

**VIEWS OF THE TURKISH MINISTRY OF JUSTICE ON THE  
DRAFT “REPORT ON THE REFORM OF THE HIGH COUNCIL OF JUDGES AND PUBLIC PROSECUTORS BY LAW NO. 6524 OF  
FEBRUARY 2014” BY PROFESSOR DR. THOMAS GIEGERICH, INDEPENDENT EXPERT FOR THE EU COMMISSION**

Relevant Units of the Turkish Ministry of Justice and High Council of Judges and Public Prosecutors were consulted in respect of the draft report prepared by EU Expert, Professor Thomas Giegerich, for the purpose of drafting the views of the Turkish Ministry of Justice on the report. The tabulated format has been selected to provide a better understanding of the Ministry’s objections concerning the report.

**The overview:**

Professor Thomas Giegerich drafted and submitted to the Ministry his first report dated 3 June 2014. The Ministry had objections to many of the remarks and views inscribed in the report. The fact that the draft report relied on the abstract statements rather than tangible data was the main reason for the objections.

As a consequence of the objections by the Ministry of Justice, Prof. Giegerich made some corrections and submitted the draft report dated 30 July 2014. An examination of the report showed that many of the objections to the previous report had not been respected.

For example: although the report stated in its section 3.5.8. that the performance assessment reports prepared by the inspectors were not subject to the judicial review, these reports can be challenged before the court.

In the aftermath of the draft report dated 3 June 2014, the Law on HSYK was amended by the law no 6545, which entered into force on 28 June 2014. By making such an amendment the original text of the law was brought back for many topics criticized in the report. An overview of the report dated 30 July 2014, which was drafted in consequence of the objections, revealed that amended provisions had not been mentioned.

We request the revision of the report content and exclusion of the sections we object to in view of the justifications we list hereby.

THE COMMENTARIES AND STATEMENTS OF THE REPORT	THE OBJECTIONS OF THE MINISTRY OF JUSTICE
<p><b>1. Purpose of the Current Mission and Legal Uncertainty after the Constitutional Court Decision of 10 April 2014</b></p>	
<ul style="list-style-type: none"> <li><i>The expert stated that the annulment decision of the Constitutional Court was not retroactive thus the consequences, which those provisions have caused in the meantime, remained unaffected.</i></li> </ul>	<ul style="list-style-type: none"> <li>Relevant articles of the Constitution clearly state that annulment decisions of the Constitutional Court shall not be retroactive. And this case is not exception. The legislation challenged in an annulment case shall be applicable with all its provisions and consequences until the decision on its annulment. Such consequences shall not be reversed by the annulment decision of the Constitutional Court. This is a general principle, which applies for, inter alia, the law on HSYK.</li> </ul>
<ul style="list-style-type: none"> <li><i>The report associated amendments concerning the Justice Academy with the independence of the judiciary.</i></li> </ul>	<ul style="list-style-type: none"> <li>The report mentions about the violation of judicial independence in connection with the Justice Academy of Turkey. However, there are no tangible data. Furthermore, the Constitutional Court denied the claim that the law on Justice Academy of Turkey violated the Constitution, on grounds that Justice Academy of Turkey had administrative and financial autonomy, and ruled that such a unification of professional legal education and compulsory consultation of HSYK for setting the principles and procedures of in-service training were positive developments. Thus, such statements about the Justice Academy are not deemed accurate.</li> </ul>
<p><b>2.1. Transfer of Location of the Public Prosecutors</b></p>	
<ul style="list-style-type: none"> <li><i>The report stated that the cabinet overhaul of 25 December 2013 resulted in the replacement of the Minister of Justice.</i></li> </ul>	<ul style="list-style-type: none"> <li>Although the report underlined that the cabinet overhaul of 25 December 2013 resulted in the replacement of the Minister of Justice, in fact the former Minister of Justice resigned from office, as he was the candidate for municipal elections. His resignation has no connection with the corruption investigations.</li> </ul>

<ul style="list-style-type: none"> <li>• <i>The expert recommended that both judges and public prosecutors should be guaranteed security of tenure and location.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Turkey contains several distinct geographical regions and provinces with different socio-economic conditions. The places having Court Organization are divided into five regions. Novice judges are initially stationed at the fifth region and may be transferred to courts in the first region provinces within eight years. As per the legislation, judges serving in a province located in the first region may stay in that location for a period of seven years, upon their request. Turkey, thereby, provides a specific security of location, which serves its own peculiarity and structure.</li> </ul> <p>Before the decrees on appointment of judges and prosecutors are issued, some provinces are observed to be in demand by hundreds of judges, while some are not preferred. In an absolute security of location, some judges would be able to complete their service in provinces they preferred, rendering others unable to work in their location of preference for their whole professional career. This would be detrimental not only to labour peace but also to people’s motivation and the principle of equality. Thus, under such circumstances it is not possible to grant absolute security of location.</p>
<ul style="list-style-type: none"> <li>• <i>The expert recommended that all HSYK decisions such as transfer of judges and public prosecutors to another location or disciplinary measures against them, be made subject to the most exacting substantive and procedural standards.</i></li> </ul>	<ul style="list-style-type: none"> <li>• It is incorrect to state that the 1st Chamber of HSYK is not bound by any rules or acts arbitrarily in the appointment of judges and prosecutors. The 1st Chamber respects the Regulation on the Appointment and Transfer of the Judges and Public Prosecutors. Furthermore, principle decisions to apply for the prospective decrees are annually made available to judges and prosecutors in the beginning of each year. Decrees are drafted in full compliance with the foreknown regulations and principle decisions. An overview of these principle decisions indicates that the 1st Chamber acted likewise in the appointment of judges both before and after 2014.</li> </ul>
<ul style="list-style-type: none"> <li>• <i>The expert recommended that the judicial review should be extended to all the High Council Decisions including appointment decisions.</i></li> </ul>	<ul style="list-style-type: none"> <li>• As per the Constitution, it is not possible to provide possibility with applying judicial review of appointment decisions by the 1st Chamber of HSYK. On the other hand, it is provided with an internal appeal mechanism against appointment decisions of HSYK in itself. When the relevant party pleads for an examination of the appointment decision, the related chamber shall</li> </ul>

	<p>reverse the appointment decision or appoint the person to another location, if there are reasonable grounds. The appointment decision of the 1st Chamber can also be challenged before the Plenary. Every now and then the Plenary overrules the appointment decisions of the 1st Chamber. The internal mechanisms of appeal listed above provide judges with the required security.</p> <p>If the judicial review were extended to appointment decisions, judges who subject their appointment decisions to judicial review and those judges who replaced them would be influenced by the annulment decisions of administrative courts, which would result in a chain reaction of annulment decisions. The resulting chaos would be detrimental to the judicial process.</p>
<ul style="list-style-type: none"> <li>• <i>The expert stated that the judges and prosecutors are subject to immediate transfer of location, whenever the majority of the First Chamber is dissatisfied with their performance.</i></li> </ul>	<ul style="list-style-type: none"> <li>• As stated earlier, the Regulation and criteria published by the 1st Chamber for the prospective term of appointment are respected in the appointment of judges and prosecutors. The report gives an impression concluding that the acts of 1st Chamber after 15 January 2014 are inconsistent with the acts of the former 1st Chamber.</li> </ul> <p>1st Chamber registers indicate that 3 decrees were published in 2010, 13 in 2011, 10 in 2012, 6 in 2013 and 8 in 2014 for civil and criminal judiciary, while 1748 judges-prosecutors were transferred in 2010, 3397 in 2011, 3278 in 2012, 2178 in 2013 and 3018 in 2014.</p> <p>Registers concerning administrative judiciary indicate that 1 decree was published in 2010, 12 in 2011, 10 in 2012, 5 in 2013 and 6 in 2014, while 44 judges-prosecutors were transferred in 2010, 574 in 2011, 243 in 2012, 169 in 2013 and 386 in 2014.</p> <p>When the data is evaluated, it is obvious that the 1st Chamber, established in 2014, published no more decrees on the appointments for civil, criminal and administrative judiciary and appointed no more judges-prosecutors than it did in previous years.</p> <p>A closer look into the decrees in 2011-2014 along with grounds of transfer indicate that the ratio of judges and prosecutors transferred upon their own request to those without such a request remained alike.</p>

	<p>The 1st Chamber in charge of appointing judges and prosecutors publishes principle decisions before the act of appointment and makes available to the public on its website the grounds for appointment and relevant statistical data after the act of appointment.</p>
<ul style="list-style-type: none"> <li>• <i>The expert mentioned about the changing composition of the chambers of the High Council.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The report referred to reestablishment of the chambers of the HSYK on 15 January 2014 as a negative development. Law no 6087 states that the Plenary Session may reformulate the composition of chambers based on decisions by sufficient number of votes. Law on HSYK does not contain any provisions limiting or prohibiting the change of composition in the chambers. New members to the 1st, 2nd and 3rd chambers appointed by the relevant session are already members of the Council. This only involves changing the chamber where these members will serve, which is based on majority of the votes in the Plenary in view of the working conditions within the High Council. Changing the chambers where the members will serve cannot be considered as detrimental to the independence of the judiciary.</li> </ul>
<ul style="list-style-type: none"> <li>• <i>The report recommended that all HSYK decisions imposing a burden on chief public prosecutors, such as their transfer to another location or other disciplinary measures against them, be made subject to the most exacting substantive and procedural standards. They should be entrusted to the Plenary of the HSYK and require a two-thirds majority.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The report recommends that the decision by two-thirds majority of the Plenary instead of the 1st Chamber for transfer to another location of the chief public prosecutors rather than the current system. Such a system would not always allow for the transfer of chief public prosecutors due to the qualified majority of two thirds, which would hinder the functioning of the system and victimize chief public prosecutors willing to work at another location. A ratio as high as two thirds may result in domination of a majority on the minority.</li> </ul> <p>The general procedure applies also for the appointment of Chief Public Prosecutors, which means that the related Chief Public Prosecutor may resort to the appeal mechanism to challenge at the Plenary the appointment decision taken by the 1<sup>st</sup> Chamber. The Plenary may change the decision taken by the 1<sup>st</sup> Chamber.</p>

<ul style="list-style-type: none"> <li>• <i>The report, in its footnote no. 4, stated that by 8 May 2014, more than sixty judges and prosecutors who had previously worked in the Ministry of Justice had been transferred to the courts and replaced by new personnel (mostly legal experts who are not judges).</i></li> </ul>	<ul style="list-style-type: none"> <li>• The Ministry recruited 155 assistant legal experts on <b>4 July 2013</b>, which is one year before the related transfer. There exists no connection whatsoever between the transfer of judges from the Ministry of Justice and recruitment of assistant legal experts at the Ministry. Therefore, this part of the report contains error in fact.</li> </ul>
<p><b>2.2. Ex Officio Presidency of the Minister of Justice and the Natural Membership of his Undersecretary in the HSYK</b></p>	
<ul style="list-style-type: none"> <li>• <i>The expert made an absolute judgement in this part of the report and stated that the Minister of Justice and the Undersecretary abused their positions for the purpose of exerting undue pressure and influence on the functioning of HSYK; therefore, the current form of ex officio membership of the Minister of Justice and the Undersecretary could not be maintained.</i></li> </ul>	<ul style="list-style-type: none"> <li>• It is first and foremost unacceptable to state that the Minister of Justice and the Undersecretary abused their positions for the purpose of exerting undue pressure and influence on the functioning of HSYK. The statement lacks substantive evidence on how such pressure and influence are or can be exerted.</li> </ul> <p>Studies of comparative law and practices indicate that Judicial Administration Councils appear to be in several forms and employ several models. For instance;</p> <p>Some countries like Germany, UK and Austria do not have Judicial Administration Councils.</p> <p>Some countries like the Netherlands, Sweden, Denmark and Finland have a “judicial council”. However, these councils have mixed structures and even the judge members of these councils are appointed by the government.</p> <p>Countries such as France, Italy, Belgium, Spain, Portugal, Ireland, Poland, Hungary, Bulgaria, Estonia, Lithuania, Slovakia and Romania have councils for the judiciary similar to HSYK, and these councils are mixed in structure. Members are from different backgrounds, but councils are dominated by judge and prosecutor members. It is observed that members are elected to such councils by parliaments, and some include the Head of State and the Minister of Justice as the president or vice-president.</p>

Countries differ in their practices regarding the position of the Minister of Justice and the Undersecretary. For example in Estonia, Poland, Lithuania and Hungary the Minister of Justice is a natural member of the High Council.

Countries listed below do not have any council or commission regarding the administration of judiciary:

- ✓ Federal or State departments for justice exercise power over the appointment and other issues related to the personal rights of judges and prosecutors in Germany.
- ✓ In Austria prosecutors are appointed by The Minister of Justice.
- ✓ In Czech Republic Judges are appointed, transferred and dismissed from office by the Head of State, upon the proposal of the Minister of Justice. The Ministry of Justice is solely responsible for the selection of candidate judges.
- ✓ Judges are appointed by the Head of State in Finland. Chief and Deputy Chief Public Prosecutors are appointed by the Head of State, upon proposal of the government, while other prosecutors are proposed by the Chief Prosecutor and appointed by the government.
- ✓ Department for Constitutional Affairs (or the Ministry of Justice) is responsible for issues such as admission of judges into the profession, their appointment, promotion and fulfilment of the physical needs of judicial bodies in the UK.

It is only for representation purposes that the Minister of Justice is included in the Council. As per the Constitution and Law on HSYK, the president of the Council shall not participate in the discussions of Chambers, or appear in the Plenary sessions where disciplinary matters are handled. The Undersecretary cannot be elected as a President of Chamber. The Minister of Justice and Undersecretary enjoy one vote each within the broad-based HSYK with 22 members.

Due to the natural structure of the Constitutional Court and the relevant

	<p>legislation, it is not possible for the President of the Constitutional Court to preside the High Council.</p>
<p><b>2.3. Ensuring the Public Accountability of HSYK</b></p>	
<ul style="list-style-type: none"> <li>• <i>The expert recommended in the report that HSYK should publish, on a regular basis, reports regarding the independence, impartiality and effectiveness of the judiciary and provide information to the public via the media.</i></li> </ul>	<ul style="list-style-type: none"> <li>• On its official website the High Council regularly publishes information on the following; <ul style="list-style-type: none"> <li>✓ The strategic plan for 2012-2016,</li> <li>✓ Annual activity reports,</li> <li>✓ In-service training plans,</li> <li>✓ Minutes of professional meetings,</li> <li>✓ Decrees on Transfer of Location and Decrees on Powers,</li> <li>✓ Promotion Results,</li> <li>✓ Principle decisions on appointment and promotion,</li> <li>✓ Examples of disciplinary decisions,</li> <li>✓ Statistics on the numbers of judges and prosecutors,</li> <li>✓ Statistics on complaints about judges and prosecutors,</li> <li>✓ Statistics on police commanders subject to the investigation procedure as per the Law on Judges and Public Prosecutors,</li> <li>✓ Progress reports,</li> <li>✓ Contact information,</li> <li>✓ Many others including application forms for obtaining information etc.</li> </ul> <p>Thus, since its establishment in 2010 HSYK has been duly sensitive in respect of public transparency. Furthermore, the High Council has not so far received any such criticisms or complaints from judges or public prosecutors.</p> </li> </ul>



	<p>The recommendation regarding the regular submission of reports to the TGNA to ensure the accountability of HSYK can be taken into account in the new legislative works. On the other hand, the recommendation about “HSYK Spokesperson” can be fulfilled by getting HSYK to enact a by-law.</p> <p>Judicial bodies are not liable to make press releases about on-going investigations. However, efforts are made on the Ministerial level for a circular establishing the office of Media Spokespersons at Courthouses. Furthermore, the legislative power has placed on its agenda the relevant amendment on the Code of Criminal Procedure. Once the amendment is enacted, offices of Media Spokesperson will be operational.</p>
<p><b>2.4. The Importance of the Judicial Police for Effective, Independent and Impartial Prosecutions</b></p>	
<ul style="list-style-type: none"> <li><i>The expert recommended that the judicial police be brought under the cover of the independence of the judiciary.</i></li> </ul>	<ul style="list-style-type: none"> <li>The judicial police shall be instructed and ordered by Public Prosecutors with respect to the judicial duties. The superiors who are not granted with judicial duties cannot give instructions and orders relating to the ongoing investigations to the judicial police officers. They are under the command of their superiors only for the services other than the judicial duties.</li> </ul> <p>If it is established that judicial police misconducts the judicial duties or is negligent, the “trial procedure that the judges are subject to due to their duties” shall be applicable to the chief of judicial police with the highest rank. Thus, the expert’s comment that the judicial police is not under the protection of the independence of the judiciary is not relevant.</p>
<p><b>3.1. Background of the Enactment</b></p>	
<ul style="list-style-type: none"> <li><i>In this part, the expert insistently stated that the Law no 6524 was submitted to the TGNA in the form of a “bill”.</i></li> </ul>	<ul style="list-style-type: none"> <li>The Law no 6524 entered into force upon the enactment of the “<i>legislative proposal</i>” presented to the TGNA by the deputies rather than a “bill” prepared by the Cabinet of Ministers.</li> </ul>

<ul style="list-style-type: none"> <li>• <i>Under the same heading, the expert stated that the legislative process which produced Law No. 6524 obviously had no built-in safety valve to prevent the adoption of legislation contradicting Turkey’s long-term commitments to European standards.</i></li> </ul>	<ul style="list-style-type: none"> <li>• When the legislative proposal or bill is introduced to the TGNA, the Speaker of TGNA determines the committees that will examine the bills. There is a EU Harmonization Committee under TGNA, which also reviews the legislative proposals to determine whether they are in harmony with the EU acquis. Thus, the statement about the absence of a built-in safety valve to prevent the adoption of legislation contradicting European standards is not relevant. Furthermore, <b>as per the Prime Ministry Circular dated 25 September 2014, the Ministry for EU Affairs must be consulted regarding the draft legislation prepared for EU harmonization purposes, which further underlines the extraordinary importance attributed by the Turkish Government to the EU harmonization process.</b></li> </ul>
<ul style="list-style-type: none"> <li>• <i>Under the same heading, the expert stated that when he asked why the Law no 6524 was necessary he was given the following reasons: HSYK packed the High Courts with the members of foreign circles; the majority of the HSYK themselves belonged to those foreign circles.</i></li> </ul>	<ul style="list-style-type: none"> <li>• As indicated in the report, the section entitled “Background of the Enactment” involves subjective opinions gathered through interviews with several individuals. The statements do not rely on substantive documents, evidence or data. Furthermore, it has not been understood what the term “foreign circles” refers to.</li> </ul>
<p><b>3.3. The Main Changes to the HSYK by the Law no 6524 as Enacted</b></p>	
<ul style="list-style-type: none"> <li>• <i>The expert made the following comments: the Law no 6524 amended sub-paragraph (c), paragraph 4 of the article 14 and subparagraph (e), paragraph one of the article 16 of the law no 6087. According to this amendment, the President of the High Council was furthermore given the power to impose duties on the President of the Inspection Board of HSYK (a power previously held by the relevant President of Chamber) and on the inspectors (a power previously held by the Plenary Session),</i></li> </ul>	<ul style="list-style-type: none"> <li>• An overview of the report indicated that Amendments introduced by the Law no 6545, which are based on the reasons listed by the Constitutional Court in its annulment decision on Law no 6524, have not been regarded. In fact, Law no 6545 was drafted having regard to the reasons listed in the annulment decision. As a result, the original text of the Law no 6087 was brought back for the items listed below. Law no 6545 has respected the judicial reform process in 2010 aiming at the implementation of European standards regarding the independence and impartiality of the judiciary:</li> </ul>

- *Under the same heading, the expert further commented that previously Ministerial approval for those measures was needed in the sense that examinations and investigations against judges and public prosecutors could not be undertaken by the Third Chamber alone; now, the Third Chamber needs the approval of the Minister even if it decides not to launch an examination or investigation and the Minister can now both prevent the Third Chamber from and compel it to ordering such an examination or investigation,*
- *the power to determine the division of labour among the deputy secretaries-general of HSYK was given to the President of HSYK,*
- *the President of HSYK can now determine the meeting days of the Plenary, which had previously been determined by the Plenary, and can also set the agenda of the Plenary without asking for the opinion of the Secretary-General,*
- *the amendment to the Law no 6524 regarding the appointment of the administrative personnel of HSYK by its President meant that it revoked the “autonomy regarding the personnel” which the HSYK only obtained in 2010,*

1- HSYK Plenary shall have the power to appoint the President and Vice-Presidents of the Inspection Board.

2- The President of the Inspection Board shall be accountable to the Plenary, and the Plenary shall impose duties on the inspection board. The President of HSYK does not have the power to impose duties either on the President of the Inspection Board or the board.

3- Inspectors shall be appointed directly by the Plenary.

4- The Plenary shall decide directly on the Chambers that the members will be appointed to.

5-Presidents of Chambers shall be elected directly by the Plenary among the members of the related chamber.

6- The Plenary shall designate three candidates to work as the Secretary-General. The three candidates shall be proposed to the President of the High Council for appointment.

7- Rapporteur Judges to work for the High Council shall be directly appointed by the Plenary.

8- Regarding the plenary member elections for the Court of Cassation, Council of State and the Justice Academy of Turkey, each member shall have as many votes as the number of original and substitute members to be elected.

9-The Plenary shall have the power over the disciplinary investigations against the members of High Council.

**2014 Turkey Progress Report** clearly stated that TGNA had passed in June the legislation calling for the enforcement of Constitutional Court ruling on the revoked HSYK Law, and that the relevant legislation **had re-established the role of the Plenary, which was key in safeguarding independence of the judiciary**, by bringing back in force the provisions passed in 2010.

- *The expert expressed his concerns with respect to the provisional article 4 added to the Law no 6087 with the Law no 6524,*
- *The expert claimed that the President of the Inspection Board was automatically dismissed with the entry into force of the La no 6524.*

As regards the comment in the report on the dismissal of the rapporteur judges and personnel in the Council:

All the staff members of the Council (secretary general and his deputies, president and vice-presidents of the inspection board, inspectors of the inspection board, rapporteur judges and administrative staff members) were dismissed from their positions as per the amendment introduced by the Law no 6524. An overwhelming majority of the staff members who were dismissed were reappointed to their previous posts in the Council. (57 of 137 inspectors, 18 of 47 rapporteur judges, 228 of 270 staff members were reappointed.) Those who were not reappointed to the Council were reassigned to their previous posts at the Ministry of Justice or courts. Therefore, no one was removed from public office or judgeship.

**2014 Turkey Progress Report** stated that around 66% of the old staff members were reassigned to their **previous posts**.

The newly appointed administrative staff members of the Council are public officers who are in the capacity of civil servants. Civil servants have to be impartial as per the Civil Servants' Law no 657. There isn't any solid claim against the impartiality of the newly appointed civil servants. Therefore, it is not relevant to claim that this structure is vulnerable to the political pressure and influence of the Executive just because they are appointed by the President of HSYK. In any case, no one has made claims about the partiality of newly appointed staff members of the Council so far.

The inspectors, however, were appointed by the Plenary following the annulment decision of the Constitutional Court pursuant to the procedure that was applicable before the amendment to the law although the annulment decision of the Constitutional Court was not published on that date.

Other administrative staff members of HSYK who were others than judges were previously appointed by the Deputy President upon the motion of the Secretary-General. The assertion that appointment by the Deputy President does not damage the autonomy of the High Council but appointment by the

	<p>President revokes the autonomy of the High Council is an abstract and groundless claim. If a power could be exercised by the Deputy President, it wouldn't damage the autonomy of the High Council when also exercised by the President who is authorized to manage the Board as per the Constitution.</p> <p>As per the article 29 of the Law no 6087, the Plenary used to determine its meeting day in the beginning of each year. The Law no 6524, however, gave this power to the President of the High Council. The exercise of this power by the President or Plenary does not influence the decisions taken. Contrary to what is asserted in the report, the initial version or amended version of the Law does not stipulate any requirement for the President of HSYK to ask the opinion of the Secretary-General to determine the agenda of the Plenary.</p>
<p><b>3.5.1. Approval Power of the Minister in his Capacity as the ex officio President of the HSYK with regard to Examinations and Investigations against Judges and Prosecutors</b></p>	
<ul style="list-style-type: none"> <li>• <i>It was stated in the report that the expert had recommended, in his previous reports, the removal of the approval power of the President of the HSYK to veto the decisions of the Third Chamber on examinations and investigations against judges and prosecutors and that the extension of this power also to the negative decisions of the HSYK (i.e. decisions not to examine or investigate) is incompatible with the independence of the judiciary.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Article 159 of the Constitution stipulates that the supervision, examinations, inquiries and investigations concerning the judges and prosecutors shall be carried out by the Council's inspectors, upon the proposal of the related chambers and with the permission of the President of the Council. Law no 6087 regulates the relevant working principles of the Third Chamber in compliance with the Constitution; however, it does not stipulate any provision regarding the negative decisions of the chamber. Therefore, the decisions of the Third Chamber not to examine and investigate the concerned judges and prosecutors were not subject to the approval of the President of the Council. Due to this conflicting situation, Law no 6524 extended the approval power of the President of the HSYK to the decisions of the Third Chamber not to examine and investigate. The Constitutional Court did not annul the new amendment. The expert's comment that the President of HSYK can now both prevent the Third Chamber from and compel it to ordering such an examination or investigation is groundless.</li> </ul>

<p><b>3.5.2. Power of the Minister in his Capacity as the <i>ex officio</i> President of the HSYK to Appoint the Deputy Secretaries-General</b></p>	
<ul style="list-style-type: none"> <li><i>It was stated in the report that the power to perform the division of labour between the deputy secretaries-general of HSYK is granted to the President of HSYK.</i></li> </ul>	<ul style="list-style-type: none"> <li>In the report, the power of the President of HSYK to select the Secretary-General from a group of three candidates nominated by the Plenary was not found to be incompatible with the principle of judicial independence. However, the power of the President of HSYK to select the deputy Secretaries-General who are judges and subordinate to the Secretary-General and only fulfil the duties assigned by the Secretary-General as per the Law was found to be incompatible with the principle of judicial independence. This contradiction makes it impossible to give credit to the relevant part of the report.</li> </ul> <p>The duties of the Deputy Secretaries-General of HSYK are regulated in a Law and they are of administrative nature. Division of labour that is planned by the Secretary-General and approved by the President of HSYK is also an administrative duty. It is irrelevant to interpret this amendment as the conferral of the power to determine the division of labour among the deputy secretaries-general to the President of the High Council. Therefore, the powers of the President of HSYK in this sense, which are not unconstitutional, are not contradictory with the independence of the courts and tenure of judges.</p>
<p><b>3.5.4. Supervision of Minister in his Capacity as the <i>ex officio</i> President of the HSYK over Inspection Board</b></p>	
<ul style="list-style-type: none"> <li><i>It was commented in the report that the Constitutional Court did not strike down the amended provision according to which the Inspection Board performs its duties on behalf of the Council and under the supervision of the President of HSYK, whereas before the</i></li> </ul>	<ul style="list-style-type: none"> <li>The power of the President of the Council to supervise the work of the Inspection Board, which was not found to be unconstitutional by the Constitutional Court, allows certain administrative measures to be taken in order to ensure efficient operation of the Inspection Board and internal coordination. The President of the Council is not entitled to exercise any control on the work of the President and Inspectors of the Inspection Board</li> </ul>

<p><i>supervisory power had been accorded to the President of the Third Chamber and the expert recommended that the supervision power should only be granted to HSYK.</i></p>	<p>that performs its duties on behalf of the Council. Therefore, the supervision power of the President of HSYK does not interfere with the independence of the courts as well as the independence and impartiality of the Inspection Board that performs its duties in line with the principles of tenure of judges.</p>
<p><b>3.5.6. Remedies against HSYK Decisions</b></p>	
<ul style="list-style-type: none"> <li>• <i>It was recommended in the report that the judicial review should be extended to all the High Council Decisions, which potentially interfere with the independence, impartiality or individual rights of judges and public prosecutors.</i></li> </ul>	<ul style="list-style-type: none"> <li>• The High Council decisions that can be contested are regulated in the article 159 of the Constitution stating “<i>the decisions of the Council, other than dismissal from the profession, shall not be subject to judicial review</i>”. Due to this constitutional provision, it does not seem to be possible to apply this recommendation in the Turkish judicial system. However, it must be noted that this requires Constitutional amendment, whereas this recommendation can be taken into account only for the disciplinary measures. On the other hand, majority of the Council’s members are judges who take administrative decisions although such decisions cannot be contested. Three of the Council’s members are judges from the administrative courts and two are the members of the Council of State. Such composition of the Council’s members reinforces the administrative decisions of the Council. Furthermore, re-examination and objection systems are also utilized effectively against the decisions of the chambers. 20% of the decisions taken by the Second Chamber were changed in favour of the judges by the same Chamber through re-examination while 20% were changed in the favour of the judges by the Plenary through the objection system.</li> </ul>
<p><b>3.5.7. Revocation of all HSYK Circulars</b></p>	
<ul style="list-style-type: none"> <li>• <i>It was stated in the report that the Provisional Article 4 added to the Law no 6087 revoked all the circulars issued by HSYK, including the one of 30 September 2011 that the result of an eventual review of judicial and prosecutorial decisions by the ECHR would be taken into consideration when decisions of promotion are made.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Following the entry into force of the Law, HSYK Plenary reviewed all the regulatory functions of the Council and reissued them with the power conferred upon it by the law. The power to issue circulars is one of the constitutional duties conferred to HSYK while it is always possible to cancel or update the circulars that change in time.</li> </ul>

<b>3.5.8. Outstanding Recommendations Concerning further Reform of the HSYK</b>	
<ul style="list-style-type: none"> <li><i>The recommendation in the report is that the Turkish Grand National Assembly be given an important role in the election of the non-judicial members of the HSYK, acting by a reinforced majority so as to ensure the election of impartial members and at least two members of the High Council should rather be elected by the Grand National Assembly in a way that promotes the representation of different cultural and political orientations of the Turkish society.</i></li> </ul>	<ul style="list-style-type: none"> <li>The President of the Republic of Turkey selects 4 individuals as the members of the Council. The President of the Republic of Turkey, who is elected by the public and thus is democratically legitimate and impartial, ensures cultural and political diversity in the selection of the members.</li> </ul>
<ul style="list-style-type: none"> <li><i>The recommendation in the report is that a legal remedy be introduced against performance assessment reports by inspectors and HSYK decisions.</i></li> </ul>	<ul style="list-style-type: none"> <li>There is a legal remedy against the certificates of good conduct and performance assessment reports issued by the inspectors. In this sense, judges and prosecutors has filed 391 actions for annulment against the certificates of good conduct and 139 against the performance assessment reports issued by inspectors; 140 of the actions for annulment against the certificates of good conduct and 29 of actions for annulment against the performance assessment and development reports were concluded in favour of the judges and prosecutors.</li> </ul>
<b>4. The Way Ahead toward Implementing European Standards of Judicial Independence, Impartiality and the Rule of Law</b>	
<ul style="list-style-type: none"> <li><i>It is recommended in the report that alleged violations of their official duties by individual members of the judiciary be sanctioned exclusively through the ordinary disciplinary and criminal procedures in accordance with the law and in compliance with due process requirements.</i></li> </ul>	<ul style="list-style-type: none"> <li>The complaint files against the members of the judiciary who are alleged to violate their official duties shall be assessed by the Third Chamber of HSYK.</li> </ul>



- *It was also stated in the report that there is an obvious contradiction between the unabated pro-European course of the Turkish Government and its recent challenge to judicial independence and impartiality as well as the rule of law and that the follow-up by the government and the Turkish Grand National Assembly to the recent Constitutional Court Decision will be crucial.*

- Although it was claimed that some provisions of the HSYK Law violate the judicial independence, the Constitutional Court examined the amended provisions introduced by the Law no 6524 with respect to their constitutionality and annulled certain provisions. This is not an indication that the principles of independence and impartiality of the judiciary in Turkey have declined. To the contrary, the annulment decision of the Constitutional Court demonstrates that the judiciary is independent from the government and politics in Turkey, and that Turkey is a democratic country, which has internalized the principle of separation of powers and relies on the rule of law just like the democratic European countries.

The government has also shown its continued commitment to the fundamental constitutional values and European Union's values by amending the HSYK Law in compliance with the annulment decision within one month prior to the expiry of the three-month deadline granted by the Constitutional Court.

**2014 Turkey Progress Report** stated that the Constitutional Court also ruled for the annulment of some amendments made on the Law on the High Council of Judges and Public Prosecutors, which **underlined the flexibility of the constitutional system in Turkey.**