

The Functioning of the Judicial System in the Republic of Turkey

Report of an Advisory Visit

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by

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Glossary of Abbreviations

CCP	Code of Criminal Procedure
EC	European Commission
ECHR	European Convention for the Protection of Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
NGO	Non Governmental Organisation
SSC	State Security Court
TGNA	Turkish Grand National Assembly
TPC	Turkish Penal Code

Table of Contents

1. Introduction	6
2. Independence of the Judiciary	8
Introduction	8
Judicial Independence and the Role of the Ministry of Justice	8
Constitutional impediment to judicial independence	8
Entry into profession	9
Pre-service and in-service training of judges	10
Promotion and power to transfer judges	11
The High Council of Judges and Prosecutors	12
Membership of the High Council	12
Activities of the High Council	13
Judicial inspectors	13
Access to files	14
Availability of review	15
Ability to form professional associations	15
State Security Courts	16
3. Affiliation between judges and prosecutors	18
Introduction	18
Judges, prosecutors and the Turkish Constitution	18
Re-assignment of prosecutors between courts	19
Separation of Judges' and Prosecutors' Offices.	19
Equality of Arms	20
Judges and Prosecutors entering and leaving Courtrooms	20
The position in Court-rooms of Prosecutors and defence Lawyers	21
Prosecutors retiring together with Judges	22
Conclusions	22
4. Role and Effectiveness of Public Prosecutors	24
Establishment of Judicial Police	24
Judicial inspections and decisions on non-prosecution	25

Substantial grounds for indictments	25
Rejection of indictments	26
The power of the Minister of Justice to override prosecutors decisions	27
Administrative functions of the prosecutors office	27
Conclusions	27
5. Role and Effectiveness of Lawyers	29
Detainees access to immediate and free legal counsel	29
Confidentiality in contacts between lawyers and clients	31
Consultations between lawyers and detained clients	31
Exchange of documents between detainees and defence lawyers	33
Communication in detention facilities in court-houses	33
Communication during the course of court proceedings	34
Conditions for lawyers work	35
Cross examination of witnesses	35
Prosecution against defence lawyers	36
Influence of the Ministry of Justice in disciplinary actions against lawyers	37
Official examination of aspiring Lawyers	38
Lawyer's access to investigation files	39
Equal equipment for Prosecutors and Defence Lawyers	40
6. Quality and efficiency of the justice system	41
Human rights related issues	
Introduction	41
Backlog and Delay	41
Expenditure on the Justice System	41
Increased training of judges and public prosecutors	42
Increase in the remuneration of Judges and Public Prosecutors	43
Information and communication technology	43
Regional Courts of Appeal	44
Alternative dispute resolution	44
Artificial law suits in criminal matters	45
Law suits in civil matters	45
Replacement judges	46
Aspects of criminal procedure	47
Interpreters and translators	48
Code of Judicial Conduct	49
Juvenile courts	49
Family courts	49
Commercial courts	50
Administrative functions in Court buildings	51
Recording verbatim in hearings	53
Application of the European Convention on Human Rights	53
The Penal Code and the right to freedom of expression	54
Role and functioning of prison enforcement judges	55

Prime Ministry's Human Rights Presidency	56
<i>Forensic Medicine issues</i>	56
Facilities for forensic medicine examinations	56
Administration of forensic medicine	57
Training of experts in forensic medicine	59
Training of judges and prosecutors in forensic medicine	59
Pressure on physicians reporting torture	61
Transporting officers and their presence during examinations	62
Transfer of forensic medical reports	64
Presence of defence lawyer during forensic medical examinations	65
Oral evidence by medical expert witnesses	67
Costs for forensic examinations	67
7. Summary of recommendations	69
Annexes	74
A List of Interviewees	
B The National Judicial (Adjudication) Network	
C Turkish courts	

1. INTRODUCTION

1.1. The background to this report of the third Advisory Mission of the European Commission to Turkey is set out in the first and second reports. As with the first and second advisory missions the aim has been to assess Turkey's progress in fulfilling an accession partnership priority which, broadly summarized, involves strengthening the independence of the judiciary and promoting within it a culture where human rights are given full effect.

1.2. Since much of the reasoning to the recommendations in the first report is set out in that and the second reports, we have been able to prepare a shorter report on this occasion, which concentrates on what we regard as the key issues. Apart from recommendations relating to defence lawyers and commercial courts, there are few new recommendations in this report. As a result of our visits for this mission, and of new developments, however, there are several new suggestions flowing from earlier recommendations. We hope the Turkish authorities will give these serious considerations. In important respects, the recommendations of the first and second reports have been adopted by Turkey so it has been possible simply to restate these and to note progress to date. We have also abandoned or changed some of the recommendations in the earlier reports, given our understanding of the position or in the light of new developments. We very much hope that this shorter report will enable the Turkish authorities to focus on what we regard as the essential parts of the report.

1.3. There are several other points we wish to make at the outset. One flows from the responses which the Ministry of Justice has made to the recommendations. In several of the responses the position in other European countries is used as a rebuttal to our recommendations. This is to misunderstand the basis of the recommendations. First, it is never possible fully to understand the situation in other countries without reference to the social and economic context. Just as these Advisory Missions have struggled, sometimes with difficulty, to appreciate the operation in practice of Turkish law and legal institutions, we felt that in some of the responses the Ministry of Justice has not grasped the actual workings of institutions elsewhere. Secondly and perhaps more importantly, the recommendations of the Advisory Mission have been based on best European practice. No country, certainly not our own, fully meets these standards. However, they are the standards against which we all must be judged. If other European countries fall short then they, along with Turkey, must strive to achieve them.

1.4. Another point which we must raise, although we regret having to do so, concerns the unexpected presence at interviews we had with judges and prosecutors of Abdullah Cebeci, the deputy director-general of Personnel at the Ministry of Justice. Obviously we have no objection to Judge Cebeci at a personal level. However, our concern was with the signal which his presence at the interviews may have given to judges and prosecutors, a number of whom were no doubt contemplating making applications for transfer or promotion within the foreseeable future. As in the justice area generally, appearances are often as important as the reality. During our visits we did not feel able to raise the matter because of the disruption and embarrassment

which may have arisen. However, Deputy Undersecretary Maksut Mete was informed of our concern at our wrap up meeting at the Ministry of Justice.

1.5. This third Advisory Mission began in Ankara on Monday 13 June 2005 and finished there on Wednesday 22 June. During that time we had numerous meetings with judges, public prosecutors, lawyers, government officers, doctors and human rights advocates in Ankara, Izmir, Van and Gevas. A full list is attached to the report as an Annex. We are very grateful for the cooperation and hospitality we received wherever we went. The mission comprised two experts, Judge Kjell Bjornberg, Chamber President of the Court of Appeal for Western Sweden and Dr Ross Cranston, QC, an English lawyer. They were advised by Tobias King, Desk Officer, External Relations and Enlargement Unit, EC Directorate General for Justice and Home Affairs; Manuela Riccio and Marie-Sofie Sveldqvist, Desk Officers, EC Directorate General for Enlargement; and Sedef Koray-Tippkamper, Sector Manager for Justice and Home Affairs, EC Delegation, Ankara.

2. INDEPENDENCE OF THE JUDICIARY

Introduction

2.1. The previous Advisory Missions have identified a number of factors which mean that, to an unacceptable degree, judicial independence in Turkey appears to be threatened by potential interference of the Ministry of Justice despite the various constitutional guarantees. We reiterate that concern.

2.2. At the outset we underline three key points. First, that it is the *appearance* which gives rise to concern. In practice, as a result of the constitutional guarantees coupled with the conventions which have grown up over the role of the Ministry of Justice, judicial independence in Turkey may be guaranteed. Whatever the reality, the concentration of functions in the ministry must give rise to a serious concern by the citizen, and even sympathetic outsider, about the quality of judicial independence in Turkey. Second, that the concern arises not from any one of the various factors identified below, but by their combination. That recruitment, promotion and training of the judiciary have been concentrated in the Ministry of Justice; and that the High Council of Judges and Prosecutors has been subject to the Ministry's potential influence, are cumulatively a threat to judicial independence. The corollary is that any one of the factors we discuss below may not, in itself, be objectionable. Thirdly, it is especially important at the present time, when there is to be additional recruitment to the judiciary and prosecution on a very significant scale, that the proper arrangements be in place. The High Council of Judges and Prosecutors told us that new recruitment should be postponed until it is. Not only would this guarantee judicial independence in relation to these appointments but it will send out a very strong signal both within Turkey and abroad that the issue is taken seriously.

2.3. In this part of the report we assess the position of judicial independence in Turkey over the last year since the second Advisory Visit. The detailed responses of the Ministry of Justice to the recommendations of the report coming out of that visit have been given the most serious consideration, as have the discussions we had at our meetings with the Deputy Under-Secretary of the Ministry of Justice and his officials. Clearly we were pleased to learn in our discussions with the High Council of Judges and Prosecutors that they support the very great number of the recommendations relevant to the issue.

Judicial Independence and the Role of the Ministry of Justice

Constitutional impediment to judicial independence

2.4. Article 140/6 of the Turkish constitution provides: "Judges and public prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned". The report of the second Advisory Visit set out the detailed reasoning behind its conclusion that this was an impediment to judicial independence.

In essence the concern is that this provision has the potential for allowing the Ministry to make decisions on the allocation of funds, and the management of courts, which would undermine judicial independence. For example, there could theoretically be pressure on the judiciary during the budgetary process. In its response the Ministry has said that Article 140/6 in no way facilitates the giving of instructions to the judiciary. The Ministry needs a link with the judiciary in the preparation of a budget to be submitted to the Ministry of Finance. Moreover, the senior officials in the Ministry are appointed from high level judges and prosecutors which means that the judiciary is in effect being administered by the judiciary. Finally the Ministry points out that there "is no European country in which the administrative functions of the judiciary are the sole responsibility of the judiciary themselves".

2.5. There is no doubt much force in how the Ministry of Justice have responded about Article 140/6. We cannot accept all of it: for example, while important, that the senior officials in the Ministry are appointed from the judges and prosecutors does not overcome the fact that they are working for the Ministry so that its interests could take precedence on any issue when judicial independence is threatened. That said, we take seriously the assurances the Ministry have given about their interpretation of Article 140/6 and how it works in practice. So long as those assurances are continued, and so long as Article 140/6 is no impediment to any of the other recommendations we maintain in relation to the independence of the judiciary, we conclude that, while desirable, it is not essential to remove it from the constitution.

Entry into profession

We recommend that, in accordance with Principle 10 of the UN Basic Principles on the Independence of the Judiciary and Principle 21(2)(c) of the Council of Europe Recommendation on the Independence of Judges, the influence of the Ministry of Justice in the process of selecting candidate judges be removed. We suggest that those aspects of the selection process presently performed by the Ministry of Justice be brought within the remit of either the Justice Academy or the High Council of Judges and Public Prosecutors.

We recommend that, in line with Opinion No.1 (2001) of the Consultative Council of European Judges (CCJE) on Standards Concerning the Independence of the Judiciary (23 November 2001) the authorities responsible for making and advising on appointments of candidate judges should introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection of candidate judges "based on merit, having regard to qualifications, integrity, ability and efficiency."

2.6. While an applicant to join the judiciary in Turkey must do well in a written examination administered by the Student Selection and Placement Centre (OSYM),

which we accept as objective, there is also an important interview by a panel of officials from the Ministry of Justice. Earlier Advisory Mission reports concluded that this interview was such as to jeopardize the independence of the judiciary. We have heard nothing to make us vary this conclusion although we draw attention to the points we made in paragraph 2.1. The recommendation of the earlier advisory missions was that the interview be conducted by the High Council of Judges and Prosecutors. Since the High Council told us that they agreed that they should perform this function, we have no reason to vary the recommendation. In this context, it might be mentioned that a Board consisting of the Court of Cassation presiding judges in a recent public statement claimed that the appointment of candidate judges by the Ministry of Justice within the executive body, and the political will being influential will cause politicisation of the judiciary.

2.7. It is certainly the case that, as the Ministry of Justice have said, there is no uniformity in the recruitment mechanism for judges in Europe. As the Ministry says, it is common to have a mixed body of judges and others making the decision. We can certainly see the advantage of that where there are lay people, who can bring a powerful community perspective into the process. If that were the position in Turkey we may take a different view, but it is not. As we have already indicated in para. 2.5, we are not impressed by the argument that the Ministry of Justice officials conducting the interview are from among the high level judges working there. The appearance is that they are Ministry officials, whose future prospects can be determined by the Ministry. Whatever the reality, there is an appearance that executive power can have a hand in who gets through this gateway to a judicial career.

2.8. The absence of publicly available objective criteria, for use in the interview decision, underlines our concern. In its reply on this point the Ministry of Justice mentions the Law Regarding Judges and Prosecutors No.2802 Dated 24 February 1983. However, this does not contemplate the type of objective criteria which are now widely used for important public appointments in many European countries. While conceding that there will always be an important element of judgment in making decisions such as appointing judges, modern human relations techniques should operate in appointment decisions. These are coupled with the advertising of positions and the public availability of the criteria for appointment.

Pre-service and in-service training of judges

We are pleased with the establishment of the Turkish Justice Academy and the progress in getting it operational. We recommend that, in accordance with the provisions of Principle 9 of the UN Basic Principles on the Independence of the Judiciary and the Chisinau Declaration, the influence of the Ministry of Justice in the pre-service and in-service training of judges be removed.

2.9. The establishment of the Justice Academy and the progress in getting it fully operational is a positive development.. At our meetings at the Ministry of Justice we heard that over the last year there had been considerable progress in the number of

judges trained there, some at an advanced level. Institutions elsewhere in Europe had been consulted over the curriculum and Ankara University was involved in the teaching. The process of acquiring an existing training site, used hitherto by a commercial organisation, was under way. This generally positive view was confirmed by the EU expert, Judge Jean-Jacques Heintz who has been assisting the Justice Academy over the last year. Judge Heintz told us that he was especially impressed by the adoption of a new approach in the proposed curriculum based as it is on best practice. In particular its practical orientation meant those trained were able to appreciate how issues would face them, and could be handled, in their everyday work of judging.

2.10. The Justice Academy is very much in its infancy. Also at our meetings at the Ministry of Justice we were told of the enormous job of training conducted over the last year by the Ministry on the new laws relating to substantive and procedural law. We were told that it was hoped that in the future all this would be done by the Justice Academy. Once the new site is operational, with its capacity for some 1,500 trainees that will certainly be possible. The new curriculum, we were told, was to be adopted by September. We conclude that these developments mean Turkey is on the way and moving in the right direction to meeting the concerns raised in the previous Advisory Mission reports. We look forward to being able to report in the future on its fulfilment. However, the previous recommendation that the influence of the Ministry of Justice in the pre-service and in-service training of judges should be removed is maintained.

Promotion and power to transfer judges

We recommend that, in accordance with Principle 1(2)(c) of the Council of Europe Recommendation on the Independence of Judges, Article 159 of the Turkish Constitution be amended so as to remove the Minister of Justice and his Under-Secretary from the High Council of Judges and Public Prosecutors. Depending on the implementation of other reforms concerning the independence of the judiciary, the Minister of Justice might remain in his position in a non voting capacity.

2.11. The previous Advisory Mission reports raised in this regard the presence of the Minister of Justice and the Under-Secretary of Justice on the High Council of Judges and Prosecutors, since that body is responsible for judicial promotions and transfers. The second Advisory Mission report considered that provided various other reforms are implemented in line with the recommendations made following the first Advisory Visit, the continued presence of the Minister of Justice on the High Council, without any voting rights, would not undermine the independence of the judiciary in Turkey. It was considered that the recommendation could be amended accordingly. However, given that the Ministry of Justice not had made any commitment to either removing the voting rights of the Minister of Justice or removing the Under-Secretary from the High Council, the recommendation was maintained and repeated.

2.12. In its reply to this recommendation, the Ministry of Justice maintains its position, in particular by reference to the position in France. Although we think this misunderstands the operation of the Judicial Council in France, the recommendation relates to best practice, not to what may or may not be the position in France. The presence of the Minister and also of the Under-Secretary on the High Council, in a non-voting capacity, might be a better possibility, even though questionable. Following best practice, they should be removed from their positions. The combination of Article 159 with other factors is the main problem. As we see it, other reforms concerning the independence of the judiciary still remain to be implemented. The recommendation in the previous report anticipated such reforms being implemented before the presence of the Minister of Justice and his Under-Secretary in a non-voting capacity could be accepted. Thus we find it necessary, as a first step, to retain the position given in the first advisory visit report on removing both the Minister of Justice and his Under-Secretary from the High Council of Judges and Public Prosecutors.

The High Council of Judges and Prosecutors

Membership of High Council

Not being convinced that the President's role to appoint members of the High Council and Judges and Public Prosecutors is purely formal and following best practice we maintain the recommendation that he be removed from this process.

We recommend it worthy of consideration along with other methods of reaching the goal of a High Council shorn of executive influence that the High Council to be increased with members from other courts.

2.13. In previous reports it was recommended that the President be absolved of his power to appoint members of the High Council and Judges and Public Prosecutors themselves should be empowered to elect their representatives on the High Council. The High Council of Judges and Prosecutors suggested that the selection of its membership should be by the General Assembly of the High Courts. This has much to commend it for it would then be clear that the executive had nothing to do with the matter and that the role of the President of Turkey under Article 159 of the Constitution was purely formal. We were told that the President's role at present is purely formal. Noting that the President has a choice between three candidates when appointing a member of the High Council we do not see the role as purely formal. Following best practice, we maintain the recommendation.

2.14. During our visit we raised with the various judges, prosecutors and others we interviewed the possibility that the members of the High Council be more representative of judges and prosecutors as a whole. At present the members are

chosen from the most distinguished and senior of judges and prosecutors: members of the Court of Cassation and the Council of State. The advantage is that this gives the High Council the benefit of a wealth of experience and also a membership which, since it is at the peak of a career of public service, is likely to be much more independent than those still in mid-career and expecting further appointment. The disadvantage is that High Council members may not have that feel for current conditions and the problems facing working judges and prosecutors. It is fair to say that the idea of a more representative High Council had a mixed reception: some favoured it and pleaded strongly for the High Council to be increased with members from other courts than the two just mentioned, others were in favour of the present composition. The High Council itself needed time to reflect on the idea. We are certainly not wedded to it but think it worthy of consideration along with other methods of reaching our goal of a High Council shorn of executive influence, albeit that this may only be apparent. The creation of Regional Courts of Appeal might also change the prerequisites for the composition of the council. For the future, it might also be considered to bring in members from outside the judiciary, for example the Bar.

Activities of the High Council

We recommend that the High Council be provided with its own adequately funded Secretariat and premises. We also recommend that the High Council be granted its own budget, the members of the High Council to be both consulted in the preparation of the budget and to be responsible for its internal allocation and administration.

We suggest that formal meetings be held between the High Council and members of the National Assembly to discuss law reform issues relating to the administration of justice.

2.15. As we understand it the process of locating separate premises for the High Council is under way. We very much welcome this. In relation to the issues of staff and budget all that the previous recommendation required is they be separately identified and under the control of the High Council. Not only is this supported by the High Council itself but it seems to us to require a relatively small step to be taken by the Ministry of Justice. We very much hope that step will be taken. Concerning the budget issue, one could make a reference to the system in Denmark.

2.16. During our visit with the High Council we were pleased to learn that its members have had bilateral meetings with the Prime Minister, the Speaker of the National Assembly and the leader of the Opposition about the state of the judiciary and its future. However, we were surprised to learn that these meetings are held *ad hoc* and that there is no formal mechanism for the High Council to feed in its views to the law-making process. We understand that there is a Draft Law on Judges and Prosecutors being considered at present. This would seem to require input from the High Council during the process of its enactment. We would suggest that formal meetings be held, at least once yearly, between the High Council and members of the

National Assembly to discuss law reform issues relating to the administration of justice

Judicial Inspectors

We strongly recommend that the Law on Judges and Prosecutors should be amended so as to remove judicial inspectors from within the central organisation of the Ministry of Justice. Judicial inspectors should be re-assigned to work directly under the control of the High Council of Judges and Public Prosecutors, the High Council having sole authority to request and/or grant permission for an investigation or inquiry in respect of a member of the judiciary.

2.17. According to Article 144 of the Constitution Judges are under the supervision of judicial inspectors. The inspectors are judges and prosecutors working for the Ministry of Justice in the inspection unit. According to Article 37 of the Law regarding Judges and Prosecutors (Law No.2802, dated 24 February 1983), judicial inspectors must be judges and prosecutors who have at least five years experience. Inspectors report on the state of the justice system as a whole but also on individual judges and prosecutors. The work of the Judicial Inspectors is regulated in more detail in the Ministry of Justice Inspection Board Regulation. Article 4 of the regulation states that the inspectors are connected directly to the Minister of Justice and that their inspections, investigations, examinations and research are carried out on behalf of the Minister. During inspections, all aspects considered necessary in establishing the professional knowledge and activities shall be researched (Articles 23 and 24 of the regulation). Opinion Reports on both judges and prosecutors are to be filled out on special forms. One section in the form has the title "Personal and Social Characteristics" and another "Professional knowledge and work".

2.18 Behind the recommendation of the previous Advisory Missions is a concern with the appearance that judicial independence is threatened, when the appraisal of a judicial career is being conducted out of the Ministry of Justice. Moving the inspection unit to the High Council of Judges and Prosecutors would immediately overcome the problem. The High Council should then also be entrusted with the task to report to the Ministry of Justice about deficits in the justice system. The transfer is supported by the High Council. We cannot stress strongly enough the importance of this issue, along with that of judicial appointment.

Access to files

We recommend that judges and public prosecutors be permitted to access all appraisal files held in respect of them.

2.19. The second Advisory Mission report raised the issue of confidential reports kept on judges and prosecutors within the Ministry of Justice. It recommended that these be available to those judges and prosecutors being appraised. In response the Ministry of Justice has said that judges and prosecutors can access all data and information relating to themselves under the Access to Information Act (Law No.4982, Dated 9 October 2003). However we understand that this covers the general file; it does not extend to the confidential file kept on judges and prosecutors. This important issue needs to be revisited.

Availability of review

We recommend that adverse decisions of the High Council related to civil rights should be capable of being appealed either to an independent judicial body or, if the High Council be divided into committees, to another committee comprised of members constituted by a majority of new members other than those taking the original decision

2.20. Principle 20 of the UN Basic Principles on the Independence of the Judiciary provides that decisions of a disciplinary nature should be subject to independent review. On the basis of that, previous reports recommended that decisions of the High Council adverse to a judge be subject to appeal to the Council of State. Having discussed this matter with the High Council, however, we find acceptable the solution now put forward by the Ministry of Justice, that the High Council be divided into committees, and that adverse decisions of one committee be appealable to another committee comprised of members other than those taking the original decision. Our only concern would be that the appellate committee be constituted by a majority of new members, for we understand that there has been some discussion of simply supplementing the original committee with new members who would be in a minority overall. That would not guarantee that a fresh view of the matter would be taken.

Ability to form professional associations

We recommend that, in accordance with Principle 9 of the UN Basic Principles on the Independence of the Judiciary and Principle 4 of the Council of Europe Recommendation on the Independence of Judges, the draft Bill to enable judges to organise and form professional associations be enacted as soon as possible

2.21. A draft law enabling judges and prosecutors to form a professional association received an adverse opinion in the Council of State. In a decision in 2004 the Council

of State apparently held that the proposed law was contrary to the Constitution. Subsequently, as we understand it, a law on associations has been drafted which would apply to judges and prosecutors as well as others. It is fair to say that the idea of a professional association for judges and prosecutors had a mixed reception when we raised it with judges and prosecutors during our visit. We remain of the view that it would be a beneficial development and again commend the Ministry of Justice for initiating the proposed law and for the lead taken by them. We hope that the compatibility of the new law on associations with the Constitution will be clarified as soon as possible, although it may be that ultimately the latter needs to be changed.

State Security Courts

We express the hope that, in order to allay the concerns of observers, consideration will be given to appointing a greater proportion of the former SSC judges and public prosecutors serving within the courts established under Law No. 5910 to other courts as soon as it is possible to do so. The work of the courts just mentioned needs to be followed up. We note, that for those who are apprehended and arrested in relation to crimes falling under the competence of Heavy Penal Courts under Law No 5190, the normal 24-hour period for deprivation of freedom before being brought before a judge is 48 hours, a difference which we question.

2.22. The first Advisory Report set out the rule of law objections to State Security Courts, and the second, the details of the very welcome Law No. 5190, which abolished them. The latter report summarised the jurisdiction of the new Heavy Penal Courts competent with Law No. 5190, established to an extent in their place. There is no need for us to go over this ground. Our concern during this third Advisory Mission was two-fold: first, to assess the concern of lawyers and human rights associations recorded in the report of the second Advisory Mission, that the Heavy Penal Courts competent with Law No. 5190 are functioning simply as State Security Courts under a different name; and secondly, to monitor the hope expressed in the second Advisory Mission, that a greater proportion of the former State Security Court judges and prosecutors be appointed to other courts.

2.23. During the present Advisory Mission we are pleased to report that there is not the same concern among the lawyers and human rights groups we spoke to about the new Heavy Penal Courts competent with Law No. 5190 functioning in the same way as the earlier State Security Courts. Partly this might be because of the changed personnel, to which we turn shortly. Partly this might also be because the procedure of the Heavy Penal Courts with Law No 5190 has been aligned with that of the other Heavy Penal Courts. In particular are the beneficial changes in all courts brought about by the new Criminal Procedure Code, including the presence of defence lawyers, discussed elsewhere in the report. While in Ankara the 11¹ Heavy Penal Court competent with Law No. 5190 still has an important case-load of anti-state activity, that is decreasing. In the Izmir 8th Heavy Penal Court competent with Law

No. 5190, the great majority of work is now drugs related, and the anti-state activity, such as it is, is decreasing. In Izmir we were told as well that although there were new cases as foreign explosives were seized in the port, in other respects the anti-state work was in effect old work, as those previously convicted of terrorism were recaptured after escape. Reflecting its geographical location, the 3rd Aggravated Felony Court competent with Law No. 5190 in Van has a substantial anti-state case-load, but about half its work involves the illegal importation of drugs.

2.24. As to the personnel of the Heavy Penal Courts competent with Law No. 5190 the picture is mixed. In Ankara, the Deputy Chief Public Prosecutor had had several decades' experience in State Security Courts but he told us that some other of the personnel associated with the court was changing. In Izmir the judiciary has not changed, although one prosecutor has left. By contrast in Van all but the president of the court were new to this type of work, and he had only spent a year in a State Security Court. We can understand that for good personnel reasons, relating to the promotion and transfer of judges and prosecutors, it may be difficult to reassign all those previously associated with the State Security Courts. There is also an advantage in maintaining an expertise in important areas like the most complex drugs cases and organised crime. Within the limitations imposed by those important considerations, we maintain our hope that over time the separation of personnel between the former State Security Courts and the Heavy Penal Courts competent with Law No. 5190 can be achieved. We look forward to seeing this in future advisory mission.

2.25. One specific concern which arose in the course of our visit to Van was that members of the public were being excluded from attending the hearings, and only a limited number of relatives were allowed into the court. That, of course, is totally unacceptable when the court is in open session. We also note, that for those who are apprehended and arrested in relation to crimes falling under the competence of Heavy Penal Courts under Law No 5190, the period for deprivation of freedom before being brought before a judge is 48 hours instead of the regular 24-hour period valid in cases before other criminal courts, a difference which should be justified.

3. AFFILIATION BETWEEN JUDGES AND PROSECUTORS

Introduction

3.1 Previous reports raised the issue of the close relationship between judge and prosecutor in the Turkish system. This is not so much an issue of the independence of the judiciary but more one of the impartiality of judges in decision-making. Again the problem is one of appearances, whatever the reality might be: the observer might think, that because of the position of the prosecutor in Turkish courts (having their offices in the court buildings near the judges in charge of court administration, sitting next to the judges in the courtroom, and so on) judges might not always be able to take an impartial and objective view on every decision. We recognise that a set of conventions have grown up which militate against this occurring in practice. Judges and prosecutors have quite different roles which are underlined in their training and professional lives. Their separate responsibilities are understood more widely in the legal community. However, we can conceive of situations, especially in difficult cases, which are the test of any system, where the impartiality of a judicial decision will be questioned because of the links we have described between the prosecution and judges.

3.2 The issue becomes one of how to address the institutional and functional links between judges and prosecutors in Turkey, which might jeopardise the appearance of impartiality, without at the same time threatening the advantages of the present system. The reports of the previous Advisory Missions began with the Constitutional amendment before turning to practical measures. The Ministry of Justice has rejected the idea of a constitutional amendment. In light of that position, we have resolved on an approach in this report which concentrates on practical measures which can lead to organic change in the direction we think essential. This includes one new recommendation, which we hope will enhance the position of the defence lawyer.

3.3 As we see all the different matters brought up on this issue as closely linked together, we will address our standpoints in a conclusion at the end of this chapter .

Judges, Prosecutors and the Turkish Constitution

Aiming for best practice on an independent judiciary, we recommend that the Constitution be amended so as to provide for an institutional and functional separation of the professional rights and duties of judges and public prosecutors.

3.4 The Ministry of Justice has rejected the idea of a constitutional amendment and stated that the situation in Turkey is almost the same as many of the EU member countries and a distinction as proposed in the Second Advisory Report exists only in a few countries. In principle, we uphold the previous recommendation on this matter.

Re-assignment of prosecutors between courts

We note the positive information given that Public prosecutors should be re-assigned to different courtrooms on a regular basis. However, referring to the information we obtained we recommend that this objective is fully implemented.

3.5 For professional purposes, it is an ordinary practice in Turkey for public prosecutors to be appointed in accordance with the standard criteria defined in related laws. They carry out their tasks before different criminal courts according to a division of labour among them. During the Advisory Visits we have met examples of public prosecutors who have had held their positions in the one court, working with the same judge for years. We therefore reiterate the earlier recommendation that prosecutors be reassigned to different courtrooms on a regular basis. The Ministry of Justice makes the valid point that there may be a specialisation among prosecutors, which means they operate in a particular court for a period. However, it states "there is no ban on public prosecutors functioning in different courtrooms on different days. As a matter of fact, such a rotation is made in practice". Nevertheless we were informed during the course of our visit by a judge in Izmir that he had been working with the same prosecutor for the last eight years. We take it from the response of the Ministry of Justice that our recommendation is accepted in principle. However, full implementation of this principle in practice will be very important and we look forward to monitoring its implementation in the future.

Separation of Judges' and Prosecutors' Offices.

We recommend that Public prosecutors either be required to have their offices outside of the courthouse or, if this is not practicable, then public prosecutors have their offices located in a completely separate part of the courthouse from that occupied by judges.

3.6 The recommendation that prosecutors should have their offices away from the judges, at the least in a separate part of the court building, is accepted by the Ministry of Justice in the context of the new intermediate Courts of Appeal project. It should also operate more generally. In Van, for example, the prosecutors seemed to be on a separate floor and wing of the court building from the judges. That ought to be the case throughout Turkey. With small court buildings, such as the one we visited in Gevas, we concede that that is not practicable.

Equality of Arms

We recommend that measures be taken to ensure equality between prosecution and defence counsel during the course of criminal proceedings. We emphasize the importance of measures to be taken to make defence lawyers fully in position to assure their responsibilities on the subject. We underline the importance of a full implementation of the new regulation enabling defence lawyers to cross-examine and recommend action to be taken to ensure that this is done.

3.7 In general terms, the previous recommendation on equality of arms was welcomed by the Ministry of Justice in the context of the Establishment of Intermediate Courts of Appeal. However, the matter concerns criminal proceedings in all courts. Again, we maintain the earlier recommendation; that in the criminal process steps need to be taken to ensure an equality of arms between prosecution and defence. This is dealt with at greater length in chapter 5 below. However, we raise a new point in this regard, relating to the defence bar. Equality of arms is not just a matter of changing the emphasis for prosecutors (moving them out of court administration, for example), it means also a new role for the defence. Under the new Criminal Procedure Code, for example, defence lawyers are able to cross-examine. That involves the acquisition of a new skill which experience elsewhere suggests take time. Yet we are troubled that defence lawyers may not be in a position fully to assume their new responsibilities. The President of the Izmir Bar Association told us, rightly in our view, that the competence of defence lawyers is as important as that of judges and prosecutors and that the training of each -judges, prosecutors and defence lawyers -was of equal importance. In Izmir the bar association had been able to involve the university law faculty to help in training in relation to the new criminal code and procedural law. More in this respect needs to be done. We believe that it is necessary to ensure a full implementation of the new regulation.

Judges and Prosecutors entering and leaving Courtrooms

We recommend that public prosecutors be required to enter and leave the courtroom through a door other than that used by the judge. We believe that this could be implemented at least to some extent also in existing courtrooms.

3.8 At the start of every court hearing, the practice has been for prosecutors and judges simultaneously enter the courtroom through the same door whilst defence lawyers are required to enter the courtroom from a side door along with the public. Whenever the judges retire, the prosecutor also retires with the judges through the

same door, leaving the defence lawyers to exit along with members of the public. In previous reports it was recommended that public prosecutors be required to enter and leave the courtroom through a door other than that used by the judge.

3.9 The Ministry of Justice has in principle accepted the recommendation. In a letter sent to the Commission under the signature of the Minister, it has been pledged that the recommendation will be put into practice in Support to Establishment of Courts of Appeal Construction Project: However, it is stated that it is impossible to implement the recommendation in existing courtrooms. Still, we believe that the recommendation at least to some extent could be observed also in older existing court houses.

The position in Court-rooms of Prosecutors and defence Lawyers

We recommend that public prosecutors and defence lawyers be positioned on an equal level in court rooms; preferably with both of them sitting at ground floor level opposite to each other. We believe that this could be implemented at least to some extent also in existing court-rooms.

3.10 During court hearings in Turkey, the public prosecutor continues to sit on an elevated platform, on the same level as the judges and directly adjacent to them. Meanwhile, the defence lawyers continue to sit at a table at ground floor level, the same level as the public and the defendants. In previous reports it was recommended that the position of the public prosecutor in the courtroom be altered so that rather than sitting on an elevated platform adjacent to the judges, the public prosecutor is required to sit at a table at ground floor level, either next to or opposite the defence lawyer.

3.11 Already in the response to the 2003 Advisory Visit Report, the Ministry of Justice agreed in principle that the position of the public prosecutor in the courtroom should be moved so as to be equated with that of the defence lawyer. The Ministry of Justice also agreed that the new Intermediate Courts of Appeal will be designed in such a way that the public prosecutor will be required to sit at a table at ground floor level, either next to or opposite the defence lawyer, and agreed that the recommendation will be taken into consideration during the building of any new courthouses. In its response to the 2004 report, the Ministry of Justice reiterated this approach and reported that the matter of lawyers sitting at the same level as prosecutors is added to the "Support to Establishment of Courts of Appeal Construction Project". This time, the Ministry said that the sitting position of the lawyers will be elevated to the same level as prosecutors. The Ministry maintained however that implementation of the recommendation will take time and financial resources. We think more can be done now.

Prosecutors retiring together with Judges

We recommend that whenever judges retire to their ante-chamber for the purposes of deliberating on their rulings, the public prosecutor be required to remain inside the courtroom. Where judges remain in the courtroom in order to conduct their deliberation, the prosecutor should not enter into any discussion with the judges during the course of their deliberation.

3.12 A recommendation on this subject has been given in previous reports. The Ministry of Justice agreed in its response that both judges and public prosecutors should receive further training that emphasises that public prosecutors should not accompany judges when they retire to consider their verdict. Under the article 282/1 of the former Criminal Procedure Code and article 227/1 of the new Criminal Procedure Code , it is impossible for the public prosecutors to attend judicial consultations. In order to implement this measure, the Ministry of Justice has transmitted a formal proposal to the Justice Academy. It was recommended that the Justice Academy implement such training at the earliest available opportunity. We underline the importance of implementing our recommendation.

Conclusion

3.13 In the Turkish Judicial system, there is a close connection in between judges and prosecutors. They have the same background, are educated in faculties of law, and attend the same training school for judges and prosecutors. Their training in this school is the same and it is not up to themselves to make the choice if they are to become a judge or a prosecutor. This choice is made by the Supreme Council for Judges and Prosecutors after the final examination in the school. The candidates can accept the decision or leave. During their entire career, they are transferred from post to post and do not appear to have much influence on where they are posted. Judges and prosecutors are working in the same court building, often sitting in the same corridor. During their first period of duty, they are normally located in small towns in rural areas. In court, they are virtually sitting together, sometimes for years, and entering and leaving the court room, publicly, through the same door. We were informed during the course of our visit by a judge in Izmir that he had been working with the same prosecutor for the last eight years. During their career, they attend the same training seminars. During training periods taking place for more than one day in some cities, and also at other occasions, they stay together in special accommodation for judges and prosecutors. One can certainly assume that judges and prosecutors also spend time together when not on duty.

3.14 Turkish judges and prosecutors are certainly aware of their different roles. They claim that in their professional capacity they are not influenced by any link to a member of the other profession. Be that as it may, but seen from the viewpoint of anyone looking at the judicial system from outside, the connections can certainly give an impression of a conflict of interest. It is a positive development that there will be different arrangements in the new Regional Courts of Appeal. We realize that it would be a huge task to rebuild all existing courtrooms in Turkey. However, in some of the

courtrooms we have visited, it seems neither difficult nor costly to rearrange the positions for the different personnel. We therefore recommend such rearrangements. The symbolism of judges and prosecutors entering and leaving the courtroom together, sitting at the same bench in the same elevated position, wearing quite similar robes, while the defence lawyer, dressed in different robes, enters and leaves the courtroom through another door together with the public and sitting below the court and the prosecutor cannot be underestimated.

3.15 A step forwards has been taken with the forthcoming Regional Courts of Appeal, which are to be constructed in a way so that the defence lawyer will be sitting at the same elevated level as the court and the prosecutor. The disadvantage is that the defence lawyer will be separated from his client, having no possibility of conferring with the client during the hearing without the permission of the court and a break in the proceedings. To some extent, this physical separation exists already, even though the lawyer and the accused are at the same level, the latter often in a standing position during the trial.

3.16 We see also the argument for giving the prosecutor, representing the state, a special status and appearance. However, we would say that it is the court which is to be seen as the representative of the society. The prosecutor represents one party in the proceedings, namely the state, and the defence lawyer represents the other party, a physical person, who under international standards is entitled to certain rights. Following best practice, we therefore would prefer to have the court sitting separated from the prosecutor.

3.17 It must be emphasized, that our recommendation is not to be seen as any kind of criticism of the role or work of prosecutors or judges. On the contrary, in the advisory visit reports recommendations have given to strengthen the role of prosecutors and judges. As pointed out previously, it is not only the way things are functioning in reality, but also the appearance that is important. Following best practice, a procedure must not only be carried out before an independent and impartial court by judicial parties with an equality of arms. The way this is done and the overall appearance of the procedure must not give any impression whatsoever of the contrary. There is a symbolism not to be underestimated in Judges and Prosecutors entering and leaving the courtroom together, sitting at the same bench in the same elevated position, wearing quite similar robes, while the defence lawyer, dressed in a different robe, enters and leaves the courtroom through the another door together with the public and sits below the court and the prosecutor.

4. ROLE AND EFFECTIVENESS OF PUBLIC PROSECUTORS

Establishment of Judicial Police

We welcome the recent enactment of the Turkish bylaw on Judicial Police, which gives the public prosecutors full supervision over the police forces in judicial investigations and cases and also facilitates the public prosecutors having effective supervisory competence over the police. Even though we consider that following the recommendations in previous Advisory Visit Reports on the creation of a judicial police force it would be desirable that officers under the Ministry of Justice affiliated directly to individual public prosecution offices as best practice, we consider the recommendation to be sufficiently met. However, we believe that it is necessary in the future to observe the functioning of the judicial police.

We recommend that training for officers in the Judicial Police, but also for prosecutors, is developed and carried out on the demands under the new regulation. We hope for the Commission to be at assistance on this.

4.1 The first and second advisory visit reports recommended the creation of a judicial police force with officers affiliated directly to individual public prosecution offices although as a whole placed under the overall control of the Ministry of Justice. The 2004 Report mentioned as a positive development that the Ministry of Justice had taken the initiative in drafting legislation on the establishment of a judicial police force in order to ensure more effective criminal investigations that will enable public prosecutors to present complete files to the courts.

4.2 The Ministry of Justice said in its response to the 2004 report that a "Bylaw on Judicial Police" has been adopted jointly by the Ministry of Justice and the Ministry of Interior as foreseen in article 167 of the new Criminal Procedure Code (Law Number 5271). It came into force on the same day as the new Penal Procedure Code on 1 June 2005. Thus, the public prosecutors will have full supervision over the police forces in judicial investigations and cases. According to the Ministry this is a milestone in the judicial reform process as the public prosecutors will have effective supervisory competence over the police, which will result in more adequate investigations leading to a presentation to the courts of complete files and indictments,. The average duration of trials should reduce as the number of hearings and adjournments in each case will decrease substantially. In this context it should also be mentioned, that the creation of the National Judicial Network will also contribute to reducing delays in proceedings, as it will give the court immediate

access to information, for example on identity and other information concerning the suspect, information that today must be asked for in writing.

Judicial inspection and decisions on non-prosecution

We recommend that public prosecutors should be given greater discretion when taking decisions on non-prosecution without risking negative evaluation from judicial inspectors. We also recommend that judicial inspectors should work directly under the control of the High Council of Judges and Prosecutors.

4.3 In connection to the second Advisory Visit, the Ministry of Justice said that the By-Law on the Judicial Inspection Board had been amended so as to stipulate that inspectors should allow public prosecutors greater discretion when taking decisions on non-prosecution. At that time, it was too early to assess what effect, if any, this amendment would have in practice; however we welcome the initiative in principle. The experts, however, considered that a more fundamental reform might be instituted in this regard. The effect of the recommendation is still to be evaluated. In the previous report, the Ministry of Justice was encouraged to re-assign judicial inspectors to work directly under the control of the High Council. We repeat this recommendation. .

Substantial grounds for indictments

We welcome the provisions in the new Criminal Procedure Code concerning demands on satisfactory evidence for prosecution, decisions concerning non-prosecution and court-decisions on sending back unfounded indictments to the public prosecutor. We also welcome the initiative taken on training of public prosecutors on the subjects.

4.4 Earlier advisory visit reports recommended that the Code of Criminal Procedure should be amended so as to ensure that public prosecutors only transfer a case to court once they are satisfied, on the basis of their evidential assessment, that there are substantial grounds to foresee a conviction. Further, public prosecutors should, through pre-service and in-service training, be encouraged to perceive their role as including the diversion of cases with no realistic prospect of conviction from the justice system.

4.5 The Ministry of Justice responded as follows to the recommendations. Having adopted the new Code of Criminal Procedure (Law No 5271), which came into force on 1 June 2005, the problems criticized in the Report have been solved. In this regard;

- Public Prosecutors are obliged to bring a criminal action if there is satisfactory (reasonable) doubt about the commission of the crime based on evidence gathered (Articles 170-172)
- Once a decision of a non-prosecution is taken, that file will not be reopened unless new evidence against the suspect is found (Article 172/2).
- A non-prosecution decision is open to judicial review by the president of the nearest heavy penal court on complaint of victim of the crime (Article 173).
- Unmeritorious proceedings before the courts will be prevented by Article 174 which gives the court the competence to return unfounded indictments.

4.6 In addition, the Justice Academy informed us that these issues are taken into the curriculum of pre-service and in-service training programmes. Accordingly, these provisions will be stressed during the lessons concerning the functioning of the Public Prosecutors Office in pre-service training programmes and during in-service training programmes for Public Prosecutors. Overall, we are pleased with progress although matters will need to be monitored in future.

Rejection of indictments

As already stated, we welcome the provision in the new Criminal Procedure Code opening a right for courts to send back indictments with deficits to the public prosecutor. We recommend that courts should be entitled not only to send back but also to reject indictments. Noting that the criteria for sending back indictments seems to be unclear, we recommend that this should be clarified and also recommend that a more extensive right on this matter might be considered.

4.7 The 2003 Report, recommended that the draft legislation providing for criminal judges to reject indictments that are not brought on sufficient evidence be adopted as soon as possible. In its response to the report the Ministry of Justice informed us that the Draft Code of Criminal Procedure would, when enacted, empower courts to reject indictments brought on insufficient evidence. We have now been informed that in the new Criminal Procedure Code, adopted by the Parliament on 4 December 2004 and in force since 1 June 2005, such a right is introduced through Article 174. According to this Article, on the occasion of the existence of certain deficiencies, mentioned in article 170 of the new Criminal Procedure Code, or when the prosecutor opens the case for certain crimes, although there is an offer to pay a fine, judges can return the indictment. Prosecutors are authorized to object to the decisions. We note this progress, but we also note that it is not fully clear from the translated text we have access to and from statements of people we met if the right to reject indictments covers indictments in which the evidence is insufficient or if it is limited to formal deficiencies mentioned in Article 170.

Power of the Minister of Justice to override a decision by a prosecutor

We welcome the abolition of the right for the Minister of Justice to override decisions by public prosecutors. The former recommendation on this is fulfilled and consequently withdrawn.

4.8 During the second Advisory Visit, it was stated that the Ministry of Justice had formally accepted the recommendation that its power be removed to override a decision of a public prosecutor not to initiate a criminal prosecution in circumstances where an impartial investigation has shown the charge to be unfounded. The power of the Minister with regard to this matter was abolished 14 July 2004 by the new Criminal Procedural Law (No 5271), which entered into force 1 June 2005. Additionally, the provision which entitled the Minister of Justice to order and the governors to demand that prosecution be initiated was abolished by the new Criminal Procedural Law. The recommendation is fulfilled.

Administrative functions of the Public Prosecutors Office

See below in chapter 6

4.9 The subject of transferral of administrative duties from prosecutors to administrative staff is dealt with below in Chapter 6, subtitle Administrative Court Staff.

Conclusions

4.10 A striking part of the procedure in criminal cases in Turkey has been the heavy role of the courts to identify and bring all relevant evidence into the proceedings, a task which sometimes creates an endless row of hearings in one single case, to which parties and witnesses are summoned. One hearing might take hours, but also be concluded in a couple of minutes. In both cases a case can be re-scheduled for another hearing. Besides the inconvenience this creates for defence lawyers and parties, it makes the procedure inefficient, slow and administratively heavy. This may contrast to civil cases which the parties can settle themselves, where the burden to collect and bring evidence before the court lies on the parties even though many lawyers, we were told, do not always fulfil their responsibilities in this respect.

4.11 The above described new concept adopted in the Turkish Criminal Procedure Code creates a good platform for a more efficient and effective procedure in criminal cases. This reform was very well received by almost all our interlocutors during the visit. Only a few lawyers regard it as being merely a reform on the paper. Even

though it is too early to evaluate its impact on investigations and court proceedings, there are already some indications of improvements in the speed of proceedings. The Chief Public Prosecutor in Van estimated that under the new legislation, 90 % of the preparatory work in criminal cases, collecting evidence etc., could be done by the judicial police on behalf of the prosecutors.

4.12 Under the new Criminal Procedure Code the police are subject to dual control, both by the executive and by the prosecutors. Public prosecutors are responsible for appraisal files for the judicial police. However, as pointed out by the Izmir Contemporary Lawyers Association, they are appointed and financed by the executive, which could imply a relationship of dependence on the Ministry of Interior.

4.13 In order to achieve the goal of bringing down the number of hearings to a minimum, preferably just one, there are some important issues to attend to. For the best prospect of the reforms, the judicial police must be carefully trained in their role and tasks. A good working relationship between police investigators and prosecutors is essential. This creates a demand not only for an efficient working structure under the new chain of command but also good and constructive personal relations. The deepened involvement of the prosecutor at an early stage of criminal investigations and the strengthened requirements on the content of indictments, including a complete statement of the evidence referred to, will create a heavier work-load for the prosecutors. To some extent this will be balanced through a reduction of the number of hearings and other activities in each case. Thus, attention must be given to the possibility of increasing the capacity of prosecutors under the new legislation.

4.14 Although the first and second reports recommended a judicial police force with officers affiliated directly to prosecutor's offices under the control of the Ministry of Justice, we consider the recommendation to be sufficiently met even though we still consider, following the previous recommendation that it would be desirable to aim for the best practice.

4.15 The new provision giving the court the right to send back incomplete indictments to the prosecutor is also a step in the right direction. A decision to send a case back should be decided by the judge within 15 days from filing the indictment in the court. It should also be noted that during this period of time, the defence lawyer does not have access to the file. Furthermore we note that the provision in the draft Criminal Procedure Code giving the court a possibility to reject totally an indictment is not realized in the new Criminal Procedure Code. We also note that there appears not to be a consensus among judges on how far the possibility goes of sending back indictments. Some of our interlocutors were of the opinion that this could be done on the basis of lack of referral in the indictment to sufficient evidence, whilst others claimed that it will be possible to refer cases back only on formal grounds. There is certainly a need for clarification on this matter. As we see it, this could be done through new legislation but also through an interpretation of the provision by the Court of Cassation.

5. ROLE AND EFFECTIVENESS OF LAWYERS

Detainees' access to immediate and free legal counsel

We are pleased to note that the previous recommendation on access to immediate and free legal counsel is to a large extent fulfilled. As problems still seem to appear in parts of the country, the implementation of the new provisions on the subject should be followed up. We also believe that there is a need for a clarification - and an eventual change of legislation - on the matter of competence between civil courts and military courts in cases brought against gendarmes on torture or maltreatment of civilians.

5.1 The first Advisory Visit recommended that steps be taken to monitor and enforce existing requirements that all persons be immediately informed by a competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence. In particular, it recommended that Bar Associations be permitted to place posters advocating the rights of detainees within police stations and other detention facilities. It also recommended that once a week police stations and gendarme stations be required to submit to the local Bar Association a list of all persons detained during the previous week. Such a list would assist Bar Associations in monitoring compliance with Articles 135 and 136 of the Criminal Procedure Code and enable them to make representations regarding further improvements if necessary.

5.2 In the second Advisory Visit Report, a slight improvement was observed regarding the implementation of the right of detainees to access free legal counsel immediately upon being deprived of their liberty. In south-east Turkey, however, significant problems remain in this regard. The experts recommended that further steps be taken to monitor and enforce existing requirements that all persons be immediately informed by a competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence. In particular, it was recommended that Bar Associations be permitted to place posters advocating the rights of detainees within police stations and other detention facilities. During the course of the Advisory Visit, the Ministry of Interior formally agreed to permit the Bar Associations to display posters advocating the rights of detainees in both police and gendarme stations. Although this agreement was conditional upon both the form and content of the posters being agreed between the Ministry of Interior and the Bar Associations, the Ministry agreed in principle that the posters should set out the rights of the accused and provide the telephone number and address of the local Bar Association so as to enable detainees to apply for legal

representation and/or complain about any human rights violations. The Ministry of Justice was urged to commence work on the posters at the earliest opportunity.

5.3 In response to the recommendation the Ministry of Justice stated that in order to implement the recommendation with regard to displaying posters advocating the rights of detainees, a commission has been established including members from the relevant institutions - the Ministry of Interior, Turkish Bar Association, General Directorate for Security, General Commandership of Gendarme, Ministry of Justice General Directorate for Criminal Affairs, Ministry of Justice General Directorate for EU Affairs. The commission will address the matter.

5.4 According to Article 150 paragraph 3 in the new Criminal Procedure Code it is compulsory to appoint a defence lawyer for juveniles and the mentally retarded, disabled persons not capable of defending themselves, and person suspect of a crime punishable by more than five years' imprisonment. Defendants unable to meet the costs of a lawyer are entitled to have a lawyer for free. The Bar Association in Van told us that the new provisions had had a great impact with a substantial increase of appointments of defence lawyers. We were told that most defendants seem to be aware of the right to instruct a defence lawyer free of charge. However, many of our interlocutors informed us that it is still widely considered as a proof of guilt to ask for a defence lawyer. It was indicated that just a few percent of detainees ask for it. The figures are said to be lowest in the southeast and in the rural areas. It was claimed that in one part of the country five years ago just one out of a thousand wanted any legal aid and that not much had changed since.

5.5 Representatives of the Bar Associations and the NGOs we met generally stated that there were no difficulties for detained persons in getting in contact immediately with a lawyer and to confer with the lawyer in private. However, both in Izmir and in Van the opinion among lawyers did differ. Some of our interlocutors claimed both that it could take a long time before a meeting with an arrested person was possible and that gendarmes sometimes were present during the meeting and even recorded conversations. It was also claimed by the Human Rights Association in Van that on 17 June this year a number of young persons were brought to the police station, handcuffed and deprived of their freedom without any "official" decision on detention and not given any opportunity to contact a lawyer until for 3 - 314 hours. The Contemporary Lawyers Association in Izmir claimed that juveniles were taken to police stations and held there for a long time before a public prosecutor was contacted. They claimed that there were cases in which children had been held up to 16 hours without any legal assistance. Representatives of the Human Rights Association and of the Bar Association in Van stated that public prosecutors are forwarding torture cases brought against gendarmes to military courts, which not only leads to delays in the proceedings but to the situation that the case file becomes secret as "the Military Courts live in their own world". This ought to be clarified and, if we have been given correct information, there might be a need for a change in legislation. Difficulties for lawyers in visiting clients in prison sometimes also seem to be a problem, especially for persons serving sentences for crimes against the State.

5.6 During the Advisory Visit we were told that before a recent change in the Turkish legal system, relatives as well as an apprehended person himself could appoint a defence lawyer for an apprehended suspect or accused person. However, it was said

that under the new Criminal Procedure Code and the new regulation on Apprehension, Detention and Interrogation, which entered into force on 1 July 2005, this possibility was taken away. Defence lawyers we spoke to regarded this as a new restriction on the right to instruct a lawyer and a step backwards. During the visit we were told by the Ministry of Justice that only the suspect or accused person him/herself is entitled to appoint a defence lawyer. On the other hand it was emphasized that under the new regulation it is compulsory to appoint a defence lawyer for suspects or accused persons under 18 or deaf or mute or incapacitated and for persons suspected of crimes that lead to a penalty punishable by more than five years' imprisonment. In a written explanation on this question from the Ministry of Justice after the visit, it was stated that neither the former Criminal Procedure Code nor the former by-law on Apprehension, Detention and Statement-taking had any provisions allowing relatives of a suspect or accused person - other than legal representatives - to appoint a lawyer. It was said that the definition of "relatives" has been widely interpreted and varies according to people and regions in Turkey, which is why the right to appoint a lawyer has been limited to legal representatives. The different views on this matter might, as we see it, be a manifestation of a different interpretation of legal rights. We therefore leave the question with a remark on the necessity of a uniform application of the law.

5.7 The recommendations previously made on this subject seems to a large extent to be met. However, there are strong indications that problems still remain in the eastern part of Turkey. This must be followed up. We urge the Minister of Justice and the Minister of Interior to strengthen the efforts of implementing the rights of a suspect. The Chief Public Prosecutor in Van has taken an initiative to train police and gendarmes on this subject. We welcome this and call for similar initiatives to be taken elsewhere.

Confidentiality in contacts between lawyers and clients

Consultations between lawyers and detained clients

We recommend strong efforts to be taken in order to clarify to all law enforcement agencies, under the Ministry of Justice as well as under the Ministry of Interior, that all detained persons have an absolute right to have effective and confidential consultations with their defence lawyers. We note that the Minister of Justice have taken action in this respect but have not obtained any information on progress in the domain of the Ministry of Interior. The recommendation should be followed up.

5.8 The second and third advisory visit reports recommended that, where such facilities do not already exist, visiting rooms in all detention centres in Turkey be equipped with consultation rooms that enable lawyers to communicate with their clients in full confidence. Such consultations may be within the sight, but not within the hearing, of security staff. The second advisory visit report noted again that certain

police and gendarme stations continue to have inadequate facilities for confidential consultation between lawyers and their clients. According to the Ministry of Justice, new police stations will be built with facilities enabling lawyers to communicate with their clients in full confidence and where such facilities are not found in existing police stations, lawyers and detainees will continue to be afforded the use of a spare room.

5.9 On the issue of detention centres, the Ministry of Justice, Directorate General for Prisons and Detention Centres, informed us that lawyers and their clients can communicate in private meeting rooms under circumstances which do not allow the conversation to be heard, without any restriction. Documents related to the defence are definitely not examined. From the gate of the prison, the access of lawyers to their clients can be possible in ten minutes. According to the Ministry, the issues mentioned in the earlier recommendation might therefore be based on misinformation. It was mentioned that during the seminar, on 'Civil and human rights of Prisoners' which was held in cooperation with TAIEX and the Directorate General for EU Affairs, on May 12-13 2005 in Ankara the Co-chairman of the seminar and also the Chairman of the Council for Penology Cooperation and a Council of Europe prisons expert stated that Turkey had taken some serious and worthwhile steps concerning the rights of prisoners. On the issue of detention centres, the recommendation was transmitted to the Ministry of Interior.

5.10 On this recommendation, a clarification seems to be needed as to who is responsible for what and when. A person deprived of his/her liberty might have a different status and be kept in different facilities. Firstly, after being apprehended the suspect is normally brought to a police or gendarmerie station and kept in arrest facilities in a police or gendarmerie station. When arrested the suspect stays in the arrest facilities or is brought to a detention centre. When there is a court order on detention, the suspect is either kept in a detention centre or brought to detention facilities in a prison. The Ministry of Interior is responsible for police stations and arrest facilities while the Ministry of Justice, Directorate for Prisons and Detention Centres is responsible for Detention Centres and Prisons. The recommendation concerning facilities in prisons and detention centres for confidential consultation with defence lawyers, at least formally is met. A continued monitoring is however recommended.

5.11 The situation for police and gendarmerie stations is still unclear. The Human Rights Association in Van stated that the practice differ from the reality and reported that in gendarmerie stations, gendarmes stay in the room where the conversation between the detainee and the lawyer is to take place. Thus, when it comes to arrest facilities under the auspicious of the Ministry of Interior, we again urge the Ministry to take all necessary measures to ensure that where such facilities do not already exist, visiting rooms be equipped with consultation rooms that enable lawyers to communicate with their clients in full privacy. The presence of gendarmes during such a conversation is a clear violation of the rights of the suspect. We refer to the provisions in the first and the last Paragraph of Article 21 in the Regulation on Apprehension, Detention and Interrogation stating the right to carry out interviews not heard by others and the obligation to designate interview rooms with appropriate conditions in each law enforcement unit.

Exchange of documents between detainees and defence lawyers

The former recommendation on free exchange of documents between lawyers and their detained clients as well as detainees' access to writing material is at least formally fulfilled through new legal provisions. The implementation thereof should however be followed up.

5.12 During the first and second Advisory Visits it was noted that in some prisons the practice regarding exchange of documents between lawyers and their detained clients, as well as the practice regarding the ability of detainees to access writing material, were not always in accordance with the law.

5.13 The recommendation in the report on these matters was fully accepted by the Ministry of Justice. A provision on this subject has been added to the draft By-Law on Apprehension, Detention and Statement Taking. With the new provisions the legal frame-work corresponding to the recommendation is in place. However, during the course of our visit we noted that the practice on this matter is not fully harmonious. In Van, the Human Rights Association reported that in ordinary cases there was no problem, but in cases of crimes against the State there were problems all the way until the trials start. Thus, even though the recommendation formally is being fulfilled, the implementation still needs to be followed up.

Communication in detention facilities in court-houses

We commend the Ministry of Justice for its commitment to arrange meeting facilities in the court houses for the Regional Courts of Appeal and urge the Ministry to do the same when constructing other new court houses, and also recommend that where the possibility of such confidential communication does not already exist in existing court-houses, consultation rooms be constructed outside of the communal cell area in court buildings but within the secure facility.

5.14 The Ministry of Justice accepted in its response to the second advisory visit report the recommendation that lawyers and their clients be provided with adequate facilities to enable them to communicate in confidence within detention facilities in court houses. It undertook to implement the recommendation in the construction of the new Regional Courts of Appeal. The Ministry further agreed to reflect upon

whether any interim measures might be adopted in the short term so as to enable lawyers to communicate with their clients in detention facilities within courthouses whilst construction of designated consultation facilities is underway.

5.15 The 2004 Report warmly welcomed the decision of the Ministry of Justice to accept the recommendation and commence work on implementing the same. Pending completion of the proposed construction project, the recommendation was maintained and repeated. The Ministry of Justice accepted the recommendation and referred to a document signed by the Minister and the Under Secretary, as part of the Support to Establishment of Courts of Appeal Construction Project. It was stated that the recommendation has been taken into account in the architectural design of three model Regional Courts of Appeal (Ankara, Erzurum and Diyarbakir). Consequently, the meeting rooms were planned adjacent to court rooms in which the lawyers and their clients would be able to communicate confidentially.

5.16 The difficulties for confidential consultations in court between defence lawyer and client were confirmed during our visit. Appropriate facilities for such consultations are often missing and if such facilities exist, a lack of law enforcement staff to bring the detainee to and from such facilities hinders such consultations. According to Mazlum-der difficulties also arose because of the attitude of police officers who tend to intervene in the conversation. According to them, consultations during the course of the hearing do not happen in practice.

5.17 We commend the Ministry of Justice for its commitment to arrange meeting facilities in the court houses for the Regional Courts of Appeal but urge the Ministry to do the same when constructing other new court houses. Where the possibility of such confidential communication does not already exist in existing court-houses, we repeat the recommendation that consultation rooms be constructed outside of the communal cell area in court buildings but within the secure facility.

Communication during the course of court proceedings

<p>We recommend a continued follow up of the practical implementation of permitting lawyers to consult with their clients during the course of court proceedings as and when required provided the process of the court is not unduly disturbed.</p>
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5.18 In the second Advisory Visit Report it was noted that many judges and public prosecutors continued to look unfavourably upon requests from lawyers to speak to their clients during the course of court proceedings and instead regard such requests as an obstruction. This attitude was regarded as undermining the right to an adequate defence, hindering lawyers from explaining the nature and content of proceedings to clients who may otherwise not understand the processes of the court, impeding defendants from giving instructions to their lawyers as to how they wish their case to be presented to the court and obstructing lawyers from seeking relevant information from their clients on novel points that arise during the course of court proceedings. It

was also noted that the Ministry of Justice had undertaken to address this issue during the course of pre-service and in-service training of judges and public prosecutors.

5.19 The second advisory visit report welcomed and encouraged the initiative of the Ministry of Justice to address this issue in pre-service and in-service training of judges and public prosecutors but urged the Ministry of Justice to consider whether an administrative circular might be promulgated on this issue and/or the Criminal Procedure Code strengthened with a view to ensuring effective implementation of the existing law in practice. The recommendation was maintained and repeated. The Ministry of Justice informed us that under Article 149/3 of the new Criminal Procedural Code (No 5271) "Suspect or accused cannot be prevented and restricted to meet with his/her lawyers in any stages of the investigation and prosecution", and under Article 154 "Suspect and accused can meet his defence lawyer without the lawyer's submission of a power of attorney at any time and in privacy. The correspondence between them cannot be subjected to any examination." The recommendation was therefore accepted. Moreover it was stated in a letter signed by the Minister and the Under Secretary, in the Support to Establishment of Courts of Appeal Construction Project, the recommendation has been taken into account during architectural design of three model Regional Courts of Appeal (Ankara, Erzurum and Diyarbakir). Consequently, the meeting rooms were planned in these courts adjacent to court rooms in which the lawyers and their clients would be able to communicate confidentially.

5.20 The provisions in the new Criminal Procedure Code seem to correspond to the recommendation made on this subject. We assume that the provisions, which of course are up to the courts to interpret, will be referred to by defence lawyers and used by the courts in a positive and constructive manner as well in the course of hearings as before and after the hearing.. For this reason the recommendation should be followed up in relation to its practical implementation.

Conditions for Lawyers work

Cross examination of witnesses

We welcome the provision in the new Criminal Procedure Code introducing cross-examination into the Turkish legal system. The previous recommendation on this is formally fulfilled and consequently withdrawn thus far; the implementation thereof however needs to be followed up.

5.21 In the first Advisory Visit Report it was noted that normal procedures in criminal trials in Turkey have precluded the defence from examining witnesses directly. Instead, defence lawyers suggest questions to the Presiding Judge who then decides both whether to ask the questions suggested and if so, how the questions should be phrased. In this manner, the defence were restricted as to both the form and content

of the questions that they might ask witnesses. There was no restriction as to the form or content of the questions that the prosecutor may ask of witnesses even though they too went through the Presiding Judge. The report recommended that the procedure for the examination of witnesses be amended so as to ensure that both the defence and prosecution are placed in a procedurally equal position regarding the form and content of witness questions.

5.22 The Ministry of Justice said during the 2004 Advisory visit that the Draft Criminal Procedure Code would introduce "cross-examination" into the Turkish legal system. This would enable both prosecution and defence counsel to ask questions to witnesses directly. The report welcomed the introduction of "cross-examination" as a practical measure to ensure that the defence is placed in a procedurally equal position vis-a-vis the prosecution when examining witnesses. We urged adoption of the Draft Criminal Procedure Code at the earliest opportunity.

5.23 In the response to the 2004 Report, the Ministry of Justice informed us that Article 201 of the new Criminal Procedural Code (No 5271), which came into force on 1 June 2005, provides for the opportunity of the cross-examination by the accused. The formal part of the recommendation is thus fulfilled. The implementation thereof however remains to be observed.

Prosecution against defence lawyers

We strongly recommend all necessary steps to be taken to allow lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution in line with international standards.

5.24 The first advisory visit report recommended that:

- All pending prosecutions against lawyers be reviewed at the highest level of the appropriate prosecuting authority to consider (i) the adequacy of evidence favouring conviction; (ii) the extent to which, despite a formal sufficiency of evidence, there is any real prospect of conviction; and (iii) whether the criminal proceedings could be said to violate the UN Basic Principles on the Role of Lawyers or other international human rights standards;
- Wherever possible, state authorities resort to civil or administrative proceedings in respect of alleged professional misconduct rather than criminal proceedings;
- Where resort to civil or administrative proceedings in respect of alleged professional misconduct would not provide an adequate remedy, the criminal prosecution of lawyers in respect of their professional activities should only occur where (a) there is evidence that is both clear and credible; and (b) where the alleged wrongdoing involves some serious impediment to the administration of justice.

5.25 The second Advisory Visit Report remained extremely concerned at the fact that, lawyers in Turkey continued to be prosecuted for offences arising out of the exercise of their legitimate professional duties and the exercise of their legitimate right to

freedom of expression. It urged the relevant state authorities to take necessary measures to ensure that police officers, gendarme officers and public prosecutors refrain from identifying lawyers with their clients' causes and allow lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution in line with international standards.

5.26 In the response by the Ministry of Justice to the 2004 recommendations it was stated that in practice, when investigations and prosecutions against lawyers are undertaken, due consideration is shown to the concerns set out in the reports. Still cases, for example in Van, were reported to us contradicting the good intention stated in the response by the Ministry of Justice. The recommendation is maintained and repeated.

Influence of the Ministry of Justice in disciplinary actions against Lawyers

We recommend that the role of the Ministry of Justice in relation to the functioning of the Bar Associations be removed

5.27 In previous reports it has been recommended that the role of the Ministry of Justice in relation to the functioning of the Bar Associations be removed with a view to establishing professional self-regulation as a step towards securing the independence of lawyers. In pursuit of this aim, it was recommended that the appeal to the Union of Turkish Bar Associations be the final appeal to a non-judicial body in the case of disciplinary action against lawyers. The decision of the Union should not be forwarded to the Ministry of Justice. In disciplinary actions against lawyers there is a requirement that all decisions of the Union of Turkish Bar Associations be forwarded to the Ministry of Justice. Additionally, Articles 58 and 59 of the Law on Lawyers continue to impose a requirement that, whenever criminal proceedings are commenced against a Turkish lawyer for offences alleged to have been committed during the course of their professional duties, a public prosecutor must obtain the permission of the Ministry of Justice before commencing an investigation and secure the authorisation of the Under-Secretary of the Ministry before preparing an indictment. In this context it might also be mentioned that the Judicial Inspectors of the Ministry also inspect the Bars.

5.28 An independent legal profession has a crucial role to play in upholding the rule of law and the administration of justice. An independent legal profession ensures that lawyers can take an objective view on issues concerning such matters and that the view of lawyers will be given credence and respect by society. An independent legal profession is a legal profession that owes a duty to the courts and to its clients, not to an arm of the executive. To this end, in order to ensure an independent legal profession in Turkey the work of lawyers must be overseen by an independent body, subject to an appeal to a judicial body, and not by a body over which the Ministry of Justice has an influence, however limited that influence might be. The experts to the second advisory visit were fortified in their conclusion that the role of the Ministry of

Justice in relation to the functioning of the Bar Associations should be removed after receiving strong support for such a reform from Bar Associations in Turkey. The 2003 recommendation is maintained and repeated.

5.29 The Ministry of Justice responded that under Article 142 of the Code on Lawyers (no 1136), that the only decisions sent to the Ministry of Justice are where the Executive Board of the Turkish Bar Association have decisions of the executive boards of individual Bars not to initiate disciplinary investigations. The Ministry of Justice returns the decisions to the Turkish Bar Association to be re-examined. They are considered upheld only if the Executive Board reaffirms it a by two-thirds majority.

5.30 During our visit this year, the Ministry of Justice said that this measure is a protection for lawyers, hindering dissatisfied former clients and others in filing court cases against a lawyer. The final decision is up to the judicial system to take. The procedure foresees a preliminary investigation and the collection of evidence. The public prosecutor gives an opinion and submits the material for decision to the General Directorate for Criminal Affairs within the Ministry of Justice. The decision made by the Ministry can be appealed to the Administrative Courts. If the Ministry approves a further investigation, the file is sent to the prosecutor's office of the closest felony court. The court might decide not to carry out a final investigation. In 2004, out of 5162 allegations against lawyers, permission was given in just 1144 cases. The president of the Ankara Bar association stated during our visit that there should be no involvement by the Ministry of Justice in cases against lawyers. There should be no difference in the treatment of lawyers and civil servants. The Van Bar Association claimed that permission was granted by the Ministry of Justice in almost all cases. We consider that the previous recommendation given on this matter is still well founded and believe that this matter should be followed up.

Official examination of aspiring Members of the Bar

We recommend that bar associations in Turkey, consider the position of defence lawyers with a view to identifying whether their qualifications, training and professional responsibilities are a match for their enhanced role in the criminal justice system. We also recommend that the European Commission provide such assistance from member states as is requested to meet any needs which are identified in any of these areas

5.31 The 2004 Report noted that the Union of Turkish Bar Associations said that from 2005 the Higher Education Board would introduce a compulsory central government

examination. The proposed introduction of a central government examination for all aspiring lawyers might be said to constitute a negative development in so far as the establishment of an independent legal profession in Turkey is concerned, although in practice everything will depend on how the examination is implemented. The report considered that this was a matter that ought to be investigated further.

5.32 In our view, in any criminal justice system defence lawyers must qualify by passing professional examinations comparable to those undertaken by judges and prosecutors; must be subject to compulsory continuing professional training requirements throughout their career; must act in accordance with the highest ethical standards; and must generally present themselves as professionals worthy of respect by the courts and society. We make no judgment as to whether there are deficiencies in any of these areas among defence lawyers in Turkey. We also note that the opinions in this matter seem to differ within the Bar. However, given the importance of these matters for a properly functioning judicial system we make the recommendation in the box above.

Lawyers access to investigation files

Lawyers' access to files concerning the defendant is a crucial element in the right to a fair trial. Potential hindrance on this matter should be closely examined. We recommend the Ministry of Justice to take action in order to prevent all hindrances of this kind.

5.33 During the course of our visit we were informed that it seems that Article 22, first paragraph, in the recently issued regulation on Apprehension, Detention and Statement Taking contradicts Article 153 of the new Criminal Procedure Code. The By-law entered into force on 1 June 2005. The article states that written permission from the prosecutor is required in order to give the defence lawyer access to the investigation file. Under both the former Criminal Procedure Code and the previous regulation on Apprehension, Detention and Statement Taking no such permission was required. Although legislation always prevails over regulation, we were told that the police apply the regulation, thus violating the Criminal Procedure Code and also Article 6 of the ECHR, which is a part of the Turkish Constitution. The Ankara Bar Association has brought the matter before the Council of State. On the practical implementation of the regulation, one of the prosecutors we met in Van told us that the law enforcement officers are given oral instructions which later on are confirmed in writing. The Contemporary Lawyers Association in Izmir also complained that the work of lawyers in cases concerning juveniles is hindered by the fact that it is very difficult for them to get access to the files in cases against juveniles. Not having case files accessible for defence lawyers, even if it might be for a short period, endangers effective defence.

5.34 Noting that defence lawyers' access to files concerning the defendant is a crucial element in the right to a fair trial, we look forward to the assessment of the matter by the Council of State.

Equal equipment for Prosecutors and Defence Lawyers

We recommend that where courtroom facilities exist for the prosecutor to observe the record of proceedings as it is being entered by the court stenographer, defence lawyers be provided with access to the same facility.

5.35 In some courtrooms in Turkey, the prosecutor, like the judges, is provided with a computer and a terminal that enables him to see the record of the proceedings as it is being entered by the court stenographer. In the 2004 Report we emphasized that we could see no justification for the prosecutor being able to have a record of the court proceedings appear on a screen in front of him in circumstances where the defence lawyer cannot have access to the same facility. Such a state of affairs is contrary to the notion of there being a fair balance between the prosecution and defence. However, we were pleased to note that the Ministry of Justice intended to remedy this state of affairs in the foreseeable future. The National Judicial Network, which was expected to be fully functioning in November 2005, was said to enable both parties to monitor the trial proceedings. Until this is the case, the recommendation on this matter is maintained and repeated.

6. QUALITY AND EFFICIENCY IN THE JUSTICE SYSTEM HUMAN RIGHTS RELATED ISSUES

Introduction

6.1. During our visit we warmly commended the Ministry of Justice on the planned increase in the number of judges and prosecutors by 1400 over the next two years. This will go a long way to meeting the concerns raised in the reports of the earlier Advisory Missions about the shortfall in judicial and prosecutorial power given current and anticipated demands on the justice system. In paragraph 2.2 above we underlined the implications of this increase in the number of judges and prosecutors for training and judicial independence more generally. This very welcome increase in the capacity of the system is both an opportunity and a challenge. There still remain issues relating to matters of backlog and delay, overall expenditure on the system and remuneration which cause us some concern. We take the view that in addition to the work undertaken on the criminal justice system, attention needs to be given to civil justice, especially commercial cases. An overview of the Turkish courts is attached to the report as Annex C

Backlog and Delay

We are concerned about a potential negative development on backlog and delay within the judiciary in the next couple of years and recommend efforts to be made in order to prevent such a development.

6.2. The earlier Advisory Mission reports set out the heavy workload and delays in important parts of the justice system in Turkey. Those strains on the system were confirmed to us in our visits, whether in Ankara, Izmir or Van. Relief will come from the 1400 new judges and prosecutors, whose training the Ministry of Justice assured us would be complete within two years. Recruiting from already qualified lawyers is being explored as a way of meeting the target. Our view is that the situation will remain difficult over the next couple of years, not least because of the need to recruit first class judges into the regional courts of appeal.

Expenditure on the Justice System

We recommend that the proportion of the budget allocated to the administration of justice be substantially increased.

We welcome the steps taken to involve judges and prosecutors in the preparation of the budget and to increase the responsibility of the judiciary for its internal allocation and administration but maintain the recommendation awaiting to see the implementation of the new order.

6.3. Previous Advisory Mission reports highlighted the shortcomings in the budget allocation for the justice system in Turkey. We are not sure by how much this will increase in the light of the boost to the number of judges and prosecutors, which we assume is to be funded from new moneys from the Ministry of Finance. Turkey's low level of expenditure is identified in the December 2004 report of European Commission for the Efficiency of Justice (CEPEJ), of the Council of Europe.¹ The figures in the report can only, of course, be a rough guide because courts perform different functions in the different countries. Overall, however, public expenditure on courts and legal aid whether per inhabitant, in terms of national budget, or as a percentage of gross average salary, is low in Turkey compared with countries in the European Union. Therefore we maintain the recommendation of the earlier Advisory Missions.

6.4. The Ministry of Justice has informed us that the other part of the earlier recommendation on the budget - that judges be consulted in the preparation of the budget and the judiciary be responsible for its allocation - is being implemented by a Circular of the head of administration and financial issues no. 01/1425-55, dated 18 June 2004. We welcome this and look forward to its implementation in future years. On this basis the recommendation is maintained.

Increased training of judges and public prosecutors

We recommend that:

- measures be taken to ensure that the Justice Academy offers judges, prosecutors and lawyers optional foreign language education courses in addition to the provision of compulsory legal education;
 - all judges and public prosecutors receive comprehensive training in international standards relating to the guarantee of an independent and impartial judiciary and the role and functioning of prosecutors and lawyers. Such training should be based upon, but not limited to, the guarantees set forth in the UN Basic Principles on the Independence of the Judiciary, the UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers.
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6.5. The progress made already in this regard is very encouraging. Foreign language training is now being offered to judges and prosecutors, although not so far by the Justice Academy. As to training in international standards on judicial independence we appreciate that over the last year substantial efforts have had to go into training on the new criminal code and procedure code, and on human rights law. We look forward to the new Judicial Academy curriculum and to the inclusion there, on a permanent basis, of training in these areas.

European Judicial Systems 2002. Facts and Figures on the basis of a survey conducted in 40 Council of Europe Member States, Strasbourg, 10 December 2004.

Increase in the remuneration of Judges and Public Prosecutors

We recommend that, in accordance with Principle 3(1)(b) of the Council of Europe Recommendation on the Independence, Efficiency and Role of Judges, the salaries of both judges and public prosecutors be substantially increased.

6.6. In its response to the recommendation of the second Advisory Mission report, the Ministry of Justice refers to what has already been done in this regard. We welcome any increase in the salaries of judges and prosecutors, since we believe that they are quite low compared with the position elsewhere in Europe. (Unfortunately, the report of the European Commission for the Efficiency of Justice, of the Council of Europe, mentioned earlier, does not include Turkish data on salaries). The position will become more acute with time as commercial law grows in importance in Turkey, not least because of increased trade developing with other countries in the EU. The experience in many countries is that the returns from commercial law practice are so great that unless judicial salaries keep pace it becomes difficult to recruit the best lawyers to a career in public service.

Information and communication technology

We welcome the progress made so far in the computerization of the judiciary. We recommend that:

- all provincial offices that do not presently have the ability to access the national information of the Ministry of Justice via a computerised network be equipped with facilities to do so;
- an electronic case-management system be introduced in all courts in Turkey with appropriate training being provided to judges and court personnel in its application.

6.7. The provision of personal computers to judges - a recommendation of earlier Advisory Visits - was evident in our visits to judges and prosecutors. We also learnt that a web site has been constructed, providing free access to all judges, public prosecutors and lawyers, containing all case law of the higher courts. This was a recommendation of the second Advisory Mission and we applaud the ready adoption by the Ministry of Justice of the idea. As for the National Judicial Network Project, we have been informed that it is proceeding according to schedule. By the end of 2006 all court-houses will be connected to the system. We are not unmindful of the difficulties attendant on such ambitious projects. The project is described in Annex B to the report. They are necessary, however, for a modern justice system and we eagerly anticipate the completion of the national link-up of the justice system and an electronic case-management system.

Regional Courts of Appeal

We commend the on-going work on the establishment of Regional Intermediate Courts of Appeal. We recommend that the implementation of all legislation and practicalities concerning the newly introduced Regional Intermediate Courts of Appeal should be closely followed up.

6.8. The entry into force on the eve of our visit of the Law on the Establishment, Function and Competence of the Regional Intermediate Courts of Appeal was very encouraging news. It will be a daunting task to establish the model courts and to recruit the necessary personnel. As noted in the report of the second Advisory Mission, the new courts will be an important step forward in ensuring the right to a fair trial and in increasing the speed and efficiency of the judiciary. Moreover, we conceive of the regional courts as also having a direct impact on judicial independence. That is why the design of the court buildings themselves is so important, in particular how they symbolise the relationship between judges and prosecutors. Architecture cannot determine the relationship, but it can certainly mould it. We look forward to seeing the plans. We also note the positive steps taken in the preparation of twinning projects on the establishment of the courts.

Alternative dispute resolution

We are pleased to learn that there are draft laws in preparation on both alternative dispute resolution and an ombudsman. This matter is to be closely followed up.

6.9. Alternative dispute resolution can improve the efficiency of the justice process by diverting minor disputes outside courts. Perhaps more importantly it can facilitate access to justice by many people who lack the knowledge or resources to bring a case to court. There are many possibilities: an ombudsman to take up complaints about government agencies, conciliation for labour disputes, arbitration for commercial and consumer disputes and mediation for landlord-tenant and neighbour conflicts. Therefore we have recommended that, necessary amendments be made to procedural rules and legislation so as to facilitate the settlement of private law disputes involving individuals and public bodies in conciliation committees or similar institution.

6.10. We are pleased to learn that there are draft laws in preparation on both alternative dispute resolution and an ombudsman. The planned sessions which the Turkish bar is to organize on alternative dispute resolution are also to be welcomed. Alternative dispute resolution already exists of course in Turkey. In Izmir we learnt that consumer boards, comprising five members from trade associations and consumer representatives, help resolve disputes. Ombudsman, conciliators and mediators may be empowered to go beyond the law to decide cases in the light of what is just or fair or reasonable in the circumstances. Ideally they should not only

solve individual disputes but may also be able, through their work, to develop benchmarks for the sector in which they operate.

Artificial law suits in criminal matters

We note that measures have been taken to improve the role of prosecutor in criminal investigations in order to concentrate the work of the judiciary in criminal cases to matters with substantial merits. The recommendation in earlier reports regarding the judicial police is commented in paragraphs 4.1 - 4.2.

6.11. Under this heading were three recommendations in the earlier Advisory Mission reports relating to criminal procedure. The first related to simplification of rules relating to criminal jurisdiction: the new Criminal Procedure Code and the law on first instance and regional intermediate courts of appeal seem to have met this recommendation. Pre-service and in-service training of public prosecutors on matters of competence and venue is in hand.

Law suits in civil matters

We recommend that the distinction between the Civil Courts of Peace and General Civil Course of First Instance be abolished and the division of labour between civil courts be based on specialisation.

We also recommend that the administration of Justice is headed towards greater court control to reduce delay and possibly costs. That control needs to be early and continuous so as to create an expectation in those parties that events will occur as ordered and on time.

6.12 The earlier reports concentrated on the division between the two lower civil courts in relation to efficiency in the civil justice system. As a result of this visit we feel that the committee which the Ministry of Justice has established to review the Civil Procedure Law needs to widen its remit to encompass other matters relating to the efficiency of the civil justice system. We do so for two reasons. First, it will be the civil courts, together with the commercial courts, which will bear the brunt of the greater litigation likely to be associated with the more intense economic activity both during and after the accession period. Secondly, we formed the initial view that existing ways of conducting civil litigation in Turkey are somewhat wasteful of time and resources. That leads us to suggest that cases need to be prepared better before they get into court, they should not have constantly to return to court, and when they get to court there needs to be better time-tabling.

6.13 During our visit to Izmir, we visited the First Instance Civil Courts. There are 13 of them, each with a judge, a registrar, two clerks and an usher. There is a wide jurisdiction including compensation claims for accidents, real estate and construction, inheritance, contracts, debt, personal identity, expropriation and foreign judgments. In 2004 6796 files were opened and 8581 files closed, so the court is dealing well with its backlog. Files are computerised. Parties tend in the main to be represented by lawyers. However, the judge in charge of the First Instance Civil Courts told us that it was only hard work on the part of the judges in getting the files in order which had enabled such impressive disposition rates to be achieved. She thought that the answer lay in better pre-trial mechanisms and more extensive use of alternative dispute resolution. We agree and would only observe that lawyers should be expected to prepare better files, if this is the cause of the problem.

6.14 In Van we observed a First Instance Civil Court. A public prosecutor was there initially because of the state interest in personal identity cases. That has implications for the timetabling of the court, to which we return. What struck us was that many cases were adjourned, because witnesses were not available or more frequently the file not complete. Both that judge and another civil court judge we spoke to, explained that a file had to be competed in open court, to give notice to all the parties to a case. Our initial view is that the constant churning of files in open court is wasteful of judicial resources. Moreover, we also identify for consideration the waste for lawyers. The Chairman of the Van Bar Association told us that it was uncertain when a civil case would be called. Other matters had to wait for personal identity cases to be completed. These were called first because the public prosecutor was present. Lawyers might waste a considerable amount of time until their matter was called.

6.15 Procedural rules and case management are crucial in the cost and efficiency of civil litigation. It is necessary to review these matters regularly and to simplify matters. Courts have limited resources and it is necessary to ensure that the resources which any one case gets is proportionate to its importance, complexity and the financial position of the parties. Not all cases need the same judicial resources. The modern trend in judicial administration is towards greater court control to reduce delay and possibly costs. That control needs to be early and continuous so as to create an expectation in those parties that events will occur as ordered and on time. It is in this context of the need for all countries regularly to renew their civil procedure rules that we maintain the earlier recommendation. We hope that in its review of the Civil Procedure Code the Ministry of Justice will take these points into account.

Replacement judges

We recommend that the practice of using replacement judges is abandoned, although we think changes in the prosecution process leading to more concentrated hearings will address the matter to some extent.

6.16 This issue was raised in earlier reports because of the practice of regularly adjourning criminal cases because they were not ready for final decision. The greater

the number of hearings in any one case, the greater the risks that at least one judge of a three judge court will be away through illness, vacation, transfer or for other reason. The concern expressed was that when a final decision on guilt or innocence was made, it might be that the panel would comprise at least one judge who had not been involved in the case all the way through. Previous reports recommended that the practice of using replacement (substitute) judges should cease immediately. The Ministry of Justice has said, obviously correctly, that there is no notion of substitute judges in the Turkish system. However we understand that it now accepts that the earlier reports did highlight a genuine issue. Our view is that the practice of replacement judges is still thoroughly undesirable, although we think the way to address it is by changes in the prosecution process, to which we now turn, which should lead to more concentrated hearings.

Aspects of criminal procedure

We look forward to the monitoring in the future of the full impact of the new Criminal Code. We also look forward to the monitoring of the implementation of the new Criminal Procedure Code - which among other things empowers the court to return incomplete files to the prosecutor and emphasises that judicial notice should be taken of matters which are within the knowledge of the court — and of the new provisions on plea bargaining.

We recommend that the administration of Justice is headed towards greater court control to reduce delay and possibly costs. That control needs to be early and continuous so as to create an expectation in those parties that events will occur as ordered and on time.

6.17 In response to these earlier recommendations, the new Criminal Code allows plea bargaining, and the new Procedure Code empowers the court to return incomplete files to the prosecutor and emphasises that judicial notice should be taken of matters which are within the knowledge of the court. It is anticipated that these changes will address the deficiencies identified in the earlier reports which, amongst other things, leads to the problem of replacement judges just mentioned. We very much welcome these measures. Unfortunately, the new code provisions had only entered into force just before our visit so it was not possible to gauge their full impact.

6.18 Although we heard some criticisms of the new criminal and procedural codes, it was not in respect of these matters. In fact we heard nothing but support for the new provisions on plea bargaining, the better preparation of indictments and the capacity of judges to take judicial notice of matters. The Chief Prosecutor in Izmir said that now indictments would only go before a judge when ready. In the course of observing several cases in the 2nd Aggravated Felony Court we saw the court take judicial notice of the value of mobile phones. The judges in the 6th Aggravated Felony Court in Izmir told us that already the number of cases filed had fallen off, so prosecutors were obviously making sure cases were complete before putting them before the court. Similarly in Van the Chief Prosecutor told of the advantages of the

new provisions, in particular the avoidance of unnecessary expert opinions. The judges and prosecutor in the 3rd Aggravated Felony Court (Law 5190) expressed the view that plea bargaining should be extended more widely to other courts to reduce the case-load. The judges of the 2nd Aggravated Felony Court welcomed the new provisions and said that so far the judges had not had to send an incomplete file back to the prosecutor. We look forward to the monitoring of the full impact of those beneficial measures in the future.

Interpreters and translators

We recommend that a system of accrediting interpreters be introduced so that, in accordance with the law, parties in Turkish courts who cannot understand or speak the Turkish language be able fully to put their case. We suggest that the European Commission should offer assistance.

6.19. The original recommendation in the Advisory Mission reports was that interpreters should be provided free in the criminal courts for those who cannot understand or speak Turkish. The Ministry of Justice has pointed out that there is provision in the Criminal and Procedure Codes for interpreters and that a 1996 decision of the Court of Cassation held that that should be free to defendants. In that sense the recommendation has been met. However, our interviews uncovered that although interpretation is provided free, this is done on an ad hoc basis. For example, in Van we learnt that interpretation is made available through administrative staff in the courts or through relatives of the parties. That was also done in the civil courts. However, we were told that mistakes were made, which were identified by other persons in the court interrupting to point them out to the court. Court interpretation is a specialist skill and needs specialist training. (We were told that the court documents frequently omit the name of any interpreter, despite the requirement for this). With all the experience the European Commission has in the area of interpretation, we recommend that it offers to assist the Ministry of Justice to establish a training and accreditation programme for court interpreters.

6.20 We were told of one very disturbing incident in Van which relates to those who cannot speak Turkish but are involved with the law. The Van Bar Association has published a brochure both in Turkish and, as it happens given the population of the region, Kurdish. The brochure was apparently discussed with judges and prosecutors beforehand and sets out the rights of people who come in contact with the law. We can see nothing wrong with this; indeed, we commend the Bar Association in taking the initiative. However, we have been told that now the brochure has been published prosecutors and judges have reacted very badly, and there was even a threat of prosecution. Frankly, we are at a loss to understand this.

6.21 Consequently, we have concluded that a proper interpretation service has to be organised for those who cannot speak or read Turkish. The law is adequate, but its

² Unfortunately, we learnt of this on the morning of our departure from Van and were not able to put the matter to the Chief Public Prosecutor in Van for his explanation.

working out in practice is not. What is needed are substantial efforts to make sure that there is a high quality interpretation service for both the criminal and civil courts. That might be done simply by accrediting persons with the required skills. These would include fluency in a language other than Turkish and a knowledge of legal terms. There is no reason that court administrators could not be accredited. But only those who have reached the requisite standard, by passing the appropriate tests, would be entitled to interpret in the courts. They will, of course, need to be paid to fulfil the obligation set out in the judgment of the Court of Cassation. Alternatively, especially when the need for interpretation is great it may be that the court will need to employ fully accredited interpreters on a full-time basis. We express no preference as to how interpretation is provided. What we do conclude is that the system needs to be better organized and the standard of interpretation improved.

Code of Judicial Conduct

We are pleased to note that the UN Bangalore Principles of Code of Conduct have been published and available on the web-site of the Ministry of Justice. We recommend that the principles are officially acknowledged and that judges and candidate judges are trained on the subject.

6.22 The recommendation in earlier reports on the creation of a code of judicial conduct has been implemented in part by publication of the UN Bangalore Principles of Code of Conduct. These are available on the Ministry of Justice web-site and we understand hard copies have also been distributed. We found a widespread, although not universal, knowledge of the existence of the Bangalore Principles. Judicial ethics is to be incorporated as part of the Justice Academy's new curriculum. We look forward to seeing the curriculum and judicial ethics as an important component of it. (On this matter, see also above in this chapter under the headline Increased training of Judges and prosecutors.)

Juvenile courts

We recommend that:

- The number of juvenile courts be substantially increased throughout Turkey;
- Very minor offences involving young persons are determined by single judge courts;
- Where they do not already exist, psychologists, psychiatrists and pedagogues are appointed to the juvenile courts.

6.23 We were not able to give any great attention to this issue during this Advisory Mission visit, although the Contemporary Lawyers' Association in Izmir told us that the position of juveniles in the criminal justice system is still acute. We welcome the steps taken by the Ministry of Justice in establishing five additional juvenile courts, in appointing additional psychologists, pedagogues and social service experts for

juvenile courts and in preparing a draft law so one judge can deal with minor offences by juveniles. Until the impact of these steps can be monitored, however, the existing recommendations are maintained.

Family courts

We recommend that:

- All judges appointed to the family courts be provided with sufficient specialist family law training to enable them to properly discharge their judicial function;
- Where such appointments have not already been made, social services personnel and child psychologists be appointed to the family courts.

6.24 Likewise, we were not able to monitor family courts during the Advisory Mission. We welcome the steps taken by the Ministry of Justice to increase the number of family courts and to appointing additional psychologists, pedagogues and social service experts. This is an encouraging progress and we look forward to examining it in detail in the future.

Commercial courts

We recommend that the Ministry of Justice conduct a review of commercial courts with a view to ensuring that they will be in a position to deal with the increase in litigation, including cross-border litigation, which will result from Turkey's integration with the EU.

6.25 Previous advisory mission reports have recommended that where appropriate commercial cases should be heard by a single judge. The Ministry of Justice has informed us that maritime courts will sit with a single judge and we welcome this. As a result of our visit to the Commercial Court in Izmir, we feel that it may be helpful to recommend that the Ministry conduct a review of commercial courts, along with its drafting of a new Civil Procedure Code. The commercial courts must be in a position to deal with the increase in litigation, including cross-border litigation, which will result from Turkey's integration with the EU. We were not in a position to make any detailed assessment. However, one factor which has become increasingly clear is that there is an association between economic development and a legal system attuned to commercial, especially international commercial, transactions. This means a court system administering predictably transparent and enforceable rules which ensure well-functioning markets, appropriate business forms, and efficient methods for dealing with default and insolvency. In particular effective credit allocation and debt recovery are central to the proper functioning of an economy. It is with debt recovery that law has an especially crucial role: in general terms it can assist creditors to monitor loans effectively and, in the event of default, can ensure that rights to debt recovery and security (collateral) can be readily exercised.

Administrative functions in Court buildings

We recommend that administrative duties currently undertaken by public prosecutors should be transferred to administrative staff.

We suggest that the European Commission give consideration to supporting a project to train administrative staff in the courts not affected by the projects "Judicial Modernisation and Penal Reform" and "Support to the Establishment of Courts of Appeal".

6.26 The 2003 report recommended that administrative duties currently undertaken by public prosecutors should be transferred to administrative staff of the Ministry of Justice. This recommendation needs some explanation. In Turkey the courts and the prosecutor's offices are closely linked to each other including being located together. The administrative duties are — as we have understood it - led by an internal board containing representatives of the two organisations. The daily administrative work and executive tasks are under the responsibility of the chief public prosecutor, who normally delegates tasks to one of the prosecutors. The administrative functions of public prosecutors are related to the management of courthouses and prisons. Public prosecutors have overall responsibility for all aspects of the day-to-day administration and support work of the courts and the prisons. It is their duty to ensure that the necessary services are provided to the judiciary, court users and personnel within the prisons so as to ensure the efficient functioning of the justice system. In this capacity, public prosecutors are responsible for matters such as informing witnesses that their attendance is required at court. They are also responsible for matters such as the maintenance of lighting, the provision of electricity, the cleaning of the buildings and ensuring that there is adequate stationery. Public prosecutors are also responsible for overseeing the administration of the quarters where judges and public prosecutors live.

6.27 In the 2003 Report we suggested that removing the responsibility of public prosecutors for administrative tasks might ease their workload and better enable them to concentrate on their judicial functions of investigating cases and presenting prosecutions. The Ministry of Justice stated that the existing administrative staff is not competent to undertake administrative tasks without the supervision of public prosecutors. The Ministry suggested that the recommendation should be reformulated so as to recommend the need over time to improve both the training and salaries of court administrative staff with a view to transferring greater responsibilities to them.

6.28 It was noted in the 2004 Report, that the Ministry of Justice was committed to improving training and salaries of court administrative staff with a view to transferring greater responsibilities to them over time and also to creating an administrative career within the court system. It was concluded, that one should wait and see how and when this commitment was implemented in practice. It was

recognised that a lack of competence within existing administrative staff might present a real obstacle to the implementation of the recommendation on removing the responsibility of public prosecutors for administrative tasks. Nevertheless we considered that reform is beneficial. The Ministry of Justice agreed to improve training and salaries of court administrative staff with a view to transferring greater responsibilities to them over time. We supported the proposal of the Ministry of Justice to improve training and salaries of court administrative staff with a view to transferring greater responsibilities to them over time. The recommendation was maintained and repeated in the 2004 Report. We also suggested that the European Commission give consideration to supporting a project to train court administrative staff.

6.29 In its response to the 2004 Report on this issue the Ministry of Justice said that the Turkish Justice Academy and the Training Department of the Ministry have been studying two different Projects with regard to training of administrative staff. With the aim of preparing a Project, the Turkish Justice Academy made a study visit to Malatya Court House between 24th and 29th April 2005. For the time being the evaluation process regarding the preparation of the project is continuing.

6.30 Previous reports thus identified the need to transfer court administrative duties away from prosecutors. Prosecutors prosecute; they should not be responsible for the functioning of the courts. We have no objection to public prosecutors serving with judges and others on a board to run individual courts. What we would object to is any situation in which judges had to supplicate to public prosecutors for administrative support and services. Already the Ministry of Justice has committed itself to enhancing the training and salaries of administrative staff, a move we very much commend. The Justice Academy has a vital role in this in the future. We reject the notion that administrative staff will never be competent to undertake administrative duties without prosecutorial insight. What is possible was evident to us during our visit to Izmir. Our day at the court was superbly orchestrated by the court administrator, working for the chief public prosecutor for Izmir. We have no doubt that with time a cadre of comparable administrators, with her competence and flair, will be able to run Turkey's courts. That requires commitment and training. We look forward to seeing the further implementation of this over the coming years.

6.31 During our visit, there did not appear to be any support for this recommendation among Chief Public Prosecutors. However, no substantial response has been given by the Ministry of Justice on this matter. The 2004 recommendation stands and is to be followed up. A reference can be made to the twinning projects "Judicial Modernisation and Penal Reform" and the "Support to the Establishment of Courts of Appeal". The latter will contain training and the creation of handbooks for administrative staff in the forthcoming Regional Courts of Appeal. We suggest that the European Commission give consideration to supporting a project to train administrative staff in the courts not affected by the projects just mentioned.

Recording verbatim in hearings

We welcome the steps taken concerning criminal court proceedings following the recommendation in previous reports on proceedings to be sound recorded. The recommendation is fulfilled this far. We recommend that provisions on sound recording also should be taken into consideration in the work on the new Civil Procedure Code.

6.32 Turkish courts have so far not had any mechanism for recording verbatim the evidence of witnesses or the submissions of counsel and different procedures continue to be adopted for recording the evidence, argument and submissions of the defence and prosecution respectively.

6.33 The Ministry of Justice said in its response to the 2004 report that under article 52 of the new Criminal Procedure Code, numbered 5271, which came into force on 1 June 2005, recording of witness's statements is allowed and in some cases it is compulsory. In this context, preparatory work to establish required infrastructure is being carried on. For cases where the recording of the testimony will be obligatory, the relevant provisions of the code will come into force 1 July 2006. The access to Justice Project concerning the construction of the sound and vision recording systems in felony courts is waiting for the approval of the EU. The recommendation will be taken into consideration during the work on the draft Civil Procedure Code.

6.34 Concerning criminal proceedings, the recommendation is fulfilled. The recommendation should also be followed up for civil procedure.

Application of the European Convention on Human Rights

We recommend that the significant efforts that have been made to date to encourage the Turkish judiciary to directly apply the European Convention on Human Rights within their own practice continue and be enhanced.

6.35 We make no apology for maintaining this recommendation, despite the very considerable efforts which the Ministry of Justice has undertaken in training judges and prosecutors in human rights. That effort has had a beneficial result, for wherever we went judges and prosecutors spoke favourably of the training. Although the ECHR had not been determinative in any decision, we were told it had been influential in some cases (e.g. on the issue of proportionality) and had brought a change in attitude. Nation-wide there have been a not inconsiderable number of first instance courts referring to judgments of the European Court of Human Rights. As the Ministry of Justice told us, human rights are to be integrated into the curriculum of the Justice Academy. That was to be approved some time after our visit, and we look forward to seeing full details when it is done. Continuing training of judges and prosecutors is also necessary, not least as the jurisprudence of the European Court of Human Rights develops.

The Penal Code and the right to freedom of expression

Pending the adoption of the revised Criminal Code and a further assessment of the extent to which both the nature of the revised provisions and their manner of implementation afford applicable guarantees for freedom of expression in Turkey, we maintain and repeat the recommendation in previous reports on the right to freedom of expression.

6.36 In the 2004 Advisory Visit Report it was noted that the provisions of Articles 159, 169 and 312 of the former Turkish Penal Code and Article 7 and 8 of the Anti-Terror Law and the application thereof had been criticized as not in conformance with Article 10 of the ECHR. During the Visit a new draft Penal Code was under review by the Turkish Grand National Assembly.

6.37 The Ministry of Justice responded to the recommendation, that Articles 159, 169 and 312 of the Penal Code have not been totally transferred to the new Penal Code, which entered into force 1 June 2005. The corresponding Articles in the new Code have been rearranged with certain amendments.

- Article 159 of the former Penal Code is mainly replaced by Article 301 of the new Code. The main difference of the new Article is that, the expression "*insult and deride*" has been replaced with the word "*denigrate*". By this the field of application of the offence has been narrowed. It has been stressed that opinions stated with the aim of criticism shall not constitute an offence. For this reason "*intention*", which is the compulsory component of the crime, has been emphasized.
- Article 169 of the former Penal Code is mainly replaced by Article 220 paragraph 7 and 8 titled "*forming a crime organization*" and Article 315 titled "*to supply gun*" in the new Penal Code. Of those, the 7th paragraph of Article 220 envisages punishment for persons supporting a crime organization with intent or propagandising the aim of the organization without being in the hierarchical structure of it. The Article regulates a concrete danger offence.
- Article 315 in the new Penal Code regulates punishment for the offence of supplying guns with the aim of supporting an organization against state security or constitutional order and the functioning of the system. The provision requires that the person should be aware of the aim of the organization. In this way the components of the offence of assisting and harbouring of an armed criminal organization regulated in Article 169 of the former Penal Code has been rearranged. In the new Article the incongruity in the old Article 169 has been abolished and simple assistance by intimidation or fear or other effects considered being out of the scope of being a member of criminal organization.
- Article 312 of the former Penal Code is mainly replaced by Article 215 to 218 in the new Code. Of those Article 215 regulates praising the crime and criminal, Article 216 regulates the offence of incitement of people to hatred or denigrating them and Article 217 regulates inciting people not to obey the law. Article 218 also regulates a special aspect of the crime, which is committing the crime via media which forms an aggravating circumstance for those offences.

6.38 The Ministry of Justice stated that with the new forms of those offences, the component of abstract danger of the crime has been replaced by seeking concrete

facts for the formation of the crime. Furthermore, the components of the crime have been more clearly written to prevent probable unjust judgements in implementation. The new provisions cited above should be seen in the light of Article 90 of the Constitution, providing that international conventions on human rights shall take precedence over domestic law. Therefore, according to the Ministry of Justice, the provisions mentioned in the new Penal Code should not be inconsistent with human rights. In this context, significant changes have been seen concerning the approach of the Court of Cassation and first instance courts, taking into consideration the ECHR and the ECtHR judgments. Judgments of the first instance courts referring to ECtHR judgments are regularly sent to the Ministry of Justice, the General Directorate for EU Affairs. So far 174 judgments have been received.

6.39 We maintain this recommendation to allow for a period of reflection. There have been changes in these offences in the new Criminal Code, described in the Ministry of Justice's responses to the report of the second Advisory Mission. As the Ministry itself says in this response, "the consequences of those provisions will emerge after a period of implementation of the Code". We note that the Council of Europe experts have criticized articles 217 and 302 of the new Code "Expert Opinions on the Draft Criminal Code of Turkey", Strasbourg, 2 September 2004, PCRED/DG1/EXP (2004)49 and that the Representative on Freedom of the Media of the Organization for Security and Co-operation in Europe has criticized articles 216 and 217 ("Review of the Draft Turkish Penal Code: Freedom of Media Concerns", Vienna, May 22005). The implementation and the interpretation of the changes in the legislation must certainly be followed up closely.

Role and functioning of prison enforcement judges

Welcoming the information given by the Ministry of Justice on the efforts made so far on the training of enforcement judges and on inspection of custody etc., noting that previous recommendations seems at least partly to be met, not having been able to follow up all questions raised, we repeat the previous recommendations that:

- Prison enforcement judges are provided with training in relation to both relevant domestic legal provisions and international standards relating to the rights of persons under any form of detention or imprisonment;
 - The competence of prison enforcement judges is extended so as to enable them to receive complaints from any individual who is deprived of his liberty in any law enforcement facility in Turkey;
 - Measures are taken to ensure that, where the substance of the complaint necessitates, prison enforcement judges undertake site visits to detention facilities in order to assess the merits of the complaint;
 - Measures are taken to ensure that public prosecutors regularly check conditions for detained persons in police and gendarmerie stations.
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6.40 In response to our previous recommendation on training, the Ministry of Justice informed us about the training being undertaken in this regard. We welcome this and

look forward to future training similar to that of judges to take place in March 2006. The Ministry has also flagged up article 92 of the Criminal Procedure Code and articles 12 and 25 of the Law on Apprehension, Detention and Taking Statements requiring regular inspections by chief public prosecutors. We are unsure what "regular" means in this context or about whether there is a corresponding duty on the police and gendarmerie to facilitate visits. Inspections are certainly taking place which we welcome. For example the prosecutor in Gevas told us he inspected the cells both at specified and unspecified times. He did it regularly, ever three months, but in a small community he knew in any event who was detained. Inspections focused on conditions, the register of who was detained and released, medical reports, compliance with detention periods and complaints from detainees. At this stage, given that specialist training is soon to begin, and because we were not able to undertake detailed inquiries in this regard, we maintain the recommendations.

Prime Ministry's Human Rights Presidency

We recommend that

- Measures are taken to increase public awareness regarding the role and function of the Prime Ministry's Human Rights Presidency;
- Measures are taken to ensure that the Prime Ministry's Human Rights Presidency is provided with sufficient resources to enable it to fulfil its function.

6.41 The Prime Ministry's Human Rights presidency provided a lengthy response to this recommendation, for which we are grateful. We had no time during this visit to evaluate the issue and on that basis maintain the recommendation.

Forensic Medicine issues

Facilities for forensic medicine examinations

We recommend that the process on transferring forensic examinations to state hospitals or health centres in accordance with our previous recommendations be expedited. We furthermore recommend that in the meantime the working facilities for the forensic medicine department in the Izmir courthouse be improved. We urge the Ministry of Justice to inspect and evaluate the conditions in forensic examination facilities in other court houses in order to find out ways for temporary improvements, when necessary.

6.42 The 2003 Report recommended that all facilities within the general courthouses for the forensic medical examination of detainees and the documentation of torture and other cruel, inhuman or degrading treatment or punishment be transferred to state hospitals and health centres.⁵⁶

6.43 During the 2004 Advisory Visit, it was reported that the Ministry of Justice had undertaken to relocate all forensic physicians currently working within the court buildings of Turkey to either hospitals in the provinces or to buildings of the health directorates in the districts. We were told that 19 out of 22 provinces with forensic medical examination facilities within courthouses should have their forensic medicine facilities transferred to state hospitals or health centres. A total of 11 newly established centres were said to be ready to begin work and the remainder would be transferred shortly. In the Report this was regarded as a significant positive development. We welcomed the initiatives undertaken and noted that progress in line with the recommendation seemed to be underway. Pending completion of the relocation process the recommendation was maintained and repeated.

6.44 During our 2005 visit to the Izmir Court building, which is a relatively new one, it was noted once more that the conditions under which the interviews during the examinations take place are not acceptable, with one single room shared by three physicians, divided only by partitions into separate working facilities. In such facilities it is not possible to carry out interviews in privacy. It could be questioned, as stated by the Mazlum-der, whether there is sufficient equipment in the facilities to carry out examinations in compliance with the Istanbul Protocol. Furthermore, the workload in the department seems to make it difficult, not to say impossible, to carry out examinations in full compliance with the Istanbul Protocol.

6.45 We still note as an important step forward the agreement in principal to transfer examinations from court houses. The progress reported to date is however very limited as we were told that examination facilities so far have been transferred from just two court buildings to state hospitals. The process on transferring forensic examinations to the state hospitals or health centres in accordance with our previous recommendations should be expedited. In the meantime the working facilities for forensic medicine department in the Izmir courthouse should be improved and the conditions in forensic examination facilities in other court houses should be inspected and evaluated in order to find out ways for temporary improvements, when necessary.

Administration of forensic medicine

We recommend that the responsibility for the preparation of official court forensic reports be removed from physicians attached to the Institute of Forensic Medicine and assigned to physicians working within the national health service in order to ensure the independence of medical personnel required to carry out forensic examinations.

However, if all forensic examinations are transferred from prison facilities to state hospitals or health centres, and a thorough training of forensic specialists and other physicians as well as of judges and prosecutors is completed, we believe that the need to transfer responsibility for the Forensic Medicine appears is not indispensable. Under those conditions, the recommendation might be withdrawn.

6.46 The 2003 Report recommended that all facilities within the general courthouses for the forensic medical examination of detainees and the documentation of torture and other cruel, inhuman or degrading treatment or punishment be transferred to state hospitals and health centres.

6.47 In its response to the 2003 report, the Ministry of Justice declined to accept this recommendation. The Ministry of Justice asserts that FMI physicians are experienced medical practitioners who fulfil their duties in accordance with the high standards expected of all members of the medical profession. Accordingly, any concerns regarding the independence of FMI physicians are misplaced. Any concerns regarding the quality of FMI forensic reports stem merely from deficiencies in training rather than a lack of independence. In this regard the FMI is conducting training activities for forensic experts in the application of the UN Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol").

6.48 The recommendation was maintained and repeated in the 2004 Report. However, the report welcomed the initiative to transfer forensic examination facilities from courthouses to hospitals and health centres. It was considered that a more thorough reform of the administration of forensic medicine services in Turkey was required so as to secure the independence of physicians engaged in the role of documenting ill-treatment by state officials. A more thorough reform of the administration of forensic medicine services is required in order to secure the independence of physicians engaged in the role of documenting ill-treatment by state officials. In order to ensure the independence of medical personnel required to carry out forensic examinations it was recommended that the responsibility for the Forensic Medicine Institute be removed from the Ministry of Justice and transferred to the Ministry of Health, or responsibility for official court forensic reports be removed from physicians attached to the Forensic Medicine Institute and transferred to physicians working within the National Health Service.

6.49 The Ministry of Justice stated in its response to the 2004 Report that the field of forensic medicine requires specialists. It was underlined that forensic experts in Turkey are well trained and are experienced and it was emphasized that the training seminars that had been offered on human rights issues for forensic experts in recent years also should be taken into account. The aim of these seminars was to prevent human rights violations. It was mentioned, that in order to maintain this training, a EU Funded Project had been prepared on training forensic experts and Judges/Prosecutors on the Istanbul Protocol and that final project files had been sent to EU Commission. The Ministry of Justice regarded transfer of the responsibility of preparation of forensic reports to physicians working within the National Health Service as inappropriate.

6.50 The Ministry of Justice underlined that the forensic experts in Turkey are well trained on forensic reports and are experienced persons. The preparation of forensic reports requires expertise in the field and the responsible physicians need to undertake necessary training on forensic examination. These duties should be carried out by permanent experts. Therefore it is inappropriate to transfer the responsibility for

preparation of forensic reports to physicians working within the national health service, who are frequently occupied by other duties.

6.51 As we understand it the normal procedure is as follows. Official forensic reports to the Courts are prepared by physicians, specialists in forensic medicine, attached to the Forensic Medical Institute, generally located in court houses in the bigger cities. The official reports are based on medical reports drafted by physicians in the National Health Service, occasionally also by a forensic specialist attached to the Forensic Medical Institute, who have examined the patient. Normally the Official Report is written on basis of the findings previously documented and the specialist does not meet the patient. The forensic medicine specialist might also examine the patient. However, official forensic reports to the courts are, as we understand it, not only prepared by physicians attached to the Forensic Medical Institute as this Institute is not organized everywhere in Turkey. In rural parts of the country, such reports are prepared only by ordinary physicians working in hospitals, clinics and health centres.

6.56 We recognise the initiatives taken on forensic medicine training. Once forensic examinations are transferred from court houses to state hospitals or health centres, and once a thorough training of forensic specialists and other physicians as well as of judges and prosecutors has been completed, there may no longer be a need to remove responsibility for examinations from the Forensic Medicine Institute. Under those conditions, the recommendation concerning the transfer of responsibility from the Forensic Medicine Institute might be withdrawn. However, this matter should be followed up until these prerequisites are fulfilled.

Training of forensic medicine experts

We welcome the initiatives taken by the Ministry of Justice on training of forensic medicine experts. We urge the Ministry of Justice to realize the plans for such training involving international experts.

6.51 The 2004 Report recommend that the Turkish Medical Association, Society of Forensic Medicine and Human Rights Foundation of Turkey be authorised to implement training programmes for physicians responsible for the preparation of official court forensic reports and such physicians be required to attend these training programmes. This was reaffirmed in the second advisory visit report. In its response to the 2004 Report, the Ministry of Justice said that the Forensic Medical Institution (FMI) had implemented and planned certain activities regarding the application of the Istanbul Protocol for physicians responsible for the preparation of official forensic reports. Five TAIEX seminars have been planned in the year 2005 for the training of physicians who are not expert in forensic medicine as well as for public prosecutors and judges. The training was to be given by experts from UK Medical Foundation, Turkish Medical Association and Forensic Medical Institute. A Twinning Project including training of 4000 physicians not expert on forensic medicine, 1000 public

prosecutor and 500 criminal judges had been prepared. In addition, within the context of in-service training programme, further training was foreseen for to 160 public prosecutors on obtaining and evaluating evidence by using better methods. In this context the programme also included training for the evaluation of the forensic medicine reports. The Ministry also stated that training has been given to physicians responsible for the preparation of official forensic reports working at the institutions attached to Ministry of Health in Istanbul by academics of the Forensic Medical Institute on preparation of forensic reports since 2004. At the end of the project 2500 physicians will be trained. The Ministry stated that it is possible that such NGOs can also give training to physicians. As a result of the TAIEX seminars and the training programmes which will be organized by the Forensic Medical Institute, it is expected that forensic reports will be better examined by the judges and public prosecutors in order to ensure their compliance with the Istanbul Protocol.

6.52 We thus note the positive progress in training activities relating to forensic medicine, not at least the Istanbul Protocol. We urge the Ministry of Justice and the Forensic Medical Institute to carry out the plans and also to bring in specialists as lecturers on the subject. We furthermore regard it as very positive that TAIEX seminars on the Istanbul Protocol for physicians, judges and prosecutors are planned for this year. We report it as unfortunate that the seminars planned for May this year were cancelled by the Ministry of Justice at the very last minute. We urge the Ministry to realize the plans this time.

Training of Judges and Prosecutors in forensic medicine

We welcome the initiatives taken by the Ministry of Justice on training of judges and prosecutors on forensic medicine. We urge the Ministry of Justice to realize the plans for such training involving international experts.

6.53 We recommended that judges and public prosecutors receive training on the Istanbul Protocol and the proper procedure for the effective forensic examination of detainees in order to enable them to subject official courts forensic reports to substantive scrutiny. The 2004 Report noted the absence of any training on the proper procedure for the effective forensic examination of detainees during the ECHR training programme for judges and public prosecutors conducted between April and June 2004. Nevertheless it welcomed both the fact that the Ministry of Justice had initiated a project to train judges and public prosecutors specifically on issues surrounding torture and ill-treatment and that all judges and public prosecutors were shortly to be provided with a copy of the Istanbul Protocol. It urged the Ministry of Justice to ensure that the training that it is to be provided will be sufficient to enable judges and public prosecutors to subject official court forensic reports to substantive scrutiny. The 2004 report welcomed the initiative on training. Pending completion of the training programme it maintained and repeated the recommendation.

6.54 In its response to the recommendation the Ministry of Justice said that a Twinning Project envisaged training of 4000 physicians not expert on forensic medicine, 1000 public prosecutor and 500 criminal judges. In addition, within the context of an in-service training programme, further training would be given to 160 public prosecutors on obtaining and evaluating evidence by using high tech methods.

The programme included evaluation of forensic medicine reports. The Ministry also stated that when assessing this recommendation, the training seminars that had been offered on human rights issues to the judges, prosecutors, police, gendarmerie and forensic experts during the last years should be taken into account. The aim of these seminars was to prevent human rights violations. As a result, security forces, judges and prosecutors act more sensitively. In order to extend this training, a EU Funded Project has been approved on training of forensic experts, judges and prosecutors on the Istanbul Protocol. Final Project fiches have been sent to the EU Commission. Furthermore, as a part of the training of candidate judges and public prosecutors in the Turkish Justice Academy, the curriculum includes a 14 hours seminar titled "*Forensic Medicine and Judicial Units*". The seminar is given by the head of Ankara University Medicine Faculty Forensic Medicine Unit and other academicians from the same unit expert in their field. The seminar's main aims are so that judges and prosecutors receive sufficient information and obtain skills for examining forensic reports. In the context of the Seminar on Criminal Procedural Law given in the preliminary and final term training of the candidate judges and public prosecutors, the request and evaluation of forensic medicine reports are clarified.

Pressure on physicians reporting torture

We strongly recommend that further measures be taken to strengthen the protection of physicians who report torture or carry out forensic medical examinations from any form of state-sponsored or state-tolerated harassment or intimidation.

6.57 In the 2004 Report, it was noted that previous allegations of physicians being subjected to pressure or threats because they have reported torture had not been repeated. The Ministry of Justice had in its response to the 2003 report emphasized that complaints in this respect are treated with great sensitivity and investigated as a matter of priority. The Ministry agreed to issue an administrative circular on this issue. Although it appeared that a positive development was in progress, pending the issue of a circular by the Ministry of Justice and the possibility of a proper assessment of the implementation thereof, the recommendation was maintained and repeated.

6.58 The Ministry of Justice referred in its response to the 2004 report to amendments in Article 9 of the new by-law on Apprehension, Detention, and Statement Taking, which entered into force on 1 June 2005. These are expected to prevent physicians responsible for the preparation of official forensic reports from being exposed to pressure since forensic medicine reports shall not be handled by law enforcement officers. The Ministry also referred to Circular No: 27/106 dated 29 September 2003 on preliminary investigations and Circular No: 28/112 dated 20 October 2003 on the offences of torture and ill-treatment. According to these, the allegation of intimidating or harassing a physician shall be investigated directly by public prosecutors which will enable an effective investigation. This should constitute a deterrent.

6.59 During the course of our visit in Van, the Bar Association reported one case in which a physician at the State Hospital had been intimidated and threatened by 4-5 gendarmes when claiming that a suspect needed immediate treatment after having

been seriously wounded. In the light of this and despite the very commendable initiatives set out on this subject we maintain the recommendation for the time being.

Transporting officers and their presence during examinations

We welcome the new provisions, which in principle do not allow law enforcement officers involved in the investigation of the actual crime to transport detainees or to be present during medical examinations. We regard these as important steps in the right direction. We recommend that the Ministry of Justice and the Ministry of Interior take all necessary further actions to inform and train law enforcement officers and physicians carrying out forensic examinations on the subject.

6.60 In the 2003 report it was recommended that measures be taken to ensure that the law enforcement officers who bring the detainee to the medical examination are not the same as those involved in the detention or interrogation of the detainee or the investigation of the incident provoking the detention.

6.61 Responding to the 2003 report, the Ministry of Justice and Ministry of Interior expressed their commitments to ensuring that law enforcement officers who bring detainees to medical examinations are not the same as those involved in the detention or interrogation of the detainee or the investigation of the incident provoking the detention. The Ministry of Interior intended to issue an administrative decree on this issue. The Ministry of Justice was also prepared to an amendment to Article 10 (Health Control) of the By-Law on Apprehension, Detention and Statement Taking with the following sentence: "The law enforcement officers who bring the detainee to the medical examination and are involved in the detention or interrogation of the detainee must be different". Pending the issue of an administrative decree and the adoption of an amendment to Article 10 of the By-Law on Apprehension, Detention and Statement Taking the recommendation was maintained and repeated in the 2004 Report

6.62 In its response to the 2004 recommendation the Ministry of Justice said that Article 9/4 of the new "By-law on Apprehension, Detention, and Statement Taking" reads as follows: "It is compulsory that the law enforcement officers involved in the detention or interrogation of the detainee and law enforcement officers who bring the detainee to the medical examination should be different. However, where different law enforcement officers are not available because of a shortage of personnel, such circumstance shall be documented."

6.63 During the 2004 Advisory Visit the Ministry of Justice and the Ministry of Interior expressed their commitment to ensuring that police and gendarmes are not admitted into medical examination rooms unless, exceptionally, a physician requests their attendance for reasons of personal safety. The Ministry of Interior informed us that it had issued an administrative decree to police and gendarme officers reminding them that they must not be present during the forensic medical examination of a

detainee. On 3 January 2004, Article 10 of the By-Law on Apprehension, Detention and Statement Taking was amended so as to provide, "It is essential that the physician and the patient be alone and making the examination within the context of doctors and patient relations. However, the doctor may demand the examination to be made under the surveillance of law enforcement officials for security reason. This demand shall be executed with written reasons." The Ministry of Interior had issued an administrative decree to police and gendarme officers reminding them that they must not be present during the forensic medical examination of detainees. The President of the Institute of Forensic Medicine also informed the delegation that posters setting out the rights of detainees would soon be displayed in forensic medicine examination rooms. The 2004 Report welcomed the initiatives undertaken by the Ministry of Justice and Ministry of Interior towards ensuring that police and gendarmes are not admitted into medical examination rooms. Progress in line with the recommendation appeared to be underway. Pending effective implementation of the measures in question, the recommendation was maintained and repeated.

6.64 The Ministry of Justice responded to the 2004 report that Article 9, paragraph 10, of the new "By-law on Apprehension, Detention, and Interrogation" reads as follows: "It is the principle that forensic medicine examination shall be between the physician and the person examined in a framework in accordance with the doctor-patient relationship. However, the physician may demand the examination to be made under the surveillance of law enforcement officials for security reasons and such request should be in writing. In this case the lawyers may attend forensic medicine examination at the request of their clients provided that there is no delay." The Forensic Medical Institute has started to display posters on this subject in examination rooms.

6.65 We welcome the measures taken and regard these as important steps in the right direction. During the 2005 Advisory Visit, however we have received allegations in relation to recent cases that law enforcement officers involved in the detention or interrogation of the detainee had brought the detainee to the medical examination. We also heard reports on cases where law enforcement officers had been present during forensic examinations, thus hindering the suspect from freely giving statements to physicians on the cause of wounds. Furthermore, we noticed that certain physicians responsible for conducting forensic medical examinations were unaware of the recently adopted regulations on the subject. In order to ensure a full and correct implementation of the regulation we recommend that the Ministry of Justice and the Ministry of Interior take all necessary further actions to inform and train law enforcement officers and physicians carrying out forensic examinations on the subject. The recommendation should be followed up.

Transfer of forensic medical reports

The previous recommendation on medical reports not to be handed over to law enforcement officers accompanying the detainee to the examination seem at least formally to be met. However, as we received allegations that the procedure laid down is not followed we urge the Ministry of Justice to take necessary steps to remind law enforcement officers about the he provisions.

The procedure concerning the preliminary medical report is not fully clear to us. We therefore believe that a clarification on this subject, and eventual provisions parallel to the provisions concerning the second medical report, could be useful.

6.66 Under no circumstances should medical reports be handed to law enforcement officers. Instead they should be immediately sent to the responsible public prosecutor who should promptly furnish a copy to the detainee and/or his lawyer.

6.67 During the course of the 2004 Advisory Visit, the Ministry of Justice expressed its commitment to amending relevant regulations so as to ensure that medical reports are not to be handed to police or gendarme officers responsible for the bringing of detainees to forensic medical examinations. The Ministry agreed to exclude the phrase "one of the copies shall be taken by the detention unit" from Article 10/5 of the By-Law on Apprehension, Detention and Statement Taking. Henceforth physicians who complete forensic medical examinations of detainees will be required to send their report directly to the public prosecutor in charge of conducting the investigation in a sealed envelope. In the 2004 Report we welcomed the undertaking of the Ministry of Justice to amend Article 10/5 of the By-Law on Apprehension, Detention and Statement Taking. We noted, however, that the mere deletion of the phrase "one of the copies shall be taken by the detention unit" does not lead to the conclusion that it is prohibited to give a copy to that unit. It was considered that further measures are required to ensure uniform practice throughout Turkey based upon effective implementation of the amended provision. The experts recommended that measures be taken to enforce the decision of the Council of State to annul provisions in the detention regulations of 1 October 1998 that permitted medical reports to be provided to police or gendarme officers following the examination of a detainee. The 2004 Report considered that progress in line with the recommendation was underway but that this was a matter that needs to be followed up. Accordingly the recommendation was maintained and repeated.

6.68 The Ministry of Justice responded that following the recommendation, Articles 9/7, 8 and 9 of the new By-law on Apprehension, Detention, and Statement Taking reads as follows: "Forensic medicine reports shall be prepared in three copies. The law enforcement officers inform the unit responsible for the preparation of official forensic reports in writing whether the report of the apprehended will be for entry or exit from the surveillance room. One copy of the report on apprehension or entering into the surveillance room shall be preserved in the health institution responsible for the preparation of the report, the second copy is given to the detainee and the third copy is given to the relevant law enforcement officer in order to be put into the investigation file. The report given for extension of the detention period or change of the place or exit from the surveillance room shall be handled as follows: one copy of the report shall be preserved in the health institution responsible for the preparation of

the report, two copies shall be sent to the relevant Chief Public Prosecution Office by the quickest way in a closed and sealed envelope by the health institution responsible for the preparation of the report. Of those one copy is given to the detainee or the lawyer of the detainee by the public prosecutor, another is put on the investigation file. In preparation of those reports and sending them to the Chief Public Prosecution Office, the health institution must comply with the privacy rules mentioned in the Article 157 of the Criminal Procedural Law, No:5271, and take the necessary measures to achieve this aim." Thus, the Ministry of Justice meant that the first sentence of the recommendation had been met.

6.69 If we have understood the situation correctly, the procedure in dealing with forensic reports on examinations of detained persons is generally as follows. A medical report is issued by a forensic medical institute or official health institution. The report is kept as to one copy at the health institution, a second copy is given to the detainee and the third copy is given to the relevant law enforcement officer (presumably the one that accompanies the detainee) for inclusion in the investigation file. Medical reports issued in connection with extension of the detention period or relocation or release from detention, are also issued by a forensic medical institute or official health institution. These reports shall be kept in the office of the specialist and two copies must be sent at once to the Chief Public Prosecutors Office in a sealed envelope. Of those copies, one is to be given to the detainee or his/her lawyer by the public prosecutor and the other copy is to be put into the investigation file. Provided that the described procedure is correctly understood, even though it seems unclear if the second kind of report is to be seen as the final official forensic court report, the procedure for these reports appears to meet the recommendation from previous advisory visits. However, we received allegations that this procedure is not followed and the official forensic report is handed over to the law enforcement officers accompanying the detainee to the examination. Moreover the procedure concerning the first medical report seems unclear. We urge the Ministry of Justice to take necessary steps to remind law enforcement officers of the provisions in the regulation and to create a regulation concerning the first (preliminary) medical report parallel to the provisions concerning the second report.

Presence of defence lawyer during forensic medical examinations

We welcome the new provision in the by-law for a written request of the physician for the presence of law enforcement officers during forensic examinations and giving the defence lawyer the right to be present if law enforcement officials are also to be present. However, we recommend that in cases of alleged torture or mistreatment lawyers should always be allowed to attend forensic examinations when the person to be examined so requests.

6.70 In the 2003 report it was recommended that measures be taken to afford lawyers the right to attend the forensic medical examination of their clients in circumstances where their client requests their attendance and measures are taken to inform

detainees of their right to have their lawyer in attendance at any forensic medical examination.

6.71 In its response to the report, the Ministry of Justice agreed to amend the second sentence of the last paragraph of Article 10 of the By-Law on Apprehension, Detention and Statement Taking so as to provide that a lawyer may stay in the examination room at the request of his client. Such an amendment would place an obligation on lawyers to advise their clients of their right to have a lawyer present during any forensic medical examination. In the 2004 Report we noted that progress in line with the recommendation was underway but considered that this was a matter that needed to be followed up. Accordingly the recommendation was maintained and repeated.

6.72 The Ministry of Justice referred in its response to Article 9/10 of the new by-law on Apprehension, Detention, and Statement Taking, which reads as follows: "Principally the forensic medicine examination shall be between the physician and the person examined in a framework in accordance with the doctor patient relations. However, the doctor may demand the examination to be made under the surveillance of law enforcement officials by raising security reasons and such request shall be written. In this case the lawyers may attend to forensic medicine examination at the request of their clients provided that it does not cause delay." The Commission mentioned above in Chapter 5, Paragraph 5.3, which was formed from the relevant institutions to consider measures concerning the rights of detainees, will address the matter.

6.73 We fully agree with the Ministry of Justice that the issue of forensic medicine examination in principle shall be a matter between the physician and the person who is examined. We welcome the new provision in the by-law providing for a written request of the physician for the presence of law enforcement officers during forensic examinations and giving the defence lawyer the right to be present if law enforcement officials are also to be present. However, we are not prepared to accept that in cases of alleged torture or mistreatment lawyers are not allowed always to attend forensic examinations when the person to be examined so requests. There is still mistrust among some lawyers and NGO's focusing on human rights issues such as torture and mistreatment concerning the way forensic examinations are carried out and on the content of forensic reports. The creation of better and fully independent working conditions for forensic specialists, improvement in information and training in the forensic profession, including the Istanbul Protocol, and attaining a sensible workload for forensic specialists are means suited to reduce this mistrust. As long as this is not achieved the mistrust will remain, which is why the possibility for the lawyer to be present at forensic examinations on request of the person to be examined can serve as a guarantee of a proper examination. The recommendation on the right to have a lawyer present during forensic medical examination is subsequently maintained and repeated.

6.74 In this context it should be mentioned that in a recent judgement the Court of Cassation recently has permitted a private medical report to be admitted as evidence in the case. However we have been told that the same court might have decided otherwise in another case, hence the legal situation remains unclear.

Oral evidence by medical expert witnesses

The recommendation in previous reports that lawyers and public prosecutors should be enabled to request the attendance of physicians responsible for the writing of court forensic medical reports at court for the purposes of giving oral evidence as expert witnesses is fulfilled and consequently withdrawn.

6.75 The 2003 Report recommended that measures be taken to enable lawyers and public prosecutors to request the attendance of physicians responsible for the writing of court forensic medical reports at court for the purposes of giving oral evidence as expert witnesses. In its response to the report the Ministry of Justice responded by noting that Article 65 of the Draft Code of Criminal Procedure is currently before the Justice Sub-Commission of the TGNA. Under the title "Appointment of Expert" this will, if adopted, provide "experts can either be appointed by the courts own or can be decided to appoint by the court at the request of prosecutor or parties or lawyers". Further, Article 69 of the Draft Code of Criminal Procedure will, if adopted, provide under the title "Explanation of the Expert at the Trial" that "the expert may be summoned to make explanation at trial by the court's own decision or at a request." In the 2004 report it was noted that progress in line with the recommendation was underway. Pending adoption of the Draft Code of Criminal Procedure the recommendation was maintained and repeated.

6.76 The Ministry of Justice responded that the new Criminal Procedure Code (No: 5271) which entered into force as of 1 June 2005 includes a provision parallel to the Recommendation. According to the Article 68 of the Criminal Procedure Code titled "clarification of the expert in trial", the court may always hear the expert at the trial of its own motion and may also summon the expert at the request of one of the parties to give clarification. According to the Ministry the provision is applicable where the hearing of the expert preparing scientific opinion is upon request of the public prosecutor, intervener, his/her lawyer, suspect, accused, his/her lawyer or legal representative. As a result of the provision in the new Criminal Procedure Code, the recommendation is fulfilled and consequently withdrawn.

Costs for forensic examinations

The previous recommendation on ensuring that all forensic medical examinations of detainees for the purposes of the preparation of official court reports are undertaken at no cost to the detainee themselves seems to have been met. We however recommend further measures to be taken on the full implementation of the provision.

6.77 We recommend that measures be taken to ensure that all forensic medical examinations of detainees for the purposes of the preparation of official court reports are undertaken at no cost to the detainee themselves.

6.78 In the 2004 Advisory Visit Report it was noted that Article 10/5 of the By-Law on Apprehension, Detention and Statement Taking reads as follows: "Medical examination, control and treatment shall be made free of charge by the doctors of Forensic Medicine Institute or official health institutions or municipalities". Even though the regulation on costs for examinations seemed to be adequate, the implementation thereof still needed to be further addressed.

6.79 In its response to the 2004 Report, the Ministry of Justice informed us that funds had been allocated for the forensic examination expenses of detainees to the budget of the Ministry of Health in the 2005 Financial Year Budget. In this context the Ministry of Health has issued a Circular on procedures for this process. A Circular on Health Expenses issued on 18 January 2005 by the Undersecretary of the Ministry of Justice, envisages not charging detainees since the health expenses of those should be covered from the costs of trial. The Forensic Medical Institute also states that in the implementation the charge is sent to the institution that brings the detainee.

6.80 Even though our recommendation seems to be met by the creation of the fund mentioned and as a result of the circulars on the subject, it is unclear if the implementation is complete. Doubts about this were raised by the Human Rights Foundation, saying that they had been informed that detainees still are charged for the costs of the examination. We recommend that implementation of the provisions be followed up.

7. SUMMARY OF RECOMMENDATIONS

1. We recommend that the influence of the Ministry of Justice in the process of selecting candidate judges be removed.
2. We recommend that the authorities responsible for making and advising on appointments of candidate judges should introduce, publish and give effect to objective criteria, with the aim of ensuring that the selection of candidate judges is "based on merit, having regard to qualifications, integrity, ability and efficiency."
3. We recommend that the influence of the Ministry of Justice in the pre-service and in-service training of judges be removed.
4. We recommend that Article 159 of the Turkish Constitution be amended so as to remove the Minister of Justice and his Under-Secretary from the High Council of Judges and Public Prosecutors.
5. Not being convinced that the President's role to appoint members of the High Council and Judges and Public Prosecutors is purely formal and following best practice we maintain the recommendation that he be removed from this process.
6. We recommend as worthy of consideration, along with other methods of reaching the goal of a High Council shorn of executive influence, that the High Council be increased with members from other courts.
7. We recommend that the High Council be provided with its own adequately funded Secretariat and premises. We also recommend that the High Council be granted its own budget, and that the members of the High Council be both consulted in the preparation of the budget and be responsible for its internal allocation and administration.
8. We suggest that formal meetings be held between the High Council and members of the National Assembly to discuss law reform issues relating to the administration of justice.
9. We strongly recommend that the Law on Judges and Prosecutors should be amended so as to remove judicial inspectors from within the central organisation of the Ministry of Justice.
10. We recommend that judges and public prosecutors be permitted to access all appraisal files held in respect of them.
11. We recommend that adverse decisions of the High Council related to civil rights should be capable of being appealed either to an independent judicial body or, if the High Council be divided into committees, to another committee comprised of members constituted by a majority of new members other than those taking the original decision
12. We recommend that the draft bill to enable judges to organise and form professional associations be enacted as soon as possible

13. We recommend that consideration should be given to appointing a greater proportion of the former SSC judges and public prosecutors serving within the courts established under Law No. 5910 to other courts as soon as it is possible to do so.
14. We question the provision in which the normal 24-hour period for deprivation of freedom before being brought before a judge is prolonged to 48 hours for those who are apprehended and arrested in relation to crimes falling under the competence of Heavy Penal Courts under Law No 5190.
15. Aiming for best practice on an independent judiciary, we recommend that the Constitution be amended so as to provide for an institutional and functional separation of the professional rights and duties of judges and public prosecutors.
16. We recommend a full implementation of the objective that Public prosecutors should be re-assigned to different courtrooms on a regular basis.
17. We recommend that Public prosecutors either be required to have their offices outside of the courthouse or, if this is not practicable, then public prosecutors have their offices located in a completely separate part of the courthouse from that occupied by judges.
18. We recommend that measures be taken to ensure equality between prosecution and defence counsel during the course of criminal proceedings.
19. We recommend that public prosecutors be required to enter and leave the courtroom through a door other than that used by the judge. We believe that this could be implemented at least to some extent also in existing court-rooms.
20. We recommend that public prosecutors and defence lawyers be positioned on an equal level in court rooms; preferably with both of them sitting at ground floor level opposite to each other. We believe that this could be implemented at least to some extent also in existing court-rooms.
21. We recommend that whenever judges retire to their ante-chamber for the purposes of deliberating on their rulings, the public prosecutor be required to remain inside the courtroom. Where judges remain in the courtroom in order to conduct their deliberation, the prosecutor should not enter into any discussion with the judges during the course of their deliberation.
22. We recommend that training for officers in the Judicial Police, but also for prosecutors, is developed and carried out on the demands under the new regulation. We hope for the Commission to be of assistance on this.
23. We recommend that public prosecutors should be given greater discretion when taking decisions on non-prosecution without risking negative evaluation from judicial inspectors.

24. We recommend that judicial inspectors should work directly under the control of the High Council of Judges and Prosecutors.
25. We recommend that courts should be entitled not only to send back but also to reject indictments. We recommend that the criteria for sending back indictments to the prosecutor should be clarified. We also recommend that a more extensive right on this matter might be considered.
26. We recommend that the implementation of the new Criminal Procedure Code introducing cross-examination into the Turkish legal system should be followed up.
27. We strongly recommend all necessary steps to be taken to allow lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution in line with international standards.
28. We recommend that the role of the Ministry of Justice in relation to the functioning of the Bar Associations be removed.
29. We recommend that Bar Associations in Turkey consider the position of defence lawyers with a view to identifying whether their qualifications, training and professional responsibilities are a match for their enhanced role in the criminal justice system. We also recommend that the European Commission provide such assistance from Member States as is requested to meet any needs which are identified in any of these areas
30. We recommend the Ministry of Justice to take action in order to prevent all hindrances on lawyers' access to files concerning the defendant
31. We recommend that where courtroom facilities exist for the prosecutor to observe the record of proceedings as it is being entered by the court stenographer, defence lawyers be provided with access to the same facility.
32. We recommend that the Ministry of Justice conduct a review of commercial courts with a view to ensuring that they will be in a position to deal with the increase in litigation, including cross-border litigation, which will result from Turkey's integration with the EU.
33. We recommend that administrative duties currently undertaken by public prosecutors should be transferred to administrative staff.
34. We suggest that the European Commission give consideration to supporting a project to train administrative staff in the courts not affected by the projects "Judicial Modernisation and Penal Reform" and "Support to the Establishment of Courts of Appeal".
35. We recommend that provisions on sound recording also should be taken into consideration in the work on the new Civil Procedure Code.

36. We recommend that the significant efforts that have been made to date to encourage the Turkish judiciary to directly apply the European Convention on Human Rights within their own practice continue and be enhanced.

37. Pending the adoption of the revised Criminal Code and a further assessment of the extent to which both the nature of the revised provisions and their manner of implementation afford applicable guarantees for freedom of expression in Turkey, we maintain and repeat the recommendation in previous reports on the right to freedom of expression.

38. We recommend that:

Prison enforcement judges are provided with training in relation to both relevant domestic legal provisions and international standards relating to the rights of persons under any form of detention or imprisonment;

The competence of prison enforcement judges is extended so as to enable them to receive complaints from any individual who is deprived of his liberty in any law enforcement facility in Turkey; Measures are taken to ensure that, where the substance of the complaint necessitates, prison enforcement judges undertake site visits to detention facilities in order to assess the merits of the complaint;

- Measures are taken to ensure that public prosecutors regularly check conditions for detained persons in police and gendarmerie stations.

39. We recommend that

Measures are taken to increase public awareness regarding the role and function of the Prime Ministry's Human Rights Presidency;

- Measures are taken to ensure that the Prime Ministry's Human Rights Presidency is provided with sufficient resources to enable it to fulfil its function.

40. We recommend that the process on transferring forensic examinations to state hospitals or health centres in accordance with our previous recommendations be expedited. We recommend that in the meantime the working facilities for the forensic medicine department in the Izmir courthouse be improved. We urge the Ministry of Justice to inspect and evaluate the conditions in forensic examination facilities in other court houses in order to find ways for temporary improvements, when necessary.

41. We recommend that the responsibility for the preparation of official court forensic reports be removed from physicians attached to the Institute of Forensic Medicine and assigned to physicians working within the national health service in order to ensure the independence of medical personnel required to carry out forensic examinations. However, if all forensic examinations are transferred from prison facilities to state hospitals or health centres, and a thorough training of forensic specialists and other physicians as well as of judges and prosecutors is completed, we believe that the need to transfer responsibility for the Forensic Medicine appears is not indispensable.

42. We urge the Ministry of Justice to realize the plans for training of forensic medicine experts involving international experts.
43. We urge the Ministry of Justice to realize the plans for training of judges and prosecutors on forensic medicine involving international experts.
44. We strongly recommend that further measures be taken to strengthen the protection of physicians who report torture or carry out forensic medical examinations from any form of state-sponsored or state-tolerated harassment or intimidation.
45. We recommend that the Ministry of Justice and the Ministry of Interior take all necessary further actions to inform and train law enforcement officers and physicians carrying out forensic examinations not to allow law enforcement officers involved in the investigation of the actual crime to transport detainees or to be present during medical examinations
46. We urge the Ministry of Justice to take necessary steps to remind law enforcement officers about the provisions that medical reports should not be handed over to law enforcement officers accompanying the detainee to the examination
47. We recommend that in cases of alleged torture or mistreatment lawyers should always be allowed to attend forensic examinations when the person to be examined so requests.
48. We recommend further measures to be taken on the full implementation of the provision on ensuring that all forensic medical examinations of detainees for the purposes of the preparation of official court reports are undertaken at no cost to the detainee themselves.

MINISTRY OF JUSTICE General Directorate of Personnel

Firstly, 138 district courthouses which had a very low work load were closed down, and the judges and prosecutors working were appointed to central courthouses where the work load is higher.

After referring to the opinions of the Supreme Council of Judges and Prosecutors in accordance with Articles 5 and 9 of the Law numbered 5235 on The Establishment, Duties and Capacities of First Degree Courts of the Judiciary and Regional General Courts, the first degree courts have been reorganized nationwide by establishing:

- 206 Heavy Penal Courts,
- 1093 Penal Courts of First Instance
- 828 Criminal Courts of Peace,
- 960 Civil Courts of First Instance
- 803 Civil Courts of Peace
- 704 Cadastral Courts
- 174 Enforcement Courts
- 98 Labour Courts
- 149 Family Courts
- 54 Commercial Courts
- 20 Consumer Courts
- 4 Civil Courts of Intellectual and Industrial Rights
- 19 Juvenile Courts
- 18 (as per Law no.5190) Heavy Penal Courts
- 5 Criminal Courts of Intellectual and Industrial Rights
- 141 Enforcement Judge Offices
- 1 Specialized Maritime Court

In these courts, a total of 4488 judges and 2994 prosecutors are employed.

In addition, there are also 983 enforcement directors, 782 enforcement deputy directors, 2550 secretarial directors, 158 administrative directors, 206 bailiff officers, 12631 clerks, 2589 court ushers currently employed. Furthermore, it is planned to employ, within 1 (one) month, 2360 more clerks who have successfully passed the examinations.

58 psychologists, 55 pedagogues and 20 social workers have been appointed to the established Family Courts, and 12 psychologists, 10 Pedagogues and 4 social workers have been appointed to the Juvenile Courts.

With the latest examinations carried out, 1114 candidate judges in judicial courts and 444 candidate judges in administrative courts are continuing their internship, and these candidates will start their duties as judges and prosecutors within a period of (1) month to (2) years.

As a recent development, the Forensic Medicine Institution has been accepted as a member by the European Network of Forensic Science Institutes as of 06.05.2005.

NATIONAL ADJUDICATION NETWORK PROJECT (UYAP)

THE OBJECTIVE OF UYAP

In order to ensure that the judiciary functions faster and more efficiently, it is planned to establish a computer network encompassing the headquarters of the Ministry of Justice, courts, public prosecutor offices, prisons, forensic medicine and enforcement departments as well as high judicial bodies and institutions, which are indispensable for the provision of information to the judiciary. The objective of the information exchange via electronic means and the decision support systems is to shorten trial periods, enable citizens to obtain dossier information through the Internet and to enable lawyers to file and follow-up a lawsuit from their offices, pay charges, submit petitions and have access to court files in the same manner, and to prepare the information requested by external units in a timely manner. With such an approach, transparency in trial procedures shall be increased and ethical principles shall become effective.

NOVALTIES OF UYAP

UYAP will integrate into the other public sector computer networks to be established in order to ensure that information and document flow is completed in the shortest time possible. Thanks to UYAP, it will no longer be necessary to wait for weeks or months to obtain a document from the land registry offices or an identity registry log from the demography offices so that court hearings will not be postponed and decisions will be given in a short time. For instance, in the pilot regions where the software is being used, it is now possible for the courts to receive identity information or title deed registry samples within a few seconds thanks to the integrated MERNIS and Judicial Records Databases.

Before this practice, to obtain such records, correspondence with relevant institutions was necessary, and therefore there usually was a need to postpone court hearings and even to postpone them once again if the requested information or document did not arrive in time.

To sum up the objectives of UYAP:

- Sub-judiciary system means that all procedures conducted at the courts (civil proceedings [*adli yargi*], administrative judicial proceedings [*idari yargi*] and State Security Courts) and public prosecutors' offices as well as all records and books kept during such procedures (also including administrative procedures and prisons and detention houses) are automated so that every stage of trial procedures can be performed on the electronic environment.
- Systems minimising potential errors of trial procedures during investigations and trials have been developed and warning is given about procedural mistakes.
- Some short decisions and parts of decisions are prepared by the system. The provisions that must be applied during criminal prosecution [*ceza*

- yargilamasi*], the sequence and ratios of such provisions are taken into account to calculate the amount of the penalty, and users' mistakes are avoided.
- Texts (minutes of the hearing, decisions, warrants, instructions etc.) can be drafted by the system.
 - Applications that would speed up and support the decision taking process of judicial units have been embedded in the system. The system contains warnings to ensure compliance with the procedures and principles stipulated in the legislation (e.g. no judgement will be given before hearing the final remarks of the accused person, or the legal time limits will be followed up by the system so that the users will be warned in time; since there is compulsory defence lawyer system applicable, if the accused person is younger than 18 and there are no lawyers; or if the accused person is older than 15 but younger than 18 and if article 31 of Turkish Penal Code no 5237 is not observed, the user will be warned.)
 - Within the scope of UYAP, lawyers will be able to launch court cases, submit petitions, examine dossiers, follow up of executive proceedings [*icra takibi*], pay charges and perform appeal procedures from their offices via the electronic environment.
 - A structure of business flow management has been established in accordance with the authority defined and in the framework of the legislation.
 - Published laws, regulations, directives, case-laws, communications and similar publications will be accessed on the system, and it will be possible to follow all these documents with a chronological sequence.
 - Exchange of information and documents between judicial palaces or with the headquarters or affiliated institutions can be performed via computers.
 - With the UYAP Lawyers' Information System, attorneys at their offices will have safe access to the system, and they will be able to reach court dossiers and complete the relevant procedures. Additionally, they will have the infrastructure enabling them to pay on the electronic environment the fees and charges emerging from the court procedures.
 - Public Prosecutors' Offices will be able to conduct preliminary investigations and file lawsuit on the electronic environment.
 - With the 18 333 desk top computers, 8 600 printers, 435 scanners, 5 087 UPSs and the 8 200 lap top computers allotted for the public prosecutors a majority of the hardware has been completed.

UYAP PILOT UNITS

The following have been selected as pilot spots and the system has become operational:

Judicial Palaces in Ankara, Istanbul, Izmir, Aydin, Yozgat, Kizilcahamam, Ayas;

Regional Administrative Courts in Ankara, Trabzon;

Closed Prisons in Ankara, Corum;

Open prisons in Ankara, Corum;

Reformatories in Kecioren, Izmir;

Child prison in Elmadag;

F-type prisons in Sincan, Kocaeli;

Forensic Medicine Institution;

Forensic Medicine Ankara and Izmir Branches;

Vocational Schools for Justice in Ankara, Bolvadin;

Judges' Guest Houses in Ankara, Istanbul;

Camp in Antalya.

The work to expand the infrastructure over further 100 heavy penal centres and 25 regional administrative courts is scheduled for the end of year 2005. By the end of 2006, all Judicial Palaces throughout Turkey and other judicial units will have the WAN connection, and they will be able to exchange data through UYAP central structure and conduct trial activities on the electronic environment.

COST OF UYAP

In the beginning, the total cost of the project was calculated as 160 million Dollars. So far the cost has been around 60-65 million Dollars, including the 18 833 desk top computers, 7 100 laser printers, 8 200 desk tops and 5 087 UPSs. When the project is completed, it is expected that nearly 40% of the cost will be saved (around 71 million Dollars). All the spendings have been made from the limited budget of the Ministry of Justice, and no external loans or grants have been resorted to.

Annex C

List of Interviewee

Ankara

- Ms. Saadet Arikan, Director General, General Directorate for EU Affairs
- Mr. Maksut Mete, Deputy Under-Secretary to the Ministry of Justice
- Mr. Nazim Kara, Director General, General Directorate of Civil Affairs
- Ms. Gülsevi Coskun, Deputy Director General, General Directorate of Civil Affairs
- Mr. Kenan Ipek, Director General, General Directorate of Prisons and Detention Houses
- Mr. Yiiksel Erdogan, Director General, General Directorate for Laws and Legislation
- Mr. Yiiksel Hiz, Head of Department, General Directorate of Laws and Legislation
- Mr. Mehmet Kurtiil, Deputy Director General, General Directorate of Prisons and Detention Houses
- Mr. Abdullah Cebeci, Deputy Director General, General Directorate of Personnel Affairs
- Mr. Birol Erdem, Head of Department, General Directorate of Personnel Affairs
- Mr. Zeki Bayrak, Judicial Inspector, Inspection Board of the Ministry of Justice
- Mr. Fahri Mutlu, Judge, Education Department
- Ms. Ztimra Yilmaz, Judge, General Directorate for EU Affairs
- Mr. Hasan Soylemezoglu, Judge, General Directorate for EU Affairs
- Mr. Yavuz Aydin, Judge, General Directorate for EU Affairs
- Mr. Hamza Keles, Deputy Chief Public Prosecutor Ankara
- Mr. Kadir Kayan, Judge, Heavy Penal Court No. 11 (authorised by Article 250 of the new Code of Criminal Procedure)
- Mr. Albin Dearing, Resident Twinning Adviser, Improvement of Statement Taking Methods and Rooms Project
- Mr. Karlheinz Grundbock, Resident Twinning Adviser, Improvement of Statement Taking Methods and Rooms Project
- Mr. Jean-Jacques Heintz, Longterm Expert, Judicial Modernisation and Penal Reform Project
- High Council of Judges and Prosecutors; Mr. Celal Altunkaynak, Deputy President, Mr. Cetin Zongor, Mr. Yasar Engin Selimoglu, Mr. Mahmut Acar, Mr. Sinan Tunca: Members
- Mr. Vedat Ahsen Cosar, President, Ankara Bar Association
- Mr. Giinal Kursun, Amnesty International

Izmir

Mr. Emin Ozler, Izmir Chief Public Prosecutor
Mr. Ilhan Mesutoglu, Izmir Deputy Chief Public Prosecutor
Heavy Penal Court No. 2: Mr. Turgut Yildirim, President of the Court; Mr. Sevket Erol Ceyhan, Judge; Mr. Arif Akcay, Judge; Mr. Erol Giingor, Public Prosecutor
Heavy Penal Court No. 6: Mr. Nevzat Sevinc, President of the Court; Mr. Niyazi Erdogan, Judge; Mr. Yahya Kesim, Judge; Mr. Erol Giingor, Public Prosecutor
General Penal Court No. 14: Mr. Nail Kartal, Judge; Mr. Nevzat Ertas, Public Prosecutor
Commercial Court No. 4: Mr. Mehmet Oktem, President of the Court; Mr. Ibrahim Karanfil, Judge; Mr. Adnan Tuncay, Judge; Mr. Vedat Ugur, Judge
General Civil Court No. 5: Ms. Fadime Akbaba, Judge
Heavy Penal Court No. 8 (authorised by Article 250 of the new Code of Criminal Procedure): Mr. Galip Dincer Cengiz, President of the Court; Mr. Giingor Tosunoglu, Judge; Mr. Erdem Yandimata, Judge; Mr. Hasan Dine, Judge; Mr. Mehmet Dogar, Public Prosecutor
Mazlum-Der: Mr. Arif Kocer and Mr. Suleyman Cetintulum
Human Rights Foundation: Prof. Dr. Veli Lok, Dr. Caglayan Ucpinar, Dr. Alp Ayan, Dr. Turkcan Baykal, Ms. Gulseli Kaya, Dr. Zeki Giil
Mr. Nevzat Ozdemir, President, Izmir Bar Association
Mr. Ozgiir Yilmazer, Contemporary Lawyers Association
Mr. Mustafa Rowlaz, Human Rights Association

Van

Mr. Kemal Kacan, Chief Public Prosecutor
Mr. Ali Nevzat Acikgoz, Public Prosecutor
Mr. Necmi Sahdalaman, Public Prosecutor
Mr. Hasan Hiiseyin Solmaz, Public Prosecutor
Heavy Penal Court No. 3 (authorised by Article 250 of the new Code of Criminal Procedure): Mr. Ilhan Kaya, President of the Court; Mr. Ferhat Erbas, Judge; Mr. Muharrem Balli, Judge
Heavy Penal Court No. 2: Mr. Halit Eris, President of the Court; Mr. Tevfik Erdogan, Judge; Mr. Yusuf Kara, Judge
General Civil Court: Ms. Arzu Esra Kotan, Judge
Mr. Ersan Erdem, Public Prosecutor in Gevas
Mr. Asim Yiicetas, Judge, General Civil Court in Gevas
Ms. Sonay Demiralp, Judge, General Criminal Court in Gevas
Human Rights Association: Mr. Hiiseyin Ayaz, Mr. Ciineyt Canis, Mr. Zeki Yiiksel
Mr. Ayhan Cabuk, President, Van Bar Association

