



PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE UNITED NATIONS OFFICE IN GENEVA

2018/62441669-BMCO DT/13304444

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 letter by Mr. Diego Garcia-Sayan, Special Rapporteur on the Independence of judges and lawyers, dated 12 December 2017, concerning State contributions to his thematic report to be submitted to the 38th Session of the Human Rights Council focusing on the question of national judicial councils and/or other national organs or mechanisms in charge of selecting, appointing, promoting, transferring, suspending or removing judges, has the honour to enclose herewith an information note compiled by relevant Turkish authorities, in reply to the information request stated in the aforementioned letter.

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, 9 January 2018



Encl: As stated

Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10

QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS

1- Pursuant to **Article 159 of the Constitution “The Council of Judges and Prosecutors”** shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.

Article 159 regulates fundamental matters such as who the Council shall be composed of, who the President of the Council shall be, the duties of the Council, and how the examinations and investigations about the judges and prosecutors shall be carried out.

It is also stated that the following matters shall be regulated by law; the election of the members of the Council, formation of the chambers and the division of work between chambers; the duties of the Council and its chambers; the quorum for meetings and decisions, operating procedures and principles; objections to be made against the decisions and proceedings of the chambers, the examination procedure for these objections; and the establishment and the duties of the Secretariat General. **The Law No. 6087 on the Council of Judges and Prosecutors** also regulates comprehensively the matters indicated in the mentioned Article of the Constitution.

2- The CJP consists of thirteen regular members. Having its own budget, the CJP is an independent Council separate from the Ministry of Justice.

The President of the Council is the Minister of Justice. The President, deputy presidents and the inspectors of the Inspection Board are appointed by the Plenary Session of the Council. **The Minister of Justice is politically responsible for the effective and proper implementation of the justice policy and in this capacity; s/he is politically responsible to the society and to the GNAT which is also the case in some of the European Countries.**

The Undersecretary of the Ministry of Justice is the ordinary member of the Council. 3 members from among the civil judges and prosecutors and 1 member from among the administrative judges and prosecutors are selected by the President of the Republic. 3 members from among the members of the court of cassation, 1 member from among the members of the Council of State, 3 members from among the university jurist lecturers and lawyers are elected by Turkish Grand National Assembly, it is obligatory that one lecturer and one lawyer are elected for this group of members. The election for the membership of the Council is held every four years. The members can be re-elected at the end of their terms of office.

The Inspection Board is subordinated to the Council.

The secretarial affairs are conducted by the Secretariat General under the Council. The Secretary General is appointed by the President of the Council from among three candidates proposed by the Plenary Session and five Deputy Secretaries General from among the judges and prosecutors allocated as first class are appointed by the President of the Council.

The President of the Council can only attend the Plenary Session meetings, but not the Chamber meetings. **The President of the Council can also not attend the Plenary Session meetings concerning the disciplinary matters of the judges and prosecutors.**

The Undersecretary has the same status with the other regular members of the Council and is a member of the First Chamber. **He cannot be elected as the head of the Chamber.**

The CJP operates with the Plenary Session and two Chambers. The Presidents and the members of the Chambers are elected by the Plenary Session. The Plenary Session elects one of the heads of the Chambers as the Deputy President.

The CJP has the authority to conduct the following procedures concerning the civil and administrative judiciary judges and prosecutors: **Admission to the profession, appointment, transference, granting temporary authorization, promotion, allocation as first class, distributing cadres, making decisions about those who are not considered suitable to continue to perform their profession, rendering decisions about disciplinary punishments, suspension from office; and to issue circulars exclusively about the above mentioned subjects and the inspections, researches, examinations and investigations regarding the judges and prosecutors.**

Decisions of the CJP for dismissal from profession **shall be subject to judicial review.**

The CJP has an effective internal objection mechanism. Objections can be raised against the decisions of the chambers to the Plenary Session.

The Council of Judges and Prosecutors is independent in performing its duties and exercising its power. No organ, authority, office or individual may give orders or instructions to the Council.

The Council of Judges and Prosecutors performs its duties taking into consideration the principle of independence of courts and the security of the tenure of judges and prosecutors, as well as within the framework of the principles of fairness, impartiality, accuracy, honesty, consistency, equality, competence and qualification.

3- Pursuant to **the Law on Judges and Prosecutors**, the basic requirements for admission to the judiciary (for both judges and prosecutors) are: to hold Turkish citizenship, be under 35 years of age; to be a graduate of a law faculty; not to be banned from civil rights; not to have physical or mental diseases which would hinder the discharge of duties; not to be under criminal investigation or prosecution for, or convicted of, criminal offences (negligent offences excepted), including dishonouring offences, embezzlement, bribery, theft, etc. The authorities point out that the requirement "not to be subject of investigation or prosecution" is particularly significant as it goes beyond what is required for entering the ordinary civil service. Furthermore, candidates may not have a history of conduct which is not in line with the judicial functions.

The Law on Judges and Prosecutors describes the procedure for appointing new judges and prosecutors. The number of candidates to be admitted every year is decided by the Ministry of Justice in consultation with the Justice Academy. The announcement of the vacancies, setting out the criteria for applying, is made publicly in the most important newspapers and it is also posted on the website of the Ministry of Justice, at least 15 days before the deadline for application.

Candidates matching these requirements must successfully complete a written competitive test, on general skills and culture (20%) and professional matters (80%). The candidates are ranked following a points system and only the successful candidates are invited to the subsequent interview. Academics, professors of law etc may also be admitted to the judiciary, but without such tests.

The Interview Board, consisting of seven members, is chaired by the Undersecretary of the Ministry of Justice or a deputy undersecretary assigned by the Undersecretary. The other members are the chair of the Inspection Board, the Director General of Criminal Affairs, the Director General of Civil Affairs and the Director General of Personnel (Ministry of Justice) and two members of the executive board of the Justice Academy.

It should be kept in mind that the CJP has the authority to promote and transferring of judges and disciplinary proceedings against judges and prosecutors.

Minister of justice has no right to attend the meetings of the Chambers and cannot decide on appointment, promotion, transfers of judges/prosecutors and monitoring and establishing disciplinary measures against judges and prosecutors.

Transfer of judges:

The system of appointment and transfer follows a set of rules that are in practice for many years. In practice, additional to the By-Law, the HCJP announces "Principle Decisions" with respect to how the provisions of the By-Law should be interpreted. In this sense judges (and prosecutors) will have the information in advance whether or not they are subject to rotation for that year.

In practice, judges (and prosecutors) are also informed by the HCJP by text messages and emails if they are subject to rotation for that year with respect to the By-Law and "Principle Decisions." Rotations are made, pursuant to the petitions received from judges (and prosecutors) by giving priority to their requests as much as possible.

The regulation concerning judges and prosecutors who are obliged to be reappointed at certain intervals provided certain conditions are met as per the regulations.

Turkey is a large country with respect to its land area and population. There are five judicial regions for civil and three judicial regions for administrative judiciary in Turkey. The living standards and working conditions are drastically differ between these regions due to the

economic and social development levels between them which host courthouses. Therefore, it would be unfair to oblige a judge to spend long periods of time in underdeveloped regions. A judge needs to work from the less developed regions to the developed regions during his career life and this provides equality of opportunity in profession. Moreover, such a system provides homogeneity and possibility to convey expertise to handicapped areas. Rotations are subject to objection within the First Chamber of the HCJP and within the Plenary if the First Chamber quashes the objection. With regard to this there is an effective remedy available for the persons concerned.

Disciplinary Proceedings:

Pursuant to Article 144 of the Constitution “Supervision of judicial services and public prosecutors with regard to their administrative duties shall be carried out by the Ministry of Justice through judiciary inspectors and internal auditors who are from the profession of judge and public prosecutor, and inquiry, inspection and investigation proceedings through judiciary inspectors. Relating procedures and principles shall be regulated by law.”

Pursuant to the Constitution is established that judicial services and public prosecutors in respect of their administrative duties are to be inspected by the Ministry of Justice through judiciary inspectors. Furthermore, Article 159 of the Constitution provides that the CJP is to supervise judges and prosecutors regarding the discharge of their duties in accordance with the law, regulations, by-laws and circulars. Such investigations are handled by the Second Chamber of the CJP through the Inspectorate of the CJP.

Complaints against judges and prosecutors may be forwarded to the HCJP by anyone, and should as a main rule be investigated provided they are supported by concrete evidence. Anonymous complaints or complaints which are not substantiated or complaints concerning matters that have already been subject to proceedings are not admitted.

In case the Minister of Justice approves the request to start the investigation which is concerning offences committed by judges or prosecutors in connection with or in the course of duty or their conduct, the judge concerned can object to the Minister’s decision which is to investigate and the objection shall be examined by court. Then the Second Chamber of the CJP may assign the task of examination or investigation to the *CJP* inspectors or judges or prosecutors. These examiner judges or prosecutors should be more senior than the person concerned. In case the Second Chamber of the CJP deems it necessary to prosecute the judge/prosecutor, the Second Chamber of the CJP is to refer the documentation to the prosecution office which is the nearest office to the jurisdiction of the one concerned. At this stage the judge/prosecutor concerned can object to the decision to investigate and the objection shall be examined by the heavy criminal court. Save for offences “*in flagrante delicto*” which fall within the remit of the heavy criminal court, judges and prosecutors who have allegedly committed an offence, may not be arrested, interrogated, nor have their person or residence searched.”

According to the Article 62 of Law on Judges and Prosecutors the disciplinary punishments are warning, salary cuts, reprimand, suspension of advancement and suspension of progress (temporarily blocking the career), displacement and dismissal.

