarded in the third round is not qualified at all. Thus, the threshold of two thirds can easily be circumvented. Anyhow, the effect of this deficiency is limited by the fact that the Grand National Assembly is only free to vote among the candidates presented by the General Assembly of the Court of Accounts (or the Court of Auditors, as the term is translated in the Constitution) or the Chairmen of the Bar Associations.

17. With respect to the field of work of newly elected judges, specifications are advisable. While the wording of both Article 146 of the Constitution and Article 7 CCL calls for seventeen elects in case of “each vacancy” at the Constitutional Court, the intended system seems to consist of a fixed number of judges from the different branches, which can only be replaced by judges from the same branch. If so, when only one judge from a certain branch is to be elected, it remains subject to speculation, whether in this case three candidates are proposed as well. This should be clarified. Furthermore, the composition of the Constitutional Court’s Chambers should be regulated taking into account the mixed composition of the Court by providing for members from different branches in each Chamber.

18. The **form of oath** enshrined in Article 9 CCL names both the Constitution and the fundamental rights and freedoms. Whereas this is arguably meant to emphasize the eminence of the latter, at least the translation creates the impression of two different – though not necessarily divergent – aims. The oath should better refer to the Constitution in general and to the fundamental rights and freedoms as an integral part of it.

19. The combination of a long **term of office** (twelve years according to Article 10.1 CCL) together with a prohibition of re-election is appreciated. This approach safeguards the independence of the judges.[16]

20. The **retirement age** of sixty-five years seems to be reasonable as well. Anyhow, its formulation in Article 10.2 CCL seems somewhat vague. It is recommended to restate this provision, for instance, by addressing the different matters of removal from office and retirement in two separate paragraphs. Moreover, the same issue is dealt with in Article 11.2 second sentence CCL. A clear restatement could make the latter superfluous. To ensure

[14] *Cf*. CDL-AD(2009)042, §§ 11 *et seq.*
[15] Rec.(2010)12, § 45.
[16] CDL-AD(2009)042, § 14.

continuity of membership at the Constitutional Court, a judge whose term has expired should remain in office until his/her successor takes over.[17]

21. The provisions of the **election of the President** and his/her deputies in Article 12 CCL largely repeat the relevant paragraph of Article 146 of the Constitution. Nevertheless, the term of office of four years seems not to have been stipulated in the CCL by mistake and should thus be introduced. In addition, there might be a conflict if the term of office as President or his/her deputy exceeds his her term as a court member. In these cases the latter should be decisive.

22. Article 13 CCL deals with the **duties and powers of the President**. These comprise *inter alia* the appointment of the Secretary General and his/her deputies as well as court staff and the removal of the former. This is arguably understood rather as a full competence of both substantive decision and formal execution. While this may not constitute a problem with regard to the staff, taking into account the powers of the Secretary General and his/her deputies (e. g. lodging an annulment case by referring it to the Writing Office, Article 38.3 CCL) a decision by a collegiate body, for instance the General Assembly of the Court, would seem preferable. Furthermore, according to Article 13 lit. f) CCL the President is entitled "to assign members from another Chamber in case a Chamber fails to convene due to a factual or legal impossibility". Rec.(2000)12, § 24 may be recalled, stating that "the allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case." Thus, if it is seen necessary to assign members from the other Chamber, it should better be done by lot or by a list agreed upon in advance. The foresaid should as well be taken into account with respect to the President's measures for balancing the workload among the Chambers in Article 49.1 CCL.

23. Amongst the **obligations of the Members** in Article 15 CCL one can find in lit. a the commitment to "act in concordance with the dignity and honor of the profession of a judge". A breach of this obligation is sanctioned via the corresponding **disciplinary investigation proceedings** under Article 18.1 CCL.

24. Recommendation (2010) 12 ought to be recalled, stating that the interpretation of legal provisions, assessment of facts or weighing of evidence carried out to determine cases should give rise to neither criminal nor civil nor disciplinary liability, except in cases of malice and gross negligence.[18] "Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate."[19]

25. The CCJE even further recommends to prepare standards defining "all conduct which may lead to any disciplinary steps".[20] On the one hand this approach would safeguard the principle of judicial independence, while on the other hand it could prevent undertaking disciplinary measures from appearing biased.

[17] CDL-STD(1997)020, The composition of constitutional courts, Science and Technique of Democracy no. 20, sub 4.3 *et seq*.; see also CDL-AD(2009)042, Opinion on the draft amendments to the Constitutional Court Law of Latvia, § 15.
[18] Rec.(2010)12, §§ 66, 68.
[19] Rec.(2010)12, § 69.
[20] CCJE (2001) OP No 1, § 60.

26. Although appropriate behaviour is indeed desirable, it comprises a wide range of behavioural patterns and is thus rather broad and hard to define. Terms such as "dignity and honor of the profession of a judge" can only be seen as in line with European standards of judicial independence, if applied with utmost restraint. The Venice Commission invites the Turkish legislator to further elaborate the elements constituting misbehaviour worthy of disciplinary sanctions.

27. Article 22 CCL deals with the two **Chambers of the Court** as defined in its Article 2 lit. ç, which are entitled to rule individual applications. Whereas the Chamber consists of seven members, it convenes with only four of them. The latter number is arguably to be seen as a minimum requirement, *i. e.* a quorum. Otherwise clarification is required with regard to the selection of those four members. In this respect an objective system is favourable to rule out all possibilities of subjective influence on the Chamber's composition. Notwithstanding, it is unclear, whether the Deputy President, who is to chair the Chamber, is already included in that count of four.

28. The **Rapporteurs** play a significant role in the concept of the Turkish Constitutional Court. Their competences set out in Article 26 CCL comprise *inter alia* the preparation of reports of preliminary examination and examination on the merits, to attend meetings and – depending on an assignment of the Court's President – hearing of witnesses and experts or similar duties. The President may also assign rapporteurs in commissions, but the functions of the latter remain unclear.

29. The Venice Commission has underlined the importance of staff in its recent study on the individual access to constitutional justice: "The Venice Commission recommends that judges are supported by qualified assistants; their number should be determined in relation to the court's case-load. (…) In fact, permanent or long serving staff allow for the construction of an institutional memory conducive to greater consistency and continuity of the court's case-law; an issue more pertinent to civilian systems than common law systems."[21] Nevertheless, the competences of the staff are subject to certain limitations. Bearing this in mind, the Venice Commission emphasized: "Depending on the number and qualification of the staff, the secretariat of the court may perform a first preliminary examination in order to weed out manifestly inadmissible complaints as far as possible. However, as the judicial power cannot be delegated to the secretariat, its opinion can only be advisory."[22]

30. Article 26 CCL does not sufficiently address these requirements. For instance, taking evidence, such as the hearing of witnesses, should be carried out by the judges themselves since it requires immediateness to develop an own opinion on matters like credibility. Hence, taking evidence cannot be delegated. With respect to rapporteurs attending meetings, it should be underlined, that the Court's deliberations should be open exclusively to the respective judges. Altogether, the competences of the rapporteurs should be refined, bearing in mind that judicial functions may only be exercised by the judges themselves.

31. The **procedure of abstract judicial review** is provided for in Articles 35-39 CCL. In Article 35.1 lit. b CCL the parliamentary groups of the ruling party and the main opposition party are entitled to lodge an abstract judicial review on the merits, while lit. c guarantees the same right to at least one fifth of the total deputies of the Grand National Assembly. Finally, according to Article 35.2 CCL the competence of the ruling party foreseen in Article 35.1 lit. b CCL shall in case of a coalition government be devolved upon the coalition party "with the highest number of members". Arguably, the latter is to be understood rather as number of

[21] CDL-AD(2010)039rev, § 224.
[22] CDL-STD(1995)015 The Protection of fundamental rights by the Constitutional Court, Science and Technique of Democracy no. 15, 1995, as affirmed in CDL-AD(2010)039rev, § 224.

deputies within the Grand National Assembly than as total number of all members of the party. The restriction of the competence to initiate an abstract judicial review to the two main parliamentary groups of the Grand National Assembly as well as a minimum of one fifth of the latter's deputies favours larger parties. Whereas there is a wide range of restrictions in this regard in Europe[23] not allowing for a uniform definition of common standards, a different approach including all parties in Parliament or focussing more on a certain number of individual deputies instead of parties would be appreciated.

32. The proceedings of cases of abstract judicial review with regard to the form are supplied in Article 36 CCL. Its paragraph 3 states, that the review and resolving of abstract judicial review cases on the basis of formal reasons is given priority. While it is not exactly clear, what this priority refers to, such a provision might foster a practice of lodging cases always on both formal and material reasons. Article 36.4 CCL denies courts the right to initiate an annulment case on the basis of formal deficiencies. If this refers to concrete judicial review, the provision is superfluous, since courts are not entitled to initiate them at all according to Article 35 CCL. if the provision refers to the preliminary ruling procedures it should be placed in this context, *i. e.* in Articles 40-41 CCL.

33. Article 37 CCL provides a time limit of ten days after the promulgation of the law in the Official Gazette to initiate an abstract judicial review. This time is too short. Although there are no clear European Standards in this field, many countries do not provide for a time limit at all[24], while the range of those supplying a limit reaches from three months from the date of publication in Spain[25] to three years after entering into force in Albania[26]. The time limit foreseen in Art. 37 CCL would be the shortest among these and should thus be prolonged.

34. According to Article 38.3 CCL an abstract judicial review is deemed lodged, when the petition is referred to the Writing Office of the Constitutional Court by the Office of the Secretary General. This should correspond with a duty of the latter to do so without undue delay.

35. Finally, Article 39 CCL deals with the problem of incomplete petitions. The Constitutional Court is obliged to check within ten days from the date of registration, whether the petition is in line with the requirements set out in Article 39 CCL. If the petition is found to be incomplete, the initiator is notified and free to complete it "within the period specified in paragraph 1". Firstly, it seems unnecessary, that the entire Constitutional Court is required to carry out the examination of completeness of the petition. This should be left to its organs. Secondly, the time limit should be refined. Besides the fact, that a time limit of just ten days is rather short in this context, the reference in Article 39.3 CCL does not only include the duration of ten days but also its starting point, that is the date of registration. Thus, completion of a petition is virtually impossible. At least, a time limit of ten days starting with the reception of the notification of the Constitutional Court with respect to the incompleteness of the petition is required.

36. The **preliminary ruling procedure** is laid down in Articles 40-41 CCL. In this context, the provision of Article 40.5 CCL, stating that the referring court may stay the proceeding for only five months and afterwards is obliged to decide on the case as if the contested

[23] While in Albania one fifth of all parliamentary deputies is required (Art. 49.1 CCL), in Germany (Art. 76 CCL) and Slovenia (Art. 23a.1 CCL) the threshold is one third. Art. 40 CCL of Ukraine provides for a Minimum of 45 deputies whereas in the bicameral Systems of the Czech Republic (§ 64.1 lit. b CCL), France (Art. 18.1 CCL) or Spain (Art. 32.1 lit c-d CCL) a concrete number of both deputies and senators is given with a range from 41 deputies or 17 senators in the Czech Republic to a minimum of 60 deputies or 60 senators in France. Nevertheless, in all these systems the key factor is the individual, be it a deputy or a senator, not the party.
[24] *E. g.* Czech Republic, Germany, Slovenia.
[25] Art. 33.1 CCL.
[26] Art. 50 CCL.

provisions were still in force unless the Constitutional Court has come to another decision within that time, meets with concern. In consequence, the referring court is bound to decide on the basis of a law it holds to be unconstitutional, a view that could be confirmed by the Constitutional Court in its later decision. Even if the chance of a retrial would be granted, such mechanism is hardly satisfying and does not meet the interests of the parties involved. In its recent study on individual access to constitutional justice the Venice Commission has held: "Ordinary proceedings should be stayed, when preliminary questions in this case are raised to the constitutional court. This can take place either *ipso iure* or by decision of the competent court. Anyway it must be ensured, that the ordinary judge does not have to apply a law, he/she holds to be unconstitutional and whose constitutionality is to be decided by the constitutional court with regard to the same case."[27]

37. According to Article 41.1 CCL after a preliminary ruling procedure has been dismissed for being without merit, the identical provision may not be subject to another preliminary ruling procedure for ten years from the promulgation of the judgement. Astonishingly the decision of this dismissal is assigned to the "trial court" in Article 41.1, while it follows from Article 40.5, that trial court is to be understood as the referring court. This ought to be a mistranslation. Besides, the formulation seems rather strict and does not allow for exceptions, especially on grounds, which would as well allow for a retrial. Typical situations for reopening cases are, however, when new facts appear of which the parties could not have been aware, to correct errors made by the constitutional court, if the constitution has changed or, under certain conditions, where the ECtHR has decided that there has been a breach of the ECHR and this also implies a violation of the Constitution.[28]

38. Article 42 CCL exempts international treaties and enlisted legal acts from abstract judicial review and preliminary rulings. While it is true, that a national Constitutional Court should not be enabled to bring down international treaties, that does not mean, international activities of a state are exempted from constitutional review. A Constitutional Court should be free to review the act of sanctioning an international treaty, since this constitutes an act of national legislation.

39. Articles 45-51 CCL provide for the **constitutional complaints procedure**. The concept laid down in Article 45.1 CCL allows for constitutional complaints, as long as the violated fundamental right or freedom under the Constitution "falls into the scope of the ECHR". This could either be interpreted narrowly, that is as necessity of a violation of the ECHR or in a more open fashion, regarding a similar guarantee under the ECHR notwithstanding whether it is applicable in the concrete case. A specification in view of the latter alternative would be appreciated.

40. The jurisdiction of the Constitutional Court concerning constitutional complaints is further elaborated in Article 45.3 CCL. This provision is objectionable as far as it excludes legislative and regulatory administrative proceedings. Whereas these proceedings will usually fail to constitute a direct curtailment of fundamental rights, as required in Article 46.1 CCL, as far as rights are directly affected, the rule of law calls for legal protection. This probably corresponds with the cases envisaged in Article 47.5 CCL, where no other legal remedy besides a constitutional complaint is provided. Additionally, the term "pursuant to Constitutional Court judgments" can be understood as enabling the Court to define its own jurisdiction. Regardless of the fact, that it is indeed on the Constitutional Court to interpret the Constitution, it is nevertheless the privilege of the Constitution to settle this matter in general terms.

[27] CDL-AD(2010)039rev, § 142.
[28] CDL-AD(2010)039rev, § 118.

41. As stated in Article 46.3 CCL, aliens may not lodge a constitutional complaint based on rights reserved for Turkish citizens. Arguably, this provision refers to rights such as the right to vote and to be elected[29], the right to form parties[30] or the right to enter the public service[31]. Anyhow, this already follows from both the formulation "his/her rights" in Article 45.1 CCL and the term "personal rights" in Article 46.1 CCL and is hence superfluous.

42. Article 47.1 CCL provides for individual applications filed "through courts or representations abroad". This could be understood as allowing courts or – arguably Turkish – representations in other countries to initiate constitutional complaints. This concept is not sufficiently elaborated in Article 47.1 CCL and can thus not be analysed thoroughly. Further specification is advisable. In addition, other modes of application are left to the Regulation, whereas at least the general ideas in this regard should be contained in the CCL.

43. According to Article 47.2 CCL for initiating a constitutional complaint one must pay a fee. Among the member states of the Venice Commission such a fee is rather exceptional. If a fee is required at all, it should be specified by law. In its recent study on individual access to constitutional justice the Venice Commission has concluded: "The Venice Commission recommends that in view of increasingly more comprehensive human rights protection, court fees for individuals ought to be relatively low and that it should be possible to reduce them in accordance with the financial situation of the applicant. Their primary aim should be to deter obvious abuse."[32]

44. The headline of Article 59 CCL suggests, that the Court may not try certain cases, while it follows from the content, that only potentially biased members of the Court are excluded. Despite this exclusion Article 61 CCL stipulates their participation in the rendering of the judgment, but only calls for an abstention in voting. Thus, the risk of bias is not addressed sufficiently, since the potentially biased member may influence the outcome of the decision as well by other means than his/her vote.

45. Article 66 CCL specifies the scope and **effect of the Court's judgments**. The binding force is specified in Article 66.1 CCL. Nevertheless, it remains unclear, to which parts of the judgment the binding force is assigned. This should be specified especially with regard to the reasons, namely when the Constitutional Court supplies an interpretation of sub-constitutional norms.

46. **Cases of retrial** due to a later decision of the ECtHR are enlisted in Article 67.2 CCL. These are restricted to decisions on the dissolution of political parties as well as decisions of the Court in its capacity as the Supreme Court, *i. e.* trials against higher officials of the state (see Article 3 lit. ç CCL). Article 46.1 ECHR[33] states the binding force of the ECtHR's judgments "in any case". Turkey has not made any reservation or notification with respect to Article 46.1 ECHR. Since the ECtHR can as well find decisions of the Constitutional Court on other matters, constitutional complaints based on human rights in particular, in breach of the ECHR, the restrictions in Article 67.2 CCL are not in line with Article 46.1 ECHR.

47. The salaries are regulated in Article 69 CCL. These comprise a **bonus system** as provided for in Article 69.1 CCL. In this context it should be emphasized, that the remuneration of judges should be based on a general standard and rely on objective and

[29] Art. 67 Constitution.
[30] Art. 68 Constitution.
[31] Art. 70 Constitution.
[32] CDL-AD(2010)039rev., § 117.
[33] „The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."

transparent criteria.[34] The salary table supplied in Article 69.1 lit. a-s CCL is in line with these standards. Taking into account an assessment of the individual performance of a judge might influence his/her decisions, thus forming a threat to judicial independence. A bonus system generally includes a certain element of discretion. Therefore the Venice Commission has taken a firm stand against bonuses as part of remuneration system for judges.[35] Hence, the Turkish legislator should exclude bonuses and adjust the general amount of remuneration, if appropriate.

[34] CDL-AD(2010)004, § 46.
[35] CDL-AD(2009)042, §§ 29, 36; CDL-AD(2010)004, §§ 46, 51, 82.