

To the Public Opinion of The Republic of Turkey

4 December 2020

Comments on the European Commission 2020 Working Report on Turkey

The following is the Better Justice Associations' comments on the European Commission's 2020 Working Report on Turkey, published on 6 October 2020.

The publication of this report by the Commission originates from the yearly reporting process formerly undertaken to monitor Turkey's progress towards a standard of ascension to the EU. The Commission has evidently decided to maintain this practice by adopting the same format and headings of previous reports despite the fact that the full membership negotiations between Turkey and the European Union have currently ceased.

This notwithstanding, it is important to note that the Report does echo many voices within Turkey regarding concerns about our country's democracy. It also contains a number of conclusions that our association considers useful for Turkey to reflect upon, particularly with regard to judicial independence and the rule of law.

In the report on section **"Chapter 23: The Judiciary and fundamental rights:"** it is stated as follows:

"In the coming year, Turkey should;

- *create a political and legal environment that allows the judiciary to perform its duties independently and impartially, respecting European standards; strengthen judicial responsibilities, with the executive and legislature fully respecting the separation of powers; and ensure that lower courts respect judgments by the Constitutional Court, whose decisions should follow ECtHR jurisprudence;*
- *amend the structure and process of selecting the members of the Council of Judges and Prosecutors thus limiting the role and influence of the executive, and introduce safeguards against any interference by the Council of Judges and Prosecutors or high level officials in judicial proceedings"*

This is a point on which we fully concur with the Report's recommendation. Turkey's judiciary has become increasingly dependent on the executive branch of government in recent years which impeded our country's the development and making the judiciary self-governing will significantly strengthen the separation of powers and democracy in Turkey. To do so will require a comprehensive package of reforms covering the executive, legislative and judicial branches of power, in order to increase their efficiency and ensuring full accountability of and the complete independence of the judiciary.

We respectfully point out that the Commission's Report sets a very high bar. Absolute independence of the judiciary is something that a number of countries, including EU member states, are still striving to achieve. To one extent or another, these are ongoing conversations in most democracies, and rightly so. Much work is needed to protect the independence of a country's judiciary even once it has been achieved in theory. For example, France has been unable to eliminate the influence of the executive branch, especially the Ministers of Justice, from the appointment of judges and prosecutors. Similarly, we note that in Italy, the Consiglio Superiore della Magistratura ("CSM") comes close to modelling a self-governing council model that can protect its own independence. However, the CSM is not financially independent or autonomous to the best of our knowledge and relies on backing from the Ministry of Justice to push forward disciplinary investigations. It is also well-known that serious problems persist with respect to the accountability of judges and the CSM.

It is difficult, therefore, for the Commission to convincingly argue their point that Turkey should aim to achieve compliance with EU standards in this respect - when on close examination, "standards" across the EU are non-standard and only partially successful. The Better Justice Association sees it as extremely positive that the EU acknowledges that judicial councils in member states of the EU and the Council of Europe are shaped by the organisational structure, historical experiences, and culture of each country. Thus, no uniform model (therefore standard) concerning this issue is existent.

We are confident that Turkey could provide a comprehensive solution to this major problem; below is a top-line overview of the solution that our Association proposes would address these issues.

Our Proposal:

In recent years, the Better Justice Association has striven to design such a solution that is uniquely appropriate to address the situation in Turkey, which we outline below, with more detail to be released over the coming months.

We propose to transform of the current Council of Judges and Prosecutors into a new regulatory body named the Supreme Authority of Justice. In its design, we have attempted to ensure that it is completely independent, fully transparent and completely accountable and focused on the production of good quality legal services. We feel that the Supreme Authority can achieve its ultimate aim of complete independence provided that it ensures the provision of quality services to the society and deserve its independence.

The Supreme Authority of Justice will have the following key features:

- Legal professions possess their own independent professional organizations;
- Stakeholders from across all of the society related to judicial services will be represented in the Supreme Authority of Justice and will participate in policy and decision-making;
- Politicians' and influence groups' influence on the judicial operation shall be completely neutralised.
- All acts and decisions relating to judiciary's organisations, members and their functioning will be open to judicial review specialised Supreme Court of Justice will be formed.
- No preliminary permissions (removing those currently in place) concerning prosecutions of public servants

We are confident that implementing this proposal will go a long way to solving those of Turkey's problems which relate to the separation of powers and efficiency, transparency and accountability of the judicial power. Putting this solution into practice will automatically resolve many other problems that are determined within the scope of the EU report.

Conclusion:

There is no doubt that Turkey must continue to develop the civil and political rights of its people. Such developments will be possible if the right reforms are made.

We invite EU officers to cooperate with our association on our comprehensive proposal named as Supreme Authority of Justice. We believe this proposal may also offer ideas to other member states of the EU.

Respectfully announced to the public.