



ASSEDEL, 11 Rue de Bruxelles 67000 Strasbourg, France, [www.assedel.org](http://www.assedel.org), [info@assedel.org](mailto:info@assedel.org)

**Submission to Venice Commission concerning the Ongoing Opinion on Law  
No. 6087 LAW ON THE COUNCIL OF JUDGES AND PROSECUTORS  
in Turkey**

**ASSEDEL**

**(L'Association européenne pour la défense des droits et des libertés)**

**November 2024**

1. ASSEDEL (L'Association européenne pour la défense des droits et des libertés) is a non-profit organization whose objective is to disseminate, promote, and defend human rights and fundamental freedoms in the spirit of the European Convention on Human Rights, both within the Council of Europe systems and international level.

2. This submission will highlight the contradictions of the relevant law of the High Council of Judges and Prosecutors (law no. 6087) regarding respect for the rule of law.

3. In her 1924 Constitution, Turkey was established under the Parliamentary system, which remained unchanged for almost a century. However, after the attempted coup back in 2016, dissidents started to build up around the existing system over the head of the state's inability to act in critical situations. Thus, the country went to a referendum to change the system in 2017. Since then, Turkey's system has evolved into a blend of presidential and parliamentary elements.

4. In their opinion, number 875/2017, the Venice Commission raised several concerns over the changes that would be implemented after the 2017 Referendum. Such was to modify the existing system into a new “presidential” one where the Constitution was first built as parliamentarian and the legal difficulties it would pose. The transition was shown to be challenging even during the voting at the assembly and during the elections. The government bypassed the laws regarding the election process by instrumentalizing the state of emergency that the state was under. Considering these events, the Venice Commission also gave examples from some Latin American countries that changing into such a “presidential model” has led to backsliding in the rule of law.

5. Furthermore, this new system has increased significant concerns for the impartiality of the judges and the rule of law aspect. *With the transition to a system where the President is affiliated with a political party, the President's existing powers, particularly regarding the appointment of members to the Constitutional Court and the Council of Judges and Prosecutors, could, over time, lead to practices that may undermine the principle of judicial independence—a fundamental requirement of the rule of law<sup>1</sup>.*

5. The independence of the judiciary is a key sign of a democratic society. The judges should not feel pressured when they are ruling a decision by any governmental institution. Article 138 of the Turkish Constitution states as follows:

*- Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming to the law.*

---

<sup>1</sup> Capar, Asuman. (2022). The relationship between executive power and judiciary in the presidential system on the axis of judicial independence. Inonu University Law Review, 13(1), 148-165.

*-No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.*

*-No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.*

*-Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.*

6. Following its 106th Plenary Session, the Venice Commission adopted guidelines for assessing whether a country upholds the rule of law. According to the document available, the law, *Law on the Council of Judges and Prosecutors*, and the practices in the Turkish judiciary will be scrutinized following this submission.

7. Law on the Council of Judges and Prosecutors lays out the *establishment, organization, duties and powers, and the operating principles and procedures of the Council of Judges and Prosecutors on the basis of the principles of courts and security of tenure of judges and prosecutors*. The council is made up of thirteen members, and the President of the Council is the Minister of Justice. The Council operates in two chambers. The duties of the Council are addressed under Article 4 of the law: they appoint, transfer, impose disciplinary sanctions, and inspect judges<sup>2</sup>.

8. In its Opinion dating back to 2011 (no. 610/2011) on the previous version of the law, the Venice Commission underlined certain fundamental problems with how the council operates, specifically, the Minister of Justice automatically becoming the President of the council as well. Such procedures have the potential to make it hard for the council to stay impartial since the

---

<sup>2</sup> The Council shall— a) make the final decision on the proposals from the Ministry for the abolition of a court or a change in the jurisdiction of a court; b) carry out the following procedures concerning the judges and prosecutors: 1) admission to the profession; 2) appointment and transfer; 3) granting temporary authorization; 4) promotion and the first-class allocation; 5) distribution of cadres; 6) deciding about those whose stay in the profession is deemed inconvenient; 7) imposing disciplinary sanctions; 8) suspension from the office. c) inspect whether judges and prosecutors perform their duties in compliance with law and other legislation (administrative circulars for judges); to examine whether they have committed offenses in connection with or during the exercise of their duties, or whether their conduct and actions are as required by their positions and duties, and if deemed necessary, to hold an examination or investigation,<sup>8</sup> except for— 1) those who serve in the central, attached and affiliate bodies of the Ministry and the international courts or organizations; 2) those who serve in any other government institutions, councils, or organizations through temporary authorization or assignment; 3) the prosecutors in terms of their administrative duties; 4) the heads and members of the justice commissions in terms of their tasks related to the works of commissions. ç) (As amended by Law No 6524/22 of 15.2.2014) issue circulars exclusively on the matters including admission, appointment and transfer; granting temporary authorisation, promotion and the first-class allocation; distribution of cadres; deciding on those whose stay in the profession is deemed inconvenient; imposing disciplinary sanctions, suspension and conducting the inspections, examinations and investigations about the civil and administrative judiciary judges and prosecutors; d) elect members to the Court of Cassation and the Council of State; e) perform the other duties assigned by the constitution and laws.

Minister is appointed by the President of the state who is also the head of the ruling political party. This practice has stayed unchanged.

9. The existing guideline established by the Venice Commission to assess the rule of law raises the question of how judicial appointments, tenure and discipline, and removals<sup>3</sup> operate. The President of the state directly elects four out of thirteen members, and seven of the members are elected by the Grand National Assembly of Turkey. One of the two remaining members is the President of the Council, the Minister of Justice, who, under the Presidential system, is appointed by the President of the State. Lastly, the Minister appointed the Deputy President from the Ministry of Justice. Thus, an indirect intervention by the President of the state. The council holds the power to appoint judges and prosecutors. Under these circumstances, the judiciary could face pressure to align with the council, whose proposals are heavily influenced by the President and the assembly, as the council also holds the power to dismiss judges and prosecutors from office. *The judiciary should be independent. Independence means that the judiciary is free from external pressure, and is not subject to political influence or manipulation, in particular by the executive branch. This requirement is an integral part of the fundamental democratic principle of the separation of powers. Judges should not be subject to political influence or manipulation*<sup>4</sup>.

10. As of this October, the council approved the assignments of chief public prosecutors in several cities, one of which was Istanbul. The first initiative of the newly appointed Istanbul chief of prosecutor, Akın Gürlek, was to dismiss and detain the mayor of Esenyurt, Ahmet Özer. Elected by a coalition of the Kurdish party DEM, and the main opposition party, CHP, the mayor is now under investigation. This investigation is being conducted by Akın Gürlek. Additionally, another investigation has been launched against the IBB, Istanbul Metropolitan Municipality, which is the mayor from the main opposition party. These events suggest that the appointments made by the Council reflect the political preferences of the President, aimed at increasing control over public administration.

11. In their information note by the Turkish government over the opinion of the Commission, number 875/2017, the reasoning for amending the related articles of the Law on the Council of Judges and Prosecutors was tied to the attempted coup. *Moreover, we have encountered the terrible reality that the well-organized Fethullahist Terrorist Organization (FETO) corrupted the democratic system subtly and captured most of the members of the High Council of Judges and Prosecutors. As the time passed, FETO used the judiciary as a tool to seize all state organs...The purpose of the change envisaged in the structure and electoral procedure of the Council is primarily to prevent the judiciary from being politicized, prevent another attempt to seize this institution which can be launched by organizations with secret goals such as FETO and to increase the effectiveness of the parliament that is a reflection of the national sovereignty, in the elections to the Council of Judges and Prosecutors (CJP), in compliance*

---

<sup>3</sup> The Venice Commission. (2016, March 11–12). *The rule of law checklist*. Venice

<sup>4</sup> The Venice Commission. (2016, March 11–12). *The rule of law checklist*. Venice

*with the recommendation of the Venice Commission in its draft opinion regarding the High Council of Judges and Prosecutors draft law of 2010<sup>5</sup>.*

12. Following the coup attempt in 2016, more than four thousand judges and prosecutors were dismissed from office. Since then, around three hundred of them have been reinstated to their positions after their cases were reviewed by the appeal court. Back in February, the Minister of Justice, thus, the President of the Council, said “Our President has also provided the necessary explanations regarding the Council of State's decision in response to questions. The Judges and Prosecutors Council has also initiated a review of these cases. If any of these cases lead to an investigation, the decision will, of course, be made by the Inspection Board of the Judges and Prosecutors Council and the relevant department. We are closely following the process based on the findings of the Inspection Board<sup>6</sup>”. It is clear from this statement that the Council operates under the strict oversight of the President, and that its actions are driven by his decisions.

13. Previously, in the opinion of the former law, the Venice Commission had highlighted the problems with appointments by the President of the state. In the new system, where the President is affiliated with a political party, concerns increase. *It should be stressed in this context that under the amendments the President will no longer be required to act as a pouvoir neutre, with the consequence that there is an actual risk that these appointments will be partisan. The change in the role of the President should have had as a consequence to reduce his or her role in respect to the appointment of judges. Instead, this role has been maintained for the Constitutional Court and Council of State and increased for the CJP<sup>7</sup>.*

14. Thus, while complaining about the influence of so-called FETÖ judges at the council, the government has turned it into an opportunity to replace them with openly affiliated with the ruling political party.

15. Although under incumbent law the number of members appointed by the President of the state has not increased sharply, its proportion has grown since the total membership was reduced from 22 to 13. Previously, the Venice Commission stated their concerns over the centralized structure of appointments of the members. *Under this system, most aspects of the organisation of judges and prosecutors have been handled directly by the authorities in Ankara,*

---

<sup>5</sup> CDL-REF(2017)015.

<sup>6</sup> Anadolu Agency. (2024, November 14). *Adalet Bakanı Tunç: Mesleklerine geri dönen 387 isimle (hakim ve savcı) alakalı HSK olarak yeniden inceleme başlattık.* Anadolu Agency. <https://www.aa.com.tr/tr/gundem/adalet-bakani-tunc-mesleklerine-geri-donen-387-isimle-hakim-ve-savci-alakali-hsk-olarak-yeniden-inceleme-baslattik/3140278>

<sup>7</sup> The Venice Commission. (2017). Opinion on the amendments to the constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017 (Opinion No. 875/2017).

*including qualification, appointments, transfers, dismissals, complaints, disciplinary actions, etc.*<sup>8</sup>.

16. In line with the Venice Commission's guidelines, a key indicator of respect for the rule of law is whether judges appointed to public service can be removed and, if so, on what grounds<sup>9</sup>. Regarding the relevant law, dismissal from the council is explained under Articles 36, 37, and 38. Although the law sets out legal proceedings in such cases, the grounds to start investigations are insufficiently specific. The Venice Commission states: *While some of them are vague, others are too broad (for instance, improper conduct, harming respect and trust required by the official position, dressing inappropriately, jeopardising the harmony of the service etc.) These can be abused to indirectly sanction judicial activities*<sup>10</sup>.

17. The article of the Judges and Prosecutors Law, Law No. 2802 Article 62, states the grounds for removal from the office of judges and prosecutors. *By using these legal regulations, which lack the elements of specificity and clarity as justification, matters not specified in the Law can also be subject to disciplinary investigation... However, in practice, it appears that disciplinary investigations are conducted in a manner that harms the judiciary's core function and operation, as a result of broad and purpose-contrary interpretations of provisions in Law No. 2802, which conflict with the principles of legal certainty and legality*<sup>11</sup>. It has been previously shown that judges who attempt to make rulings not aligned with government interests may be subjected to disciplinary investigations.

18. The council has the right to change the posts of the judges and prosecutors. Article 68 of the Judges and Prosecutors Law states: *to lose the honor and reputation of the profession or personal dignity and respect due to faulty or inappropriate actions and relationships*. The same concerns arise. The power to initiate disciplinary investigations under such vague concepts hurts the impartiality of the judges and, thus, the rule of law.

19. *The European Court of Human Rights highlights four elements of judicial independence: manner of appointment, term of office, the existence of guarantees against outside pressure - including in budgetary matters - and whether the judiciary appears as independent and impartial*<sup>12</sup>. The Turkish judiciary has shown to be having trouble respecting the rule of law. The existing law is not able to give concrete reasonings for disciplinary investigations and dismissals from the office. Another issue for securing the impartiality of the judges and prosecutors in Turkey is tied to the factor listed above, budgetary matters. With the referendum

---

<sup>8</sup> The Venice Commission. (2011, March 29). *Opinion on the draft law on judges and prosecutors of Turkey* (Opinion No. 610/2011). Strasbourg

<sup>9</sup> The Venice Commission. (2016, March 11–12). *The rule of law checklist*. Venice

<sup>10</sup> The Venice Commission. (2011, March 29). *Opinion on the draft law on judges and prosecutors of Turkey* (Opinion No. 610/2011). Strasbourg

<sup>11</sup> Aras, Bahattin. (2020). The subject of the judiciary activities of the judges and prosecutors for disciplinary investigation. *Hacettepe Hukuk Fakultesi Dergisi*, 10(2), 835-862.

<sup>12</sup> The Venice Commission. (2016, March 11–12). *The rule of law checklist*. Venice

in 2017, the new system appointed the President of state to manage budgetary matters that were managed by the Ministry of Finance. Thus, the budget that the Council receives is decided and approved directly by the President of the state. This practice does not meet the requirements of the guidelines of the Venice Commission for the rule of law. *Is the financial autonomy of the judiciary guaranteed? In particular, are sufficient resources allocated to the courts, and is there a specific article in the budget relating to the judiciary, excluding the possibility of reductions by the executive, except if this is done through a general remuneration measure? Does the judiciary or the judicial council have input into the budgetary process?*<sup>13</sup>.

20. In conclusion, with the enactment of this new law, the Council of Judges and Prosecutors functions as a supervisory body in which judges operate under stringent government oversight. There is no space for impartiality. A body that in theory should ensure the rule of law and protect the impartiality of the judiciary is turned into an institution lacking genuine autonomy. The increasing powers vested in the president following the attempted coup and the 2017 referendum should be scrutinized by the Venice Commission during its assessment of the law. It should not be forgotten that Turkey, although having detailed laws on the judiciary in somewhat European standards, is not complying with their laws. Thus, the evaluation should consider the practices of the council and the judiciary rather than only laws on the paper.

---

<sup>13</sup> The Venice Commission. (2016, March 11–12). *The rule of law checklist*. Venice