REMARKS OF THE MINISTRY OF JUSTICE REGARDING THE REPORT ON *"CRIMINAL JUSTICE SYSTEM"* DRAFTED BY LUCA PERILLI INDEPENDENT EXPERT OF THE EUROPEAN COMMISSION

The representatives of the relevant units of the Ministry of Justice, the High Council of Judges and Prosecutors (HSYK), Court of Cassation, NGOs, Union of Turkey Bar Associations as well as judges and prosecutors working in the relevant courts were consulted for their opinions and information while drafting the comments and considerations of the Ministry of Justice regarding the Draft Report prepared by Luca Perilli, judge and an independent expert of the European Commission. The relevant parts of the report that we objected were referred to in the table below in order to allow better understanding for our objections.

Overall Remarks:

The European Commission initially communicated the draft report prepared by Luca Perilli to the Ministry of Justice in June 2014. The Ministry of Justice raised objections to many findings and comments presented in the report.

Following our objections, the Expert revised the draft report in June 2014 and communicated the revised report to the Ministry of Justice. When the subject-matter report was evaluated, it was understood that majority of our objections to the previous report were not reflected. Furthermore, it is striking to see that specific matters of political nature were mentioned in the report, which was supposed to be technical.

In addition to the matters we disagree, significant amendments were introduced as per the Laws no 6526 and 6545 after the consultative visits of the expert. Some of these amendments were related to the remarks mentioned in the report. The amendments can lead to substantial changes in the report.

Due to the abovementioned reasons, we request that the content of the report be readjusted according to the objections we put forward below and that the parts we object be completely removed from the report.

	CLAIMS AND REMARKS IN THE REPORT	OBJECTIONS OF THE MINISTRY OF JUSTICE
	Executive Summary	
1	• The whole process that brought from the establishment of specially authorized courts, the regional serious crime courts, specially authorized prosecutors and liberty judges to their abolishment raises serious concerns both for the independence and the effectiveness of Turkish criminal justice. The parliamentary deliberations did not follow public consultation with civil society. (Page: 2)	• The government programme, development plan, decisions of higher judicial bodies, action plans of the Ministry of Justice, Accession Partnership Documents, National Programme for the Adoption of the EU Acquis, decisions of ECHR, opinions of the High Council of Judges and Public Prosecutors, opinions of the universities, citizen petitions as well as the opinions of all relevant non-governmental organizations are taken into consideration while making a law. Since the establishment of the specially authorized heavy criminal courts (SAHCC), they have been perceived as the continuation of the State Security Courts (SCC).The special investigation procedures followed by these courts are considered to be in conflict with the articles 5 and 6 of the ECHR. The EU, Amnesty International, bar associations and many non-governmental organizations all agree on this matter. Workshops and symposiums were held on the legal position and future of the SAHCCs with a wide participation including the implementers, academics and foreign experts under the leadership of the Union of Turkish Bar Associations. For example, the Union of Turkish Bar Associations organized a panel in December 2010 and the presentations delivered during the panel were published in the form of a booklet. ***(http://tbbyayinlari.barobirlik.org.tr/TBBBooks/oym-2010-387.pdf)*** **(ANNEX-1)** Majority of the participants in the panel expressed that these courts violated the principles of equality, natural judge and right to fair trial and thus they had to be abolished.
2	• Further serious concern regard the *"internal independence"* of judges and prosecutors with	• The Law no 6526 entered into force upon its promulgation on the Official Gazette. Therefore, all judges and prosecutors are aware of this Law. As per the

	reference to the lack of transparency in the procedure followed by the HSYK for the re-location of judges belonging to abolished courts and prosecution offices and for the appointment of judges and prosecutors to the courts newly set up. This not only conflicts with the relevant standards but also induces the negative impression that HSYK powers can be abused to intimidate judges and prosecutors and to interfere with pending investigations and trials. (Pages: 2-3)	Article 1, Paragraph 2 of the Law, HSYK is required to appoint the judges and prosecutors within 10 days to the posts that are convenient for their vested rights. For that reason, as a requirement of the standard practice, the 1st Chamber of HSYK published an announcement on 11.03.2014 to call for applications from all the judges and prosecutors for the new appointment. The requests of the judges and prosecutors who submitted their applications as well as their tenure were taken into consideration for the new appointments. Under the Law, 38 Heavy Criminal Courts were abolished and replaced by 22 Heavy Criminal Courts. 210 out of 245 judges and prosecutors assigned at the abolished courts were reappointed to the posts in the provinces they were already serving in line with their requests, 19 were appointed to posts in the provinces they requested, 4 were appointed to the provinces that were close to the ones they requested, and 13 were appointed to the other provinces due to the excess staffing. All judges and prosecutors who were transferred to different courthouses have the right to demand for the re-examination of the decision of the First Chamber from the same Chamber and they also have the right to raise an objection for the decision of this Chamber at the Plenary. Moreover, some judges and prosecutors exercised their right to demand for re-examination and right to raise an objection for the decision.
3	• Moreover concerns must be expressed because of the absence of a transitional provision in the Omnibus Law, that would allow the abolished courts to complete pending cases. Because of the lack of this provision in the Omnibus Law, new panels of judges will have to re-consider	• As regards this matter, first of all; the Commissioner for Human Rights of the Council of Europe Thomas Hammerberg noted in his report titled "*Justice Management and Protection of Human Rights in Turkey"* drafted on 10 January 2012 that the specially authorized courts should be abolished immediately. Hammerberg stated in several parts of the report that rights were violated at the specially authorized courts; right to defend was restricted; evidence was collected unduly; there was a separation in the judicial system because separate

	the evidence obtained by previous panels, by reading documents and minutes of hearings that may consist of thousands of pages. This risks seriously affecting the effectiveness of the courts that were already overburdened by very long trials. (Page: 3)	procedures were followed at the ordinary courts and thus he questioned the need for such courts; he stated that all criminal cases should be tried at well-equipped ordinary courts. On the other hand, the independent long-term expert Marcel Lemonde states in his report regarding the specially authorized courts that were published lastly on December 2013, under the *"Project for Improving the Efficiency of the Turkish Criminal Justice System"* jointly implemented by the Council of Europe and European Union that the specially authorized courts were hindrance before combating organized crimes and terror through democratic means; and they were detrimental to the right of defense and safeguards of criminal justice. Underlining that the judges who tried certain offences for a long time fell into blindness in perception and could not remain impartial, Lemond argued that the involvement of unspecialized courts in judicial process enables the judiciary to take decisions against such offenses in a genuinely independent and impartial way. Furthermore, he claimed that these courts might abandon the traditional safeguards of the criminal procedure and substantive law, and might hinder the impartial functioning of the judiciary. In fact, he considers the abolishment of the specially authorized prosecution offices to be a positive development. In this sense, when we analyze the German case; general courts try the terrorist offences with a different setting and in a separate hearing however, the panel is composed of the same judges. In Austria, although the investigation and prosecution procedures of organized crimes are different, they are tried at the general and ordinary heavy criminal courts. In countries such as Italy, Romania, Poland, Estonia and Denmark, general courts try these types of offences without the existence of any specially authorized courts. The problems leading to the abolishment of specially authorized courts indicate why the judges at these courts should not try the ongoing cases. That is why such a provision was not added to the Omnibus Law. As regards the comment that the new panel of judges will have to examine the

		files again; the judges and prosecutors in our country might be appointed to larger cities where the workload is higher from smaller cities periodically according to the regions system. Sometimes, they might be transferred to another court within the provinces they are already assigned. In this case, the judges and prosecutors can examine the new files that they take over in a short period of time thanks to the nature of their duties and can get a good command of the file. Therefore, the lack of such provision in the Omnibus Law is not thought to influence the capacity of the new panels of judges.
4	• The abolishment of special prosecution offices and of the liberty judges will set back the positive development because of the specialization of the judges and prosecutors in these units. (Page: 3)	• Although it was stated together in the report both the abolishment of the specially authorized prosecution offices and of liberty judges, the prosecution offices that were assigned as per the article 250 of the Criminal Procedures Code were abolished pursuant to the Law no 6352 and dated 02.07.2012. In addition to this, the chief prosecution offices have some prosecution offices specialized in specific areas in cities where the number of investigations is high. For example, there are some prosecution offices that are specialized in *"Combating Smuggling and Organized Crimes", "Combating Constitutional Crimes"* and *"Economic Crimes"*. The prosecutors that investigate only specific types of offences are specialized in their fields just like the specially authorized prosecution offices are. This shows that the positive development brought by the specially authorized prosecution offices still persists. Contrary to what is claimed in the report, the Liberty Judges were not abolished. Nonetheless, civil judges of peace, replacing the Liberty Judges who exercised their powers in a limited jurisdiction, were created as per the Law no 6545 and dated 18.6.2014to deal with cases involving all crimes in every province and every district identified, taking account of the geographical requirements of regions and the workload while they were entrusted with the power to decide especially on protective measures. These judges do not have the power to exercise jurisdiction but instead they are entrusted exclusively with the task to take necessary decisions that should to be taken by judges during the

		investigation phase. Therefore, a more comprehensive legal arrangement was introduced compared to the liberty judges and the practice of liberty judges was extended to the national level. In this way, the individual rights and freedoms can be protected in our country more effectively than what is recommended in the report and a better specialization can be ensured.
5	• It further requires the *unanimity* of a three-member panel of judges for intercepting communications and appointing undercover agents, and the unanimity of a three-member panel of judges in first and in second instance, both for the decision and the objection (appeal), for seizing assets. Moreover the unanimity rule brings the potential to block every investigation (it would sufficient the opposition of one among three judges) and it is indeed totally inconsistent with further CPC provisions. (Page: 3)	• During the investigation, detection of communication, appointment of an undercover agent and seizure of assets are ordered without the suspect being aware of such decisions and there is no possibility to raise an objection to these decisions because they are confidential. This might result in irreparable damage for the suspects. For that reason, the concerned legal arrangement created a safer system for the suspects with respect to this situation that is directly related to the individual rights and freedoms.
6	• Statistics show that Turkish judges still often resort to pre-trial detention and do not use it as an *extrema ratio*. (Page: 4)	• The ratio of the detained persons to the total prison population in our country was 23.3 % in 2012, 19 % in 2013 and 14.4 % in 2014. When the figures are evaluated, it is understood that the detention rate has decreased dramatically in the last three years. Given the detention rate in 2006 which was 49%, it is evident that our country has attained progress in this regard. **(ANNEX 2-A)** When the attached statistical data on the enforcement of the judicial control orders is evaluated, it can be seen that the enforcement of judicial control orders has gradually increased by years in our country. For example, in 2006, only 108 judicial control orders were issued, while this number rose up to 11.410 in 2008,

		and 70.574 judicial control orders were issued in 2013. **(ANNEX 2-B)** The new legal arrangement introduced will decrease rates of the pre-trial detentionin the future.
7	• However Turkey still lacks a genuinely adversarial remedy that allows the accused to challenge the lawfulness of his/her pre-trial detention and a remedy that allows parties to access an authority which can exercise its supervisory jurisdiction over the trial court to expedite the proceedings. (Page: 4)	• Before 11/04/2013, the judge used to decide on the requirement for the continuation of detention of the suspect maximum every 30 days without hearing the suspect or her/his defendant. In another word, the continuation of detention was decided over documents without holding hearings. The amendment introduced by the Law no 6459 and dated 11/04/2013 requires the judges to hear the suspect or her/his defendant in order to evaluate whether detention should be continued or not. In practice, such evaluation is made in a hearing. The appeal authority takes the due decision in the hearing after writing a minute on the oral statements that the suspect or accused has not committed the crime, the conditions for detention have not occurred or the conditions for detention do not exist anymore. In this way, an adversarial remedy is provided.
8	• As to the relation of prosecutors with the police, a proper judicial police, functionally dependent on the prosecution office, is still far to be established. (Page: 4)	• Article 161 of the Criminal Procedures Code states that the public prosecutor shall perform the criminal investigations. Judicial police is dependent on the prosecution office with respect to their judicial tasks and only the public prosecutor can order and instruct the judicial police within the scope of judicial investigations. The chiefs of judicial police who have administrative capacities can neither order nor instruct the judicial police in relation to criminal investigations. The superiors of judicial police are subject to the same investigation procedures in terms of investigation methods as the judges and prosecutors are. In this sense, the judicial police in our country is quite independent from the administration with respect to judicial tasks and they are safeguarded enough

9	• However concerns persist about the whole legal framework on organized crime and terrorism, which should be clarified and defined as precisely as possible and be implemented in accordance with the Council of Europe Recommendation No 1426 (1999) and in compliance with the principle of proportionality. (Pages: 4-5)	• Article 5 of the Council of Europe Recommendation No 1426 (1999) defines the *"terrorism"*. However, there isn't a general definition for terrorism that is acknowledged by all countries although it is an international problem. The criteria for terror offences set by countries and international organizations vary. Article 1 of the Anti-Terror Law (ATL) defines the overall purpose and nature of terrorism. On the other hand, Articles 3 and 4 of ATL has defined certain criminal acts as terrorist offences and offences committed for terrorism purposes that satisfy the relevant critiques in the report. Specific crimes committed against the security of the state as well as the specific crimes committed against the constitutional order and functioning of this order stipulated in the Turkish Criminal Code (TCC) are automatically acknowledged as terrorist offences in Article 3 of the ATL, while Article 4 of ATL lists the offences for terrorism purposes in an exhaustive way and thus defines concretely which acts shall be deemed as terrorist offences. In this regard, it is considered that the legal framework of our country regarding terrorism is in harmony with the concerned Council of Europe Recommendation.
	1.3. The Regional Serious Crime Courts	
10/1	• An a last-minute addition to the third judicial reform package, that was adopted by the Turkish Parliament on 2 July 2012 and entered into force on 5 July 2012, abrogated articles 250-252 of the CPC, abolished the specially authorised courts ad set up, under the amended Article 10 of the antiterror Law the Regional Serious Crime Courts (henceforth: RSCC) to deal with cases involving crimes	• Although the report referred to the *"Regional Serious Crime Courts"*; as per Article 10 of ATL amended by the Law no 6352, the courts that have been established do not special name. These courts are named *"Heavy Criminal Court"*. They cover more than one province due to their jurisdiction. In our comments to the report, the expression *"Heavy Criminal Courts assigned under Article 10 of ATL"* will be used to refer to these courts. Instead of *"Regional Serious Crime Courts", "Heavy Criminal Courts assigned*

	against the security of the State, organized crime and terrorism. (Page: 10-11)	*under Article 10 of ATL"* must be used in the report as well.
10/2	• The number and location of the new courts, their territorial jurisdiction and judges and prosecutors assigned to the regional serious crime courts were decided by the HSYK in only 6 days since the entering into force of the third judicial reform package. (Page: 11)	• Even though the concerned decision was taken in 6 days since the entering into force of the law as also mentioned in the report, as a matter of fact the General Secretariat of HSYK made the necessary preparations within the knowledge of HSYK's Plenary during the time spent from the adoption of the Law by the TGNA to its promulgation in the Official Gazette. On the other hand, these appointments helped avoiding significant risks that might have occurred with respect to the individual rights and freedoms if the courts had lacked judges for a longer period of time.
10/3	• The appointment of judges and prosecutors to the RSCC by HSYK did not follow a public call for applications; judges and prosecutors were not consulted prior their appointment; the reasons for their appointment were neither made public nor communicated to them. The HSYK decision about the appointment was not reasoned. (Page: 12)	• The 1st Chamber respects the "*Regulation on the Appointment and Transfer of the Judges and Public Prosecutors*" in its decisions on appointment. 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.
	1.4. Abolishment of Specially Authorized Courts	
11	• Prior to the Law no 6526, special prosecutors initiated proceedings against cabinet members	• The amendments made to the by-law on the Judicial Police do not prevent the prosecutors from performing the investigations independently. In fact, the

	and/or their close relative for suspicion of corruption in December 2013. The first reaction by the Government to was an amendment of 26 December 2013 to the by-law on the Judicial Police which required police investigators to report investigations to their police superiors. (Page: 12)	administrative authorities are not entitled to give orders to the judicial police. Judicial investigations are carried out completely under the initiative of the prosecutor. Those who will fulfill judicial tasks under the police organization are identified in advance.
	1.5. Effectiveness of the Special Courts - Considerations	
12	• Then, concerns must be expressed about the transparency of legislative process. Both in the case of the *"third package"* which abolished the SAC and set up new special courts under art. 10 of the anti-terror Law, and in the case of the February 2014 Omnibus law that cancelled the special courts established only a year and a half before, NGOs, associations of judges and lawyers and stakeholders – the High Council of Judges and Prosecutors- alleged that they were neither consulted nor informed. (Page: 15)	• For this comment, we would like to reiterate our comment presented in row number 1 above.
13/1	The followings were stated in the report; • For what regards the *"internal independence"* of judges and prosecutors; serious concerns must be further expressed about the transparency of the decision of the HSYK for the re-location of judges belonging to	• For this comment, first we would like to reiterate our comment presented in row number 2 above.

	abolished and newly set up courts. Following the adoption of the third judicial reform package, decisions regarding the new courts as well as the judges and prosecutors to the new posts were taken by the HSYK in only six days since the entry into force of the law, without opening a call for applications, and without consulting to them. Following the abolition of special courts and prosecution offices, judges and prosecutors were relocated to other tasks in only 15 days, 8% of them were transferred to different courthouses without their consent and without clear justification. Likewise, new judges were assigned to the new heavy criminal courts without opening a call for the applications and without consulting the judges who were selected for the new task. (Page: 15)	

13/2	In the report the following was stated: • In major cases, such as Ergenekon, Sledgehammer and KCK, prosecutors in charge with the investigations were withdrawn from the case by the chief prosecutor and assigned to other tasks, judges in on-going cases were subject to disciplinary investigation or transferred to other duties without being subject to any prior disciplinary investigation and, thus, without being given the possibility to defend themselves. Such interventions by chief prosecutors and HSYK in the course of proceedings can lead the public to question judicial independence. (Page: 16)	• As per Article 18/2 of the Law no 5235 on the Establishment, Duties and Powers of First Instance Courts in Ordinary Justice and Regional Courts of Appeals, one of the duties of the chief public prosecutor is to divide tasks among public prosecutors. Under this scope, the chief public prosecutors changed the division of tasks pursuant to the abovementioned article in order to ensure more robust performance of the investigations. The appointments in relation with these investigations which were critized, were made because it was believed that the relevant persons committed a criminal act under the disciplinary law. No judge or prosecutor was appointed just because of the investigations they performed or cases they dealt with.
14	• In footnote numbered 40; it was noted that Yılmaz Alp who issued decisions to release suspects both in the *Sledgehammer* and the *Ergenekon* case, was transferred to other duty, even though he had not been subject to any disciplinary procedure. As regards the *Sledgehammer* case, Deputy Chief Prosecutor Turan Çolakkadı, prosecutors Bilal Bayraktar and Mehmet Berk were removed from the case after issuing a motion for an arrest warrant of 95 military personnel in the *KCK* case the prosecutor Sadrettin Sarıkaya was removed from the case by the chief prosecutors.	• In Sledgehammer case, as complaints were filed against the prosecutors who were claimed to be removed from the case, the chief public prosecutor changed the division of tasks as per Article 18/2 of the Law no 5235 on the Establishment, Duties and Powers of First Instance Courts in Ordinary Justice and Regional Courts of Appeals in order to ensure more robust performance of the investigations.

	(Page: 16)	
15/1	Therefore; …. • Every HSYK decision concerning the career of judges should be based on objective and pre-established criteria. Such decisions should be based on merit having regard to the qualifications, skills and capacity. (Page: 17)	• The First Chamber of HSYK cannot be claimed to appoint judges and prosecutors with discretion and without having regard to any rules. The First Chamber abides by the provisions stipulated in the "*By-Law on the Appointment and Transfer of Judges and Prosecutors"*. Furthermore, the resolutions taken at the beginning of each year and to be applicable to the decrees in that year are announced to the judges and prosecutors. The decrees are prepared completely based on the provisions of the by-laws as well as the resolutions that were already known.
15/2	• Every HSYK decision regarding judges and prosecutors careers, involuntarily transfer included, should be subject to judicial review**.** (Page: 17)	• As per the Constitution, it is not possible to provide possibility with applying judicial review of appointment decisions of the 1st Chamber of HSYK. On the other hand, it is provided with an internal objection mechanism against appointment decisions of HSYK in itself. When the relevant party demands for the re-examination of the appointment decision, the related Chamber shall 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 objection mentioned above provide judges with the required security. For example, 20% of disciplinary decisions taken by HSYK's Second Chamber are overruled by the same chamber upon the request for re-examination. Similarly, 20% of decisions taken by the Second Chamber are annulled by HSYK's Plenary upon objections. If the judicial review were provided 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.
16	• For what regards the effectiveness of Criminal Justice, serious concerns must be expressed because of the absence of a transitional provision in the Omnibus Law, that would allow the abolished courts to complete pending cases. … Because of the lack of this provision in the Omnibus Law, new panels of judges will have to re-consider the evidence obtained by previous panels, by reading documents and minutes of hearings that may consist of thousands of pages. This risks seriously affecting the effectiveness of the courts that were already overburdened by very long trials. Neither the Ministry of Justice not the Justice Commission of the Parliament provided any plausible justification for the absence of such transitional provision. That creates the impression that the reform was adopted with the view to not re-organize the court system but instead to remove prosecutors and judges who were dealing with very sensitive cases and that it was a reaction against the high profile	• For this comment, we would like to reiterate our comment presented in row number 3 above.

	investigations about corruption cases. (Page: 17)	
17	• As a consequence, whilst in larger prosecution offices -such as Istanbul and Ankara- special units were established to deal with organized crimes and terrorism related crimes, prosecutors from small and even very small prosecution offices could face very complex and delicate investigations, without being properly trained for the task. (Page: 17)	• In our country, it is very important to combat organized crimes and terror crimes. In this regard, the Ministry of Justice and Justice Academy of Turkey organize many training events in order to maximize the knowledge level of judges and prosecutors on this matter. The information sheet regarding the training activities held on this matter is attached hereto. **(ANNEX 3)**
18/1	• The expert noted the astonishing increase of cases, suspected persons and long duration of investigations and trials since 2005. The reasons for this increase should be further investigated. (Page: 17)	• In the report, the astonishing increase of cases and suspected persons since 2005was highlighted. This was because of the misinterpretation of the data delivered to the expert. Insofar as; Until 2009, the number of the cases was taken into account while collecting statistical data. After 2009, however, not only the number of cases but also the number of suspects and offences in each case have been counted. However in this report, the number of cases in 2004-2008 was compared with the number of offences in 2009-2013 and thus this led to misleading results because different sorts of data were compared. When these figures are evaluated, it is understood that the number of cases was 5406 in 2003, while it was 7665 in 2013, that it decreased in some years while increasing in other years within a period of a decade but there wasn't any remarkable difference between the numbers. As regards the duration of investigations and trials; In significant majority of cases investigated by the prosecution offices assigned as per article 10 of ATL, the offenders cannot be found for many years. These

		files are referred to as case files with unknown assailants. These case files with unknown assailants should not be counted while evaluating the duration of investigations. So when the evaluation is made in this way; it is observed that an investigation file was resolved by the chief public prosecution office within 317 days on average in 2006 which is one year following the entry into force of Turkish Criminal Code and Criminal Procedures Code, while it was concluded within 306 days in 2013. As regards the cases filed at Heavy Criminal Courts assigned as per article 10 of ATL; the average duration of trial was 352 days in 2006 while it was 257 days in 2013, which was a remarkable decline.
18/2	• It might be due to the extended implementation by prosecutors and courts of the vaguely defined criminal offences contained in articles 220 and 314 of the CC and in the anti-Terror law, as well as to the rather low threshold required by the Court of Cassation for the prosecution and punishment of criminal offences provided for in the Anti-Terror law. What is nevertheless for granted is that the size of workload would require an effective response by prosecutors and judges. (Pages: 17-18)	• For this comment, we would like to reiterate our comment presented in row number 9 above.
	Recommendations for the Chapter 1:	

19/1	• Every significant reform of the judicial system should be preceded by public consultation with civil society and relevant stakeholders. (Page: 18)	• For this comment, we would like to reiterate our comment presented in row number 1 above.
19/2	• The approval of the Authorities for investigation and trials regarding government officials should be abolished, in order to ensure the equality of defendants before the law. (Page: 18)	• In Turkish law, direct investigation by the prosecutors is foreseen for the crimes committed in the course of the performance of judicial duties or tasks pertaining to the Article 161 of the CPC and for the crimes of malversation, bribe, embezzlement, smuggling on duty or due to duty, rigging official tenders and purchases and sales, disclosure of State secrets or causing disclosure of State secrets as per art. 17 of the Law No 3628 on Declaration of Property, and Combating Bribery and Corruption. Therefore, there isn't any requirement to obtain prior permission for the investigation especially of the crimes that can be deemed as corruption. Permission has to be taken for the petty acts such as breach of a duty. These acts are usually subject to the disciplinary legislation. Without such a permission mechanism for the investigation of these acts, the complaints against the civil servants would have been filed directly at the public prosecution offices and they could have been directly investigated. This would have hindered the fulfillment of routine tasks of civil servants, and thus there would have been delays in the access of citizens to public service. For that reason, the mechanism for investigation permission is not a system which prevents the investigation of crimes committed by civil servants. The aim of such a system is to ensure the uninterrupted delivery of public service.
19/3	• Every HSYK decision concerning the career of judges and prosecutors be grounded on	• For this comment, we would like to reiterate our comment presented in rows

	objective and pre-established criteria. Such decisions should be based on merit, having regard to the qualifications, skills and capacity; Every HSYK decision regarding judges and prosecutors careers, involuntary transfer included, to be subject to judicial review. (Page: 18)	number 15/1 and 15/2 above.
19/4	• Specialized prosecution offices with extended jurisdiction be re-established. (Page: 18)	• The prosecutors attached to the Heavy Criminal Courts assigned as per article 10 of ATL and that were abolished pursuant the Omnibus Law no 6526 were entrusted with a wide jurisdiction that covered multiple provinces. This created challenges for the prosecutors to transfer their specialization and experience to the cities and districts that were distant from their offices. On the other hand, the prosecutors used to have limited control over the police in the provinces and districts where the crime was committed. For that reason, local prosecutors used to perform the investigations. The local prosecutors used to send the documents of completed investigations with a summary of proceedings to chief public prosecution offices attached to the specially authorized courts. Therefore, the pace and efficiency of the investigations were not at the desired level. Due to the abovementioned reasons, this recommendation is not appropriate.
19/5	• Liberty judges be re-established. (Page: 18)	• In the report, liberty judges were considered to be a positive development because of their specialization in protective measures for the freedoms and fundamental rights of the accused and thus it was recommended to re-establish the liberty judges. Nonetheless, civil judges of peace, replacing the Liberty Judges who exercised their powers in a limited jurisdiction, were created as per the Law no 6545 and dated 18.6.2014 to deal with cases involving all crimes in every province and every district identified, taking account of the geographical requirements of regions and the workload while they were entrusted with the

		power to decide especially on protective measures. These judges do not have the power to exercise jurisdiction but instead they are entrusted exclusively with the task to take necessary decisions that should to be taken by judges during the investigation phase. Therefore, a more comprehensive legal arrangement was introduced compared to the liberty judges and the practice of liberty judges was extended to the national level. In this way, the individual rights and freedoms can be protected in our country more effectively than what is desired in the report.
	2. Preventive Detention	
20	• According to the Commissioner for Human Rights of the Council of Europe, remands in custody are relied on very heavily despite the existing supervision measures persons remanded in custody accounted for 43% of total prison population of April 2011, this was a big problem, and the courts had failed to take into account alternative, non-custodial restrictions. (Page: 19)	• For this comment, we would like to reiterate our comment presented in rows number 6 above.
	2.1 Statistical Information on Pre-Trial Detention	

21	• It was stated in the report that the detention rate as a percentage of total number of prisoners fell from 47.8 % in 2004 to 25% in 2012, while according to the statistical figures provided by the Ministry of Justice, on 5 November 2012 the absolute number of detainees was 32.569 and the ratio of prisoners to population per 100.000 inhabitants is one of the highest in Council of Europe Member States. (Pages: 19-20)	• Although the number of detainees was reported to be 32.569 in November 2012, the records of our Ministry show that the number of detainees is 22.241 in 2014. This indicates that the number of detainees decreased by 32% compared to the number in 2012. On the other hand, the web page http://www.prisonstudies.org that shows the number of detainees and convicts in the prisons of various countries in all around the world indicates that with its 14% detention rate, Turkey ranks 174th among 211 countries in the world and 48th among 57 European countries. These statistics clearly show that the detention rates in Turkey are far below the rates in many EU member states. **(ANNEX 4-A)** As regards the detention rates, this rate is 40.6% in Switzerland, 39.9% in the Netherlands, 33.8% in Italy, 31.8% in Belgium and 26% in France, which are all considerable. **(ANNEX 4-B)** The ratio of prisoners to population per 100.000 inhabitants which was claimed to be one of the highest rates in the Member States is wholly associated with the social, economic and cultural structure. Referring to this rate in a report that is dedicated only to criminal justice is technically not right.
	2.5. Judicial Practice About Pre-Trial Detention- Considerations	
22	• According to the figures provided by the MoJ, the duration of pre-detention before first instance decision is shorter than 3 years in 95,76% of cases. If this figure is reversed, it means that in 4, 34% of cases, that is hundreds if not more than a thousand of individual cases**,** pre-trial detention before first instance conviction was longer than three years. This	• In the report, it is not indicated to which year the information presented belongs. According to the records of our Ministry, the rate of persons who are kept under pre-trial for more than 3 years is 2.42% (529 individuals) as of 07.11.2014.

	figure shows a long duration of pre-trial detention in a significant number of cases. (Page: 25)	
23/1	It was claimed in the report that • The third package of judicial reform did not bring a positive change as regards the reasoning of decisions by the liberty judges who had the sole task to decide on protective measures. (Page: 26)	• The comment in the report is not appropriate due the article 101/2 of CPC stating *"evidence concerning pre-trial detention decisions must be justified through solid facts"*. On the other hand, Justice Academy of Turkey carries out training activities for the Civil Judges of Peace to raise their awareness for the fact that they should justify their pre-trial detention orders. The syllabus of the Justice Academy of Turkey includes a course entitled "*Justification of Court Orders in the light of the Case-law of the European Court of Human Rights*", which has been delivered since 2012 to the trainee judges and prosecutors in civil and criminal justice. In this way, training of trainee judges and prosecutors as well as the Civil Judges of Peace will bring tangible results in practice in the following years**.** In addition to this, the due attention has been given to this matter through the organization of the following activities regarding the protection measures: ✓ Symposium on "*Case-Law of the European Court of Human Rights in the field of Enforcement of Protection Measures and Freedom of Expression*" held on 12 March 2012, ✓ Training Seminar on "*Protection Measures under the Criminal Procedural Code"* on 30 September 2013-1 October 2013, ✓ Seminar on "*Protection of Private Life and Protection Measures within the*

		framework of the European Court of Human Rights and Convention on Human Rights" on 28-30 April 2014, ✓ The Project entitled "*Improving the Efficiency of the Turkish Criminal Justice System"* implemented by the Justice Academy of Turkey has a training module titled "*Pre-trial Detention and Judicial Control Measures*".
23/2	• The provision on catalogue crimes in CPC should be suppressed. (Page: 26)	• The first sentence of article 100/3 of CPC states that "*if strong grounds for suspicion are present, that the below mentioned crimes have been committed, then 'the ground for arrest with a warrant' may be deemed as existing."*; however, this cannot be interpreted as an absolute ground for arrest against the crimes listed. To the contrary, the practice of catalogue crimes restricts the rendering of pre-trial detention orders by the judges for the crimes outside the scope of the catalogue crimes. In this way, the rights and freedoms of persons are protected more effectively.
	Recommendations for Chapter 2:	
24/1	• The provision on *catalogue crimes,* art. 100, paragraph 3 of the c.p.c., should be suppressed and until it is suppressed, full justification should be given for pre-trial detention orders falling under the umbrella of this provision. (Page: 26)	• For this comment, we would like to reiterate our comment presented in row number no 23/2.

24/2	• Judges dealing with liberty of persons should undergo, as a matter of urgency, judicial training about article 5 and 6 of the European Convention of Human Rights and about the practice of reasoning pre-trial detention order followed by liberty judges in EU Member States. (Page: 26)	• For this comment, we would like to reiterate our comment presented in row number no 23/1.
24/3	• Liberty judges, entrusted with handling decisions and objection regarding *"protection measures"* such as: search, seizure, apprehension, detention, and detection of communication, should be re-established. (Page: 26)	• For this comment, we would like to reiterate our comment presented in row number no 19/5.
	3. The Conditions for Issuing a Pre-Trial Detention Order, Seizing Assets or Intercepting Communications Pursuant to the Omnibus Law	
	Recommendations for Chapter 3	
25/1	• The provision of law no 6526 requesting solid evidence to issue a pre-trial detention order (art. 100 paragraph 1 of the CPC), to order searches (art. 116 of the CPC) to seize assets (art. 128 of the CPC), to decide interceptions of communications (art. 135 of the CPC), to appoint an undercover agent (art. 139 of the CPC) should be abrogated. (Page: 28)	• As regards the solid evidence criteria recommended in the report to be abrogated, Article 21 of the Bill that was accepted by the Parliamentary Justice Commission on 13 November 2014 and submitted to the General Assembly of the Parliament stipulates an amendment to the article 116 of the Criminal Procedural Code no 5271. This amendment requires *"reasonable suspicion"* to search the suspect or the accused. This amendment is in line with the recommendation in the report.

25/2	• The provision of law no 6526 requesting for a panel of three judges to unanimously issue or confirm, if opposed, an authorization for the interception of communication (art. 135 of the CPC) should be abrogated. (Page: 28)	• During the investigation, detection of communication, appointment of an undercover agent and seizure of assets are ordered without the suspect being aware of such decisions and there is no possibility to raise an objection to these decisions because they are confidential. The concerned legal arrangement created a safer system for the suspects with respect to this situation that is directly related to the individual rights and freedoms.
25/3	• The provision of law no 6526 requiring judges to get a report by the relevant administrative authority to seize immovable properties and other assets should be abrogated. (Page: 28)	• Article 128 of the Criminal Procedures Code amended by the Law no 6526 introduced the requirement to get a report to seize the immovable properties and assets. This report is an expert opinion report on a technical subject-matter. This is not binding on the court. Therefore, the court can take a decision without taking account of the report.
	4. Duration of Pre-Trial Detention	
	Recommendations for Chapter 4	
26/1	• Pre-trial detention should be limited to those circumstances where it is strictly necessary in the public interest and that the continuing detention should be justified, as long as it lasts, by adequate grounds of a genuine requirement of public interest. (Page: 31)	• Article 101/2 of CPC stipulates "*the decision on arrest should be furnished with the legal and factual grounds and reasons"*; therefore, the recommendation made in the report is considered to be inappropriate.
26/2	• A detained person should be entitled to having the case given priority and conduct it with particular expedition. (Page: 31)	• Pursuant to the article 108/1 of the Criminal Procedures Code, during the investigation phase in time limits not exceeding 30 days each, an evaluation on whether the continuation of the status of the arrest with a warrant is necessary or not, shall be conducted by the Civil Judge of the Peace upon the motion of the public prosecutor. The suspect may also file a motion of evaluation of the status

		of his arrest with a warrant. The cases related to the persons remanded in custody shall also be tried during the judiciary recess period. In practice, the hearing intervals are determined by judges in a way not to exceed 30 days for cases in which the suspect is detained in order to avoid any damage to the person's rights and freedoms. The accused or her/his defense counsel may always file a motion for the hearing to be held on an earlier date. In practice, the judges are sensitive to this matter and hold hearings on an earlier date in case of a relevant motion.
	5. Domestic Remedies to Challenge the Lawfulness of the Pre – Trial Detention	
27	• According to the Commissioner of Human Rights of the Council of Europe, the practice of the domestic courts and prosecutors continues to confirm the established case-law of the European Court of Human Rights, stressing that the Turkish legal system lacks an effective and genuinely adversarial domestic remedy that could offer applicants the opportunity to challenge the lawfulness of their pre-trial detention, as well as reasonable prospects of success. (Page: 32)	• As per the Article 101/5 of CPC, decisions on pre-trial detention may be subject to a motion of objection. Law no6545 introduced a remarkable amendment regarding the motion of objection to all judge and court orders including pre-trial detention orders. Pursuant to the article 268/3 of CPC, objection against the decisions of a civil judge of peace on pre-trial detention shall definitely be handled by another civil judge of peace. This means that pre-trial detection orders as well as objections shall be handled by specialized judges on this matter. By this provision a remedy which is effective and subject to judicial review has been introduced for effective protection of individual rights and freedoms.
	5. Domestic Remedies to Challenge the Lawfulness of the Pre – Trial Detention- Consideration	
28	• The expert notes that the current procedure to challenge the lawfulness of pre-trial detention initial order is carried out by the judge on the basis of documents, without the accused	• For this comment, we would like to reiterate our comment presented in row number 7 and row number 26/3.

	having the right to appear before the judge immediately after the arrest. (Page: 32)	
	Recommendations for Chapter 5	
29/1	• A genuinely adversarial remedy should be introduced, in order to allow the accused to challenge the lawfulness of their pre-trial detention and to be heard by a judge. (Page: 33)	• For this comment, we would like to reiterate our comment presented in row number 7 above.
29/2	• A remedy should be introduced to allow parties to access an authority which can exercise its supervisory jurisdiction over the trial court to expedite the proceedings. (Page: 33)	• Civil judges of peace, replacing the Liberty Judges who exercised their powers in a limited jurisdiction, were created as per the Law no 6545 and dated 18.6.2014, to deal with cases involving all crimes all around the country while they were entrusted with the power to decide exclusively on protective measures. These judges do not have the power to exercise jurisdiction but instead they are entrusted exclusively with the task to take necessary decisions that should be taken by judges during the investigation phase. On the other hand, motion of objection to the decisions of a civil judge of peace shall be handled by another civil judge of peace. In this way, a system that expedites the process in which the judges who are specialized in their fields take decisions only on protection measures was established.

	Recommendations for Chapter 6	
30	• The accused should have access to the relevant documents pointing at innocence or guilt already early in the proceedings and the limitation of the right to access the prosecution file be justified by the need of protection of concrete public interests. Where full disclosure is not possible, the persons concerned should still have the possibility to access information necessary to effectively challenge the allegations against them. (Page: 35)	• As per Article 153 of CPC amended by the Law no 6526 on 21.02.2014; limitations that might prevent the defense counsel from reviewing the full content of the file related to the investigation phase and taking a copy of his choice of documents have been removed. Accordingly, the defense counsel may review the full content of the file during the investigation phase and may take a copy of his choice of documents without paying any fees for such. The counsel of the victim also has the same right.
	7. Quality of Investigations and Indictments – Judicial Police	
31	• As reported above, in December 2013, when special prosecutors initiated proceedings against cabinet members and/or their close relatives for	• The amendments made to the by-law on the Judicial Police do not prevent the prosecutor from performing the investigations independently. In fact, the administrative authorities are not entitled to give orders to the judicial police.

	suspicion of corruption, the first reaction by the Government to those proceedings was an amendment of 26 December 2013 to the by-law on the Judicial Police, that required police investigators assisting prosecutors in the investigations to report those investigations to their police superiors. (Page: 35)	Judicial investigations are carried out exclusively under the initiative of the prosecutors. Those who will fulfill judicial tasks under the police organization are identified in advance. On the other hand, only the top ranking superior is authorized and charged with the duty to identify the tasks to be carried out by the judicial police within the police organization, identify the adequate number of judicial police officers for judicial tasks, and organize the activities through performing the overall supervision and control over the police officers. For that reason, it is important to inform the police superiors about the judicial investigations for the effective and efficient operations of the police organization.
	7. Quality of Investigations and Indictments – Judicial Police – Considerations	
32	• The capacity of the prosecutors to effectively and independently guide the judicial police was seriously undermined by the December 2013 amendment to the by-law on the Judicial Police, that required police investigators assisting prosecutors in the investigations to report those investigations to their police superiors, before than to prosecutors. This was a clear interference by the Government in the independence of the investigations. (Page: 37)	• For this comment, we would like to reiterate our comment presented in row number 31 above.
	Recommendations for Chapter 7	

33/1	• A proper judicial police, functionally dependent on the prosecution office should be established. (Page: 38)	• For this comment, we would like to reiterate our comment presented in row number 8 above.
33/2	• The prosecutors should assign to the police time-limits for reporting back on the implementation of the investigation. (Page: 38)	• Article 332 of CPC stipulates that "*the request for the information, given in a written form by the public prosecutor, the judge, or the court during a pending investigation or prosecution, a response must be given within 10 days. If it is not possible to comply with the inquiry within this period, the ground for that and when the response shall be delivered the latest shall be informed within the same period. The writing that asks for the information shall also contain the caution with a statement about the provision of the previous subparagraph, and of non-compliance would mean the violation of Art. 257 of the Turkish Criminal Code. In such cases, except for parliamentary immunities, the investigation regarding persons for whom the opening a public case requires an authorization or a decision, shall be investigated directly*". Likewise, Article 161/2 of CPC states that "*The members of the judicial security forces are obliged to notify immediately the incidences they have started to handle, the individuals who have been arrested without a warrant, and the initiated measures to the public prosecutor under whose command they perform their duties, and are obliged to execute all orders of this public prosecutor related to the administration of justice without any delay*". Therefore, our legislation already defines the time-limits for the police for this matter. Thus, this recommendation is groundless.
	8.4. Anti-Terror Law and Freedom of Expression – Considerations	
34	• The expert, although fully acknowledging the extraordinary challenges posed by terrorism and the deep difficulties it causes in the daily	• For this comment, we would like to reiterate our comment presented in row number 9 above.

	work and in the personal security of prosecutors and judges, expresses concerns both for the imprecise definition of some criminal offences concerning terrorism and membership of criminal organizations, as well as for their wide interpretation by courts. (Page: 43)	
	Recommendations for Chapter 8	
35	• The whole legal framework on organized crime and terrorism should be clarified and defined as precisely as possible and be implemented in accordance with the Council of Europe Recommendation No 1426 (1999) and in compliance with the principle of proportionality. (Page: 45)	• For this comment, we would like to reiterate our comment presented in row number 9 above.
	Recommendations for Chapter 9	
36	• The public prosecutors should have their offices located in a completely separate part of the courthouse from that occupied by judges. (Page: 46)	• The policy adopted in the 10th Development Plan (2014-2018) is "*to implement the principle of equality of arms that strikes a fair balance between the parties in a judicial process"*. One of the objectives of the Draft Judicial Reform Strategy is to *restructure the location of courts and public prosecution offices within the courthouses* in parallel to the Development Plan. It *is planned to separate the physical locations* in order to achieve this objective. Attention is shown to avoid locating the judges and prosecution offices in the same block within the newly-constructed larger courthouses. In smaller courthouses, however, the judges and prosecutors are enabled to have their offices in separate spaces by means of the method for creating restricted spaces

		inside the building. The subject-matter of this recommendation was implemented in 20 pilot courthouses under the Project for Strengthening the Court Management System co-implemented with the Council of Europe. Within the scope of the project activities, the architecture of courthouses was analyzed, the offices of judges and prosecutors are designed to be located in separate blocks if the available land permits in the courthouses to be constructed in the light of the project outcomes, however, if the land does not permit for such a design, the court units are designed to be located in different wings of the building or at separate floors. The Ministry of Justice considers extending this practice.