



TURKEY'S EU AGENDA AND THE CHP

Constitutional Amendment and the independence of the Judiciary

Turkey has recently discussed the draft constitutional amendment package prepared by the ruling party, AKP, without integrating all the parties in the Parliament in the process. If the package gets between 330-367 votes, the AKP will go for a referendum on the changes.

As the main opposition party, the CHP has supported for long the idea of changing the constitution with the aim of further enhancement of Turkish democracy, and shared continuously, in this regard, its stance with public. However, the CHP will not support the AKP's efforts to change the constitution for the following two reasons:

A question of methodology: the need for social consensus

It is beyond doubt that constitutional changes inherently require a great degree of social consensus. Democracy is instrumental for social consensus. Unfortunately, during the AKP ruling, democracy in Turkey has meant only elections, paving in essence the way for the authoritarian ruling of a single man for a period of five years: It is an undeniable fact in today's Turkey that almost all opponents of the AKP have been labeled as Ergenekon-associated people. The Prime Minister Erdogan has called on the media owners to dismiss the columnists criticizing the AKP's policies. The anti AKP press was levied on excessive tax penalties, the opinions of the opposition parties in the Parliament have been continuously ignored, the principle of separation of powers has been consciously violated by the AKP, and the fact that civil society, freedom of speech, press freedom and judicial independence is the structural elements of democracy has been forgotten.

The CHP, on the other hand, opposes the AKP's initiative to change the constitution mainly because of the fact that AKP was labeled by the Constitutional Court as the centre of the activities against secularism, and that lacks for a consensus based political culture. The CHP proposes that the constitutional amendment be made in the next Parliamentary term. All the parties involved, meanwhile, should work on the methods, proposals that would pave the way for a broader social consensus.

A question of principles: the CHP wants a Constitution inspired by the European democratic values

The CHP conceives a package of constitutional amendments, the main principles and the objectives of which are as follows:

- ◆ the broad consultative process on which the constitutional amendments are build.
- ◆ the principle of secularism as one of the main pillars of the Turkish Republic.
- ◆ Judicial independence, and in this regard, the elimination of constitutional basis of the government intervention in judiciary
- ◆ Lifting the parliamentary immunities
- ◆ Strengthening the women rights and ensuring the gender equality in the public and work life.
- ◆ Freedom of communication guaranteed for all citizens and respect for the privacy of personal lives
- ◆ Enhancing social rights
- ◆ Guaranteeing human rights and promoting pluralism



To promote an atmosphere of national consensus, CHP proposed to the Parliament and the President of Republic to dissociate all the amendments on which a compromise is possible. The Parliament can vote and approve 24 articles very quickly. Then if the government insists really, it can bring to a referendum remaining three amendments of discontent, concerning the structure of the judiciary system. We can then discuss rationally the deep concerns of the Turkish public on the increasing domination of the judiciary system by the executive power.

The CHP' stance for judicial independence is explained below in detail.

The Independence of the Judiciary and the Guarantees of Judges

Judicial independence and the guarantee of judges are essential for a fully-fledged implementation of the principle of separation of powers. Today, in most of the European countries, the rising tendency of the executive branch of the government to intervene in judiciary has been severely criticized. The CHP has closely followed these discussions and set its point of view regarding the modern judicial system of the 21st century.

As a participation from the Council of Europe to the above mentioned discussion, the Consultative Council of European Judges-CCJE-, prepared the Opinion no^o10 (2007) on “the Council for Judiciary at the Service of Society”, in consultation with the Venice Commission, and submitted it to the Committee of Ministers of the Council of Europe. The aim of the Opinion is to identify the core elements in relation to the general mission, composition and functions of the Council for the Judiciary with a view to strengthening democracy and to protecting the independence of the judiciary. The equivalent of such a Council in Turkey is The High Council of Judges and Prosecutors (HCJP).

In the below chart, the structure, composition and the functioning of the HCJP as regulated in the Turkish Constitution is presented and analyzed in the light of the core elements set by the CCJE. The chart also compares the benchmarks of the judicial reform planned by the CHP with those included in the AKP's newly presented constitutional amendment package. **As seen from the chart, the benchmarks set in the 2008 party programme of the CHP is in line with those laid down in the Opinion of the CCEJ, especially in respect of better guaranteeing the independence of the judiciary.**

According to the AKP's reform package, the Minister of Justice and the Undersecretary of the Minister of Justice shall be the natural members of the High Council, as they currently are. The number of members elected by and among from the High Court of Appeals and the Council of State is very few, compared to those to be elected to the Council among from the non-judiciary members.

Moreover, conferring on the lower court members the right to elect members to the High Council is most likely to create a conflict between the lower and higher courts. Without integrating the all segments of society, especially the judiciary itself, into the constitutional reform process, the AKP dictated its package, to Turkey.



	CCJE Opinion n°10(2007)	The HCJP regulated in the Turkish Constitution and in the relevant law.	The HCJP in the CHP 2008 Party Programme	The Constitutional Amendment Package of the AKP and the HCJP
In general	<ul style="list-style-type: none"> it is important to set up a specific body, such as the Council for the Judiciary, mentioned in a constitutional text or equivalent and entrusted with the protection of the independence of judges, as a an essential element in a state governed by the rule of law and thus respecting the principle of the separation of powers, as defined in Article 6 of the ECHR 	<ul style="list-style-type: none"> The High Council of Judges and Prosecutors (HCJP) has been regulated with Article 159 of Constitution, and Law on High Council of Judges and Prosecutors No: 2461 (O.G.:14.5.1981 No: 17340), and has exercised its functions in accordance with the principles of the independence of the courts and the guarantees of judges. 	<ul style="list-style-type: none"> The HCJP shall be regulated by the Constitution and be composed of the bodies for administrative judiciary and the ordinary judiciary. 	<ul style="list-style-type: none"> The HCJP shall be regulated by the Constitution and be composed of three different divisions. A separate regulatory law will be enacted in the Parliament following the adoption of the Constitutional amendment legislation package.
the composition of the Council for the Judiciary:	<ul style="list-style-type: none"> The Council for the Judiciary may also be exclusively composed of judges or a substantial majority of judges, Prospective members, whether judges or not, shall be appointed on the basis of their competence, experience, understanding of judicial life and culture of independence. Also, they should not be active politicians or members of the executive or the legislature; <u>Judge members should be elected by their peers, without any interference from political authorities</u> or judicial hierarchies, through methods guaranteeing the widest representation of the judiciary. The appointment of non-judge members, with or without a legal experience, should be entrusted to non-political; if they are however elected by the Parliament, they should not be members of the Parliament, should be elected by a qualified majority necessitating significant opposition support 	<ul style="list-style-type: none"> The HCJP is composed of 7 regular and 5 substitute members. The President of the Council is the Minister of Justice. The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council. The Council elects a deputy president from among its elected regular members. Three regular and three substitute members of the Council shall be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the Plenary Assembly of the High Court of Appeals from among its own members and two regular and two substitute members shall be similarly appointed from a list of three candidates nominated for each vacant office by the Plenary Assembly of the Council of State. Members of the Council shall be appointed among the first class judges and public prosecutors qualified to be selected to High Courts. They may be re-elected at the end of their term of office. 	<ul style="list-style-type: none"> The members of the body for the ordinary judiciary shall be elected by the Plenary Assembly of the High Court of Appeals from among its own members. Similarly, the members of the ordinary judiciary shall be elected by the Plenary Assembly of the Council of State from among its own members. The president of the HCJP shall be nominated and elected from among its own members. The membership of the Minister of Justice and the Undersecretary to the Minister of Justice in the HCJP shall cease. 	<ul style="list-style-type: none"> The HCJP shall be composed of 21 regular and 10 substitute members. The President of the Council shall be the Minister of Justice. The Undersecretary to the Minister of Justice shall be the natural member of the Council. The President of the Council shall not be participating to the works of the divisions. Each division shall elect its own president among from its own members. 4 regular members of the Council shall be appointed by the President of the Republic among the lawyers and University scholars and the high ranked officials; 1 regular and 1 substitute member shall be elected by the Constitutional Court among from its own members; 3 regular and 2 substitute members shall be elected by the Plenary Assembly of the High Court of Appeals from among its own members; 1 regular and 1 substitute member shall be elected by the Plenary Assembly of the Council of State among from its own members; 7 regular and 4 substitute members shall be elected by the ordinary lower courts among from their first class judges; 3 regular and 2 substitute members shall be elected by the administrative lower courts among from their first class judges. Their terms of office are four years. They shall be re-elected.



	CCJE Opinion n°10(2007)	The HCJP regulated in the Turkish Constitution and in the relevant law.	The HCJP in the CHP 2008 Party Programme	The Constitutional Amendment Package of the AKP and the HCJP
On the functioning of the Council for the Judiciary	<ul style="list-style-type: none"> members (judges and non-judges) should be granted guarantees for their independence and impartiality the Council for the Judiciary should manage its own budget and be financed to allow an optimum and independent functioning some decisions of the Council of the Judiciary shall be reasoned and have binding force, subject to the possibility of a judicial appeal an ethical code for judiciary members should be adopted 	<ul style="list-style-type: none"> The High Council of Judges and Public Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the guarantees of judges. Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; - nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post. The High Council of Judges and Public Prosecutors hasn't a separate budget. The Council receives its financial resources from the Ministry of Justice's budget. The decisions of the Council are reasoned, but are not subject to judicial appeal. ethical code for judiciary doesn't exist. 	<ul style="list-style-type: none"> the independence of the courts and the guarantees of judges enshrined in the constitution shall be deeply respected and guaranteed. The HCJP shall have its own personnel and financial resources. The decisions of the HCJP concerning the appointment and the promotion of the judges and prosecutors, and the disciplinary and dismissal from the professions sanctions imposed against judges and prosecutors shall be subject to a judicial appeal. An ethical code for judiciary members shall be adopted. 	<ul style="list-style-type: none"> The competences and the tasks of the Council and the attached divisions shall be regulated by a separate legislation. A Secretariat General attached to the Council shall be set up. There is no mention of whether or not the Council would have a separate budget. Except for the sanction of dismissal from profession imposed on the judges and prosecutors, the decisions of the Council shall be subject to a judicial appeal. There is no mention of the ethical code for all judiciary personal.
On the powers of the Council for the Judiciary	<ul style="list-style-type: none"> the Council of the Judiciary should preferably be competent in the selection, appointment and promotion of judges; this should be carried out in absolute independence from the legislature or the executive as well as in absolute transparency as to the criteria of selection of judges the Council for the Judiciary may also be the appropriate agency to play a broad role in the field of the promotion and protection of the image of justice prior to its deliberation in Parliament, the Council for the Judiciary shall be consulted on all draft legislation likely to have an impact on the judiciary, e.g. the independence of the judiciary, or which might diminish citizens' guarantee of access to justice 	<ul style="list-style-type: none"> The High Council has an important role in area of personnel policy. The HCJP is competent with the admission of judges and public prosecutors within the civil, criminal and administrative judiciary into the profession, appointment, transfer to other posts, temporarily authorization in a different courthouse, promotion and designation to first class, allocation of posts, deciding against those whose continuation in the profession is found to be unsuitable, imposition of disciplinary sanctions, and dismissal from the post. Investigations of judges or public prosecutors whether they have committed offences in connection with, or in the course of their duties, and performed their tasks pursuant to the law in force are conducted by the judicial inspector and subject to the permission of Ministry Of Justice. 	<ul style="list-style-type: none"> The HCJP shall continue to exercise their powers entrusted them by the Constitution. Judicial inspectors shall perform under the supervision of the HCJP. Investigations of judges or public prosecutors whether they have committed offences in connection with, or in the course of their duties, and performed their task pursuant to the law in force shall be subject to the permission of the HCJP. 	<ul style="list-style-type: none"> The HCJP shall continue to exercise their powers entrusted them by the Constitution. Investigations of judges or public prosecutors whether they have committed offences in connection with, or in the course of their duties, and performed their task pursuant to legislations, by-law, and decrees in force (administrative decrees when judges are concerned) shall be performed by the judicial inspectors of the Council and subject to the permission of the HCJP upon the initiation of such investigation by the relevant division of the Council.