
Le Président
The President

H.E. Mr Tayyip Erdoğan
President of the Republic of Turkey
Cumhurbaşkanlığı Külliyesi
06689 Çankaya
Ankara
Turkey

Brussels, 7 July 2016

Re: Concerns related to the recently adopted ‘Law on the Amendment of the Codes of the Supreme Court and the Council of State’

Dear President,

I write to you as President of the Council of Bars and Law Societies of Europe (CCBE). The CCBE is a non-profit organisation which represents over one million European lawyers, through the Bars and Law Societies of 45 member countries, including Turkey.

The draft “law on the Amendment of the Codes of the Supreme Court and the Council of the State and other Codes” was passed by the Turkish Parliament on 30 June 2016. It raises several concerns in regard to the independence of the Turkish judiciary, and its impact on the rule of law in the country.

The principle of the independence of lawyers and judges is stated in several international instruments of which Turkey is a party, including the International Covenant on Civil and Political Rights and the European Convention on Human Rights (ECHR). The independence of judges is necessary to achieve the separation of powers and respect for the rule of law, and requires independent appointments and decision-making, as well as guarantees as to the security of their tenure. The newly-adopted Turkish law challenges all aspects of this principle.

Firstly, the legislation is in clear contradiction with the principle of security of tenure for judges, as defined in the Basic Principles on the Independence of the Judiciary (“*Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists*”). Indeed, we understand that all members of the Supreme Court and of the Council of the State will be shortly dismissed and replaced. Considering that the age of retirement for judges of the Supreme Court is 65 years old and that their term of office does not expire, dismissing all the judges at once will violate the principle of security of tenure. Such a measure also endangers the principle of the separation of powers as it allows the legislative branch of government to interfere with matters strictly reserved to the judiciary.

Second, this law could further undermine the independence of the judiciary and the principle of the separation of powers by submitting the appointment of judges to the executive. Indeed, the European Court of Human Rights, to whose decisions Turkey must abide, held that “*in order to establish whether a tribunal can be considered ‘independent’ [...], regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence*”. Under the new law, the appointment of new magistrates will be carried out by the High Council of Judges and Prosecutors (HSYK), which is reportedly made up of government-backed members. Furthermore, 24 members of the Council of State will be directly appointed by the President. Consequently, the CCBE is concerned that the government will wield considerable influence in the appointment system without appropriate safeguards in place to guarantee the independence of the process. In addition, and due to the direct

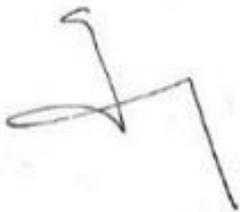
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appointment of judges by the President and of the declaration of the HSYK deputy head that the judiciary is “working in harmony with the executive”, the process will fail to present an appearance of independence. This was denounced by the Union of Turkish Bar Associations, who stated that “trust in the judiciary” will be “shattered” under the new legislation.

Finally, the CCBE is concerned that the new law will affect the independence of judges’ decision-making. Given the new appointment system, along with the quick dismissal of all the Supreme Court and Council of State judges, it is foreseeable that judges at all levels across the country will feel pressured to follow the example of the HSYK and “work in harmony with the executive”, lest they be dismissed or transferred against their will. Such a context will necessarily impact on the way judicial decisions are made, and deprive citizens of their right to a fair trial as guaranteed by the ECHR.

The CCBE is concerned with the impact that this new legislation will have on the independence of the judiciary at all levels, thereby undermining the separation of powers, the right to a fair trial and, more broadly, the rule of law. Respecting the rule of law is an important aspect of the accession negotiations between Turkey and the European Union taking place as part of the enlargement procedure. With this piece of legislation, the government is sending the message that safeguarding the Rule of law is not a priority.

Yours sincerely,



Michel Benichou
President