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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**TÜRKİYE**

**OPINION**

**ON**

**THE COMPOSITION OF THE COUNCIL OF JUDGES AND  
PROSECUTORS  
AND THE PROCEDURE FOR  
THE ELECTION OF ITS MEMBERS**

**Adopted by the Venice Commission  
at its 141<sup>st</sup> Plenary Session  
(Venice, 6-7 December 2024)**

**On the basis of comments by**

**Mr Richard BARRETT (Member, Ireland)  
Ms Nina BETETTO (Member, Slovenia)  
Mr António GASPAR (Member, Portugal)  
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## I. Introduction

1. By letter of 18 April 2024, the Chairperson of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), Ms Zanda Kalniņa-Lukaševica, requested an opinion of the Venice Commission on the composition of the Council of Judges and Prosecutors (hereinafter, “the CJP”) and the procedure for the election of its members (see the Constitution of Türkiye, [CDL-REF\(2024\)029](#) and the Law on the Council of Judges and Prosecutors, [CDL-REF\(2024\)031](#), hereinafter “Law on the CJP”).

2. Mr Richard Barrett, Ms Nina Betetto, Mr António Gaspar and Ms Regina Kiener acted as rapporteurs for this opinion.

3. On 1 of October, the Secretary of the Venice Commission, Ms Simona Granata-Menghini, accompanied by Ms Martina Silvestri from the Secretariat, attended a meeting with the representatives of the majority and the opposition of the Turkish delegation at the Parliamentary Assembly of the Council of Europe.

4. On 3 and 4 October 2024, a delegation of the Commission composed of Mr Barrett, Ms Betetto and Mr Gaspar, accompanied by Ms Silvestri, travelled to Ankara and had meetings with Members of the National Assembly; the Deputy Minister of Justice and other officials of the Ministry of Justice; the Acting President and other representatives of the Council of Judges and Prosecutors; the Secretary General of the Court of Cassation, the Vice-president and the Secretary General of the Constitutional Court. The Commission is grateful to the Turkish authorities for the excellent organisation of this visit.

5. This opinion was prepared in reliance on the English translation of the Turkish Constitution and the Law on the CJP. The translation may not accurately reflect the original version on all points.

6. This opinion was drafted on the basis of comments by the rapporteurs and the results of the meetings on 3 and 4 October 2024, as well as the comments submitted by the authorities on 21 November 2024. The draft opinion was examined at the joint meeting of the Sub-Commissions on the Judiciary and on the Rule of Law on Thursday 5 December 2024. Following an exchange of views with Mr Ozan Muzaffer Köstü, Deputy Head of Human Rights Department at the Ministry of Justice of Türkiye, it was adopted by the Venice Commission at its 141<sup>st</sup> Plenary Session (Venice, 6-7 December 2024).

## II. Background

### A. Legislative background

7. The High Council of Judges and Prosecutors or *Hâkimler ve Savcılar Yüksek Kurulu* (hereinafter the “HCJP”) was established under the 1982 Constitution of Türkiye. Initially, the authority to manage and oversee the judiciary and prosecution service was largely shared between the Ministry of Justice and the HCJP, with the Ministry holding responsibility for many tasks. The seven-member HCJP was significantly influenced by the Ministry of Justice, with the Minister serving as its President and holding extensive powers. Additionally, the Undersecretary of Justice was an *ex officio* member, while the remaining five members were appointed from the two ordinary high courts, with three from the Court of Cassation and two from the Council of State.

8. The 2010 constitutional and legislative changes significantly reformed the HCJP. The number of HCJP members was expanded from seven to 22, and twelve substitute members were added, resulting in a much broader and more pluralistic composition. Most of the relevant powers that previously resided with the Ministry of Justice were transferred exclusively to the HCJP, establishing it as an independent institution. There was a substantial reduction in the power and

position of the Minister for Justice as President of the HCJP and decisions still made by the President were made subject to judicial review. An internal appeal system was also created, allowing the Plenary of the HJPC to review the decisions of the Chambers within the Council. The legislative draft amendments were positively assessed by the Venice Commission.<sup>1</sup>

9. However, in 2014, Law No. 6524<sup>2</sup> introduced some legal amendments which significantly reduced the competency of the HCJP, transferring several key responsibilities back to the Ministry of Justice and other bodies, such as the power to conduct disciplinary investigations and prosecutions of elected HCJP members. Furthermore, the internal structure and powers within the HCJP was reorganised to strengthen the authority of the President of the HCJP (who was *ex officio* the Minister of Justice), thereby weakening the powers of the HCJP as a whole and its elected members.

10. In the aftermath of the failed *coup* attempt in 2016, the constitutional amendments of 2017, ratified by a constitutional referendum, introduced a significant shift in the country's political and governmental structure, moving from a parliamentary system to a presidential system. The President of Türkiye became both the head of state and the head of government, effectively merging the executive powers that were previously divided between the President and the Prime Minister. The office of Prime Minister was abolished. The President was granted broad executive powers, including the authority to appoint and dismiss ministers, issue decrees with the force of law (except in certain areas), and prepare the budget. The President also gained the power to appoint senior officials, including judges, without parliamentary approval. The amendments allowed the President to be a member or even the leader of a political party, which was previously prohibited. The HCJP was renamed to the *Hâkimler ve Savcılar Kurulu* or the Council of Judges and Prosecutors (hereinafter, the "CJP"). The number of members was reduced from 22 to 13. Four members of the CJP would be appointed by the President of Türkiye, as well as two *ex officio* members (the Minister of Justice and the Undersecretary), while seven members would be elected by the Grand National Assembly of Türkiye.

11. The constitutional amendments were followed in 2018 by Law No. 7078<sup>3</sup> restructuring the CJP. One of the most significant changes was the abolition of direct elections by judges and prosecutors of the members of the CJP, who would be appointed by the executive and legislative branches.

12. In 2021, further amendments were made to the Law on the CJP, enacted through Law No. 7331,<sup>4</sup> focusing on the process for appointing judges and prosecutors, as well as the provisions related to the disciplinary oversight over judges and prosecutors. These amendments emphasised the importance of merit in judicial appointments, and improved transparency of process, while at the same time enhancing the power of the Inspection Board.

## **B. Recent developments and contextual elements**

13. In 2017, the Venice Commission adopted an opinion on the amendments to the Constitution, the "2017 Opinion",<sup>5</sup> in which it found "that the proposed composition of the CJP is extremely problematic. Almost half of its members (4+2=6 out of 13) will be appointed by the President. It is

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<sup>1</sup> Venice Commission, [CDL-AD\(2010\)042](#), Türkiye, Interim Opinion on the Draft Law on the High Council for judges and Prosecutors (of 27 September 2010) of Turkey; and [CDL-AD\(2011\)004](#), Türkiye, Opinion on the Draft Law on Judges and Prosecutors of Turkey.

<sup>2</sup> Omnibus Law adopted on 15 February 2014, amending four laws, namely Law No. 6087 on the High Council of Judges and Public Prosecutors, Law No. 2802 on Judges and Public Prosecutors, Law No. 2992 on the Organization and Duties of the Ministry of Justice and Law No. 4954 on the Turkish Justice Academy.

<sup>3</sup> Law No. 7078 published on the Official Gazette on 8 March 2018 to convert Decree Law No. 694 published on 25 August 2017.

<sup>4</sup> Law 7331 adopted on 8 July 2021.

<sup>5</sup> Venice Commission, [CDL-AD\(2017\)005](#), Türkiye, 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.

important to stress once again in this respect that the President will no more be a *pouvoir neutre*, but will be engaged in party politics: his choice of the members of the CJP will not have to be politically neutral. The remaining 7 members would be appointed by the Grand National Assembly. If the party of the President has a three-fifths majority in the Assembly, it will be able to fill all positions in the Council. If it has, as is almost guaranteed under the system of simultaneous elections, at least two-fifths of the seats, it will be able to obtain several seats, forming a majority together with the presidential appointees. That would place the independence of the judiciary in serious jeopardy, because the CJP is the main self-governing body overseeing appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors. Getting control over this body thus means getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where transfers of judges are a common practice. In this context it seems significant that the draft amendments provide for elections to the CJP within 30 days following the entry into force of the amendments and that the political forces supporting the amendments control more than three-fifths of the seats in the TGNA, enabling them to fill all seats in the CJP.”<sup>6</sup>

14. In 2020, the European Court of Human Rights (hereinafter, the “ECtHR”) quoted the 2017 Opinion of the Venice Commission in the *Selahattin Demirtaş (No. 2)*<sup>7</sup> case, concerning the arrest and pre-trial detention of, and criminal proceedings against a member of the National Assembly and one of the leaders of the Peoples’ Democratic Party (HDP, a pro-Kurdish opposition party). The ECtHR acknowledged that the tense political climate in Türkiye following the 2016 failed *coup* attempt created an environment capable of influencing certain decisions by the national courts, especially during the state of emergency, when hundreds of judges were dismissed, and especially in relation to criminal proceedings instituted against dissenters.<sup>8</sup>

15. In March 2022, the Council of Europe’s Group of States against Corruption (GRECO), in its interim compliance report on Türkiye, concluded as regard judges and prosecutors that “the current level of compliance with the recommendations remained globally unsatisfactory”. GRECO also noted that “[...] the executive has kept a strong hold over a number of key areas regarding the running of the judiciary, including: the process of selecting and recruiting candidate judges and prosecutors; reassignments of judicial officeholders against their will; disciplinary procedures; and training of judges and prosecutors.”<sup>9</sup> In June 2023, likewise, GRECO concluded that “(...) more substantial changes are also needed for GRECO’s recommendations to be fully implemented, notably to limit the role and influence of the executive on a number of key matters regarding the running of the judiciary.”<sup>10</sup>

16. In October 2022, the Parliamentary Assembly of the Council of Europe noted that the constitutional amendments establishing a presidential system did not guarantee the separation of powers and the independence of the judiciary, notably due to the composition of the Council of Judges and Prosecutors.<sup>11</sup>

17. In March 2024, the then Council of Europe Commissioner for Human Rights, Ms Dunja Mijatović, pointed out “strong partiality of the judiciary to political interests and a systemic lack of independence of the Turkish judiciary” in her “Memorandum on freedom of expression and of the media, human rights defenders and civil society in Türkiye”.<sup>12</sup> She concluded that “(...) the situation regarding the independence and impartiality of the judiciary posed an existential risk to

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<sup>6</sup> *Ibid.*, para. 119.

<sup>7</sup> ECtHR, GC, *Selahattin Demirtaş v. Türkiye (No. 2)*, Application no. [14305/17](#), 22 December 2020.

<sup>8</sup> *Ibid.*, para. 434.

<sup>9</sup> Council of Europe Groups of States against Corruption (GRECO)’s third interim compliance report on Türkiye, [GrecoRC4\(2022\)5](#), adopted on 25 March 2022, para. 94.

<sup>10</sup> GRECO, fourth interim compliance report on Türkiye, [GrecoRC4\(2023\)12](#), adopted on 9 June 2023, para. 74.

<sup>11</sup> PACE, [Resolution 2459 \(2022\)](#), para. 9 (1).

<sup>12</sup> [CommHR\(2024\)16](#), 5 March 2024, para. 51.

the rule of law in Türkiye and, by extension, to the respect for all human rights guaranteed under the European Convention on Human Rights”.<sup>13</sup>

18. Up till now (autumn 2024), following the *Kavala*<sup>14</sup> and *Selahattin Demirtaş (No. 2)*<sup>15</sup> cases, the Committee of Ministers of the Council of Europe continues the supervision of the execution of these judgements which, as regards the general measures, require the Turkish authorities to take all legislative and other measures to ensure independence of the judiciary, in particular by securing the structural independence of the Council of Judges and Prosecutors from the executive.<sup>16</sup>

19. More generally, following the attempted *coup* of 2016 and the ensuing reforms of 2017/2018, many cases of dismissals, transfers, promotions and appointments of judges and prosecutors were reported and argued to be implemented following strategic political reasons, in disrespect of judicial independence.<sup>17</sup> Out of the approximately 11.000 judges and prosecutors in office at the time of the reforms, about one third was dismissed.<sup>18</sup> Reportedly, this generated a widespread climate of fear and submission in the judicial system.<sup>19</sup> Moreover, during the last six years, not only had the dismissed judges to be replaced, but the overall number of judges was increased to about 25.000, requiring the recruitment of many young and often (perceived as) inexperienced judges.<sup>20</sup> Public trust in the judiciary is consequently heavily affected.<sup>21</sup>

20. In the comments submitted on 21 Novembre 2024, the Turkish authorities reported that already after the 2010 elections of the HJPC the public opinion perceived that “judges and prosecutors who are the members of the FETÖ/PDY started to lead/manage the judiciary”<sup>22</sup> and after the attempted *coup* in 2016, “the dismissal of judges and prosecutors who were found in the light of concrete findings to have no loyalty to the democratic constitutional order was emerged as the only way to re-establish the rule of law”. The Turkish authorities questioned some of the cited sources as biased and critical towards their judicial system.

### III. Scope of the Opinion

21. The present opinion addresses the questions raised by the Monitoring Committee of the PACE, in particular: the composition of the Council of Judges and Prosecutors (members and

<sup>13</sup> [CommHR\(2024\)16](#), 5 March 2024, para. 57.

<sup>14</sup> ECtHR, *Kavala v. Türkiye*, Application No. [28749/18](#), 10 December 2019. See also, [GC](#), for infringement proceedings under article 46 (4) ECHR, 11 July 2022. The applicant was arrested on 18 October 2017 and placed in pre-trial detention, accused of attempting to overthrow the government within the context of the Gezi Park events of 2013 and to overthrow the constitutional order within the context of the attempted coup in July 2016.

<sup>15</sup> ECtHR, GC, *Selahattin Demirtaş v. Türkiye (No. 2)*, Application no. [14305/17](#), 22 December 2020.

<sup>16</sup> [1507th meeting \(17-19 September 2024\) \(DH\) - H46-37 Kavala v. Türkiye \(Application No. 28749/18\) \[CM/Del/Dec\(2024\)1507/H46-37\]](#) ; [1507th meeting \(17-19 September 2024\) \(DH\) - H46-36 Selahattin Demirtaş \(No. 2\) group v. Turkey \(Application No. 14305/17\) \[CM/Del/Dec\(2024\)1507/H46-36\]](#)

<sup>17</sup> UN Human Rights Committee, 7 November 2024, [CCPR/C/TUR/CO/2](#), para. 41; [CommDH\(2020\)1](#), Country report, 19 February 2020, para. 121; European Commission, Türkiye 2023 Report, [SWD\(2023\) 696 final](#), 8 November 2023, page 24.; [Mass Dismissals of Judges and Prosecutors in Turkey of Post-Coup Period - Turkey Tribunal](#)

<sup>18</sup> [CommDH\(2020\)1](#), Country report, 19 February 2020, para. 19.

<sup>19</sup> [CommDH\(2020\)1](#), Country report, 19 February 2020, para. 38. European Commission, [Türkiye Report 2024](#), SWD(2024)696, Brussels, 30 October 2024, pages 25-26. See also, <https://medelnet.eu/medel-at-the-side-event-revisiting-the-functioning-of-democratic-institutions-and-rule-of-law-in-turkey-role-of-judiciary-in-current-situation-of-turkey-in-honouring-the-obligations-deriving/>. Information reported by several national and international observers.

<sup>20</sup> Information provided by the national authorities during the visit to Ankara. See also, UN Human Rights Committee, 7 November 2024, [CCPR/C/TUR/CO/2](#), para. 4; European Commission, Türkiye 2023 Report, [SWD\(2023\) 696 final](#), 8 November 2023, page 26.

<sup>21</sup> See for example: [CommDH\(2020\)1](#), Country report, 19 February 2020, para. 117; <https://turkeytribunal.org/actuality/distrust-in-the-judiciary-in-turkey/>; <https://www.chathamhouse.org/2024/05/democracy-turkey>.

<sup>22</sup> Fetullahçı Terör Örgütü / Paralel Devlet Yapılanması (FETÖ/PDY) is an organisation that the Turkish authorities describe as terrorist and consider to be behind the attempted coup d'état of 15 July 2016.

structure) and the procedure for electing its members, in the light of European and international standards and against the background of the social, historical and political context in Türkiye.

22. This opinion refers to constitutional and legislative provisions which have been in force for some time. In substance, the request refers to Article 159 of the Constitution of the Republic of Türkiye, as amended on 12 September 2010 (Act No. 5982), and 16 April 2017 (Act No. 6771), and to the Law on the Council of Judges and Prosecutors (Law No. 6087), adopted on 11 December 2010, with numerous amendments made in the following years and summarised above, in particular to the following provisions: Part 2, Section 1-3, Articles 5-8, Articles 10-11 and Articles 14-15, and Part 3, sections 1- 4, Articles 18-28.

#### IV. Analysis

23. The composition, manner of election and functions of the Council of Judges and Prosecutors is set out in Article 159 of the Turkish Constitution, which, in the amended version, provides as follows:

- (1) The Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.*
- (2) The Council of Judges and Prosecutors shall be composed of thirteen members; shall comprise two chambers.*
- (3) The President of the Council is the Minister of Justice. The Undersecretary to the Ministry of Justice shall be an ex-officio member of the Council. Three members of the Council shall be appointed among first category civil judges and public prosecutors not having lost the qualification to be reserved in the first category and one member shall be appointed among first category administrative judges and public prosecutors not having lost the qualification to be reserved in the first category by the President of the Republic; three members shall be elected among the members of the High Court of Appeals; one member shall be elected among the members of the Council of State and three members shall be elected among teaching staff working in the field of law at higher education institutions and lawyers, whose qualifications specified in law by the Grand National Assembly of Turkey. Among the members elected from the teaching staff and lawyers, at least one member shall be a teaching staff and one member shall be a lawyer. The applications for the membership of the Council to be elected by the Grand National Assembly of Turkey shall be made to the Office of the Speaker of the Assembly. The applications shall be referred by the Office of the Speaker to the Joint Committee composed of the members of the Committee on the Constitution and the Committee on Justice. For each membership, the Committee shall nominate three candidates with a two-third majority of the total number of its members. In case the Committee fails to conclude the nomination of candidates in the first ballot, a three-fifth majority of the total number of its members shall be required in the second ballot. If the candidates cannot also be nominated in the second ballot, the procedure of nomination shall be concluded by lot between the two candidates who received the highest number of votes for each membership. The Grand National Assembly shall hold separate elections by secret ballot for each membership between the candidates nominated by the Committee. The two-third majority of total number of the members shall be required in the first ballot; in case the election cannot be concluded a three-fifth majority of total number of the members shall be required in the second ballot. In case the member cannot also be elected in the second ballot, the election of the members shall be concluded by lot between the two candidates who received the highest number of votes.*
- (4) Members shall be elected for a term of four years. Members may be once re-elected at the end of their term of office.*
- (5) The election of members to the Council shall be held within thirty days before the members' term of office expires. If a vacancy arises in the Council before the elected members' term of office expires, new members shall be elected within thirty days following such vacancy.*

- (6) *The members of the Council other than the Minister of Justice and the Undersecretary to the Ministry of Justice shall not assume any office except those specified by law or be appointed or elected by the Council to another office during their term of office.*
- (7) *The administration and representation of the Council shall be carried out by the President of the Council. The President of the Council shall not participate in the works of the chambers. The Council shall elect the heads of chambers from among its members and one Deputy President from among the heads of chambers. The President may delegate some of his/her powers to the Deputy President.*
- (8) *The Council shall conduct the proceedings regarding the admission to the profession of judges and public prosecutors of civil and administrative courts, appointment, transferring to other posts, delegation of temporary powers, promotion, and being reserved to the first category, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office; the Council shall take final decisions on proposals of the Ministry of Justice concerning the abolition of a court, or changes in the territorial jurisdiction of a court; it shall also exercise the other functions given to it by the Constitution and laws.*
- (9) *Supervising whether the judges and public prosecutors perform their duties in accordance with laws and other regulations (administrative circulars, in the case of judges); investigating whether they have committed offences in connection with, or in the course of their duties, whether their behaviour and conduct are in conformity with requirement of their status and duties and if necessary, inquiries and investigations concerning them shall be assigned to the Council's inspectors, upon the proposal of the related chambers and with the permission of the President of the Council of Judges and Prosecutors. The inquiries and investigations may also be assigned to a judge or public prosecutor who is senior to the judge or public prosecutor to be investigated.*
- (10) *The decisions of the Council, other than dismissal from the profession, shall not be subject to judicial review.*
- (11) *A Secretariat General shall be established under the Council. The Secretary General shall be appointed by the President of the Council from among three candidates proposed by the Council from among first category judges and public prosecutors. The Council shall be empowered to appoint, with their consent, the Council's inspectors, and judges and public prosecutors to be temporarily or permanently assigned to the Council.*
- (12) *The Minister of Justice is empowered to appoint judges, public prosecutors, judiciary inspectors, and internal auditors having the profession of judgeship and prosecutorship, with their consent, to temporary or permanent functions in the central, subordinate or affiliated institutions of the Ministry of Justice.*
- (13) *The election of the members of the Council, formation of the chambers and the division of labour between chambers, the duties of the Council and its chambers, quorum for meetings and decisions, operating procedures and principles, objections to be made against the decisions and proceedings of the chambers and the examination procedure for these objections, and the establishment and the duties of the Secretariat General shall be laid down in law.*

24. The Law on the CJP repeats the constitutional provisions and adds further details on the composition of the CJP and the election of its members.

25. The tasks assigned to the CJP reflect those of a classical judicial council, namely the appointments and career, as well as the discipline of judges and prosecutors. These are matters that are essential to guarantee the independence of the judiciary.

#### **A. Composition of the CJP and method of election of its members**

26. Many European democracies have incorporated a judicial council, or an equivalent politically neutral body, into their legal systems - sometimes in the Constitution – as an instrument to serve as effective guarantor of respect of essential Rule of Law principles relating to the judicial system.

These include the independence of the judiciary and the autonomy of the prosecution service and the role of the judiciary in safeguarding fundamental rights and freedoms. The independence of the judiciary is an essential element of the separation of powers of the State, as well as of checks and balances, which are indispensable to the democratic functioning of the government.<sup>23</sup> Judicial councils should have a decisive influence on the appointment and promotion of judges, and (maybe via a disciplinary board set up within the council) on disciplinary measures regarding judges.<sup>24</sup> Security of tenure of all their members should be ensured.<sup>25</sup>

27. Under current international standards, there is no single model that a democratic country is bound to follow in setting up its judicial council as long as the function of such a council fall within the aim to ensure the proper functioning of an independent judiciary within a democratic State.<sup>26</sup>

28. In order to assess whether the CJP can perform such a function, it is necessary to look at its composition, the method of election of its members and the guarantees of their independence (security of tenure and immunity).

29. The composition of the Council must be such as to guarantee the conditions of independence and impartiality for the exercise of its powers. To this end, the Venice Commission has identified some key parameters on judicial and prosecutorial councils:<sup>27</sup>

- At least half of the members of judicial councils should be *judges elected or appointed by their peers*.<sup>28</sup>
- The judicial component in a council should represent the whole judiciary and should respect the pluralism inside the judiciary.<sup>29</sup> Hence, there should be a balanced representation of judges from all different levels and courts and the widest possible diversity and representation of gender and regions.<sup>30</sup>

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<sup>23</sup> See, *inter alia*, Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law checklist, II.E access to justice; [CDL-AD\(2010\)040](#), Report on the Independence of the Judicial System – Part II: The Prosecution Service; [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System – Part I: The Independence of Judges, in particular para. 32.

<sup>24</sup> CCJE, [Opinion 24 \(2021\)](#) on the evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems; Venice Commission, [CDL-PI\(2022\)005](#), "Shaping Judicial Councils to Meet Contemporary Challenges", Rome Conference, 2022, "General Conclusions".

<sup>25</sup> CCJE, [Opinion 24 \(2021\)](#), *op. cit.*, paras 37-38.

<sup>26</sup> See Venice Commission, [CDL-AD\(2015\)042](#), Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of "The Former Yugoslav Republic of Macedonia", para. 61.

<sup>27</sup> See, Venice Commission, [CDL-AD\(2024\)009](#), Bosnia and Herzegovina, Interim follow-up opinion to previous opinions on the High Judicial and Prosecutorial Council, para. 28.

<sup>28</sup> Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2010\)12](#) on the independence, efficiency and responsibilities of judges, para. 27. ECtHR, *Grzęda v. Poland* [GC], application no. [43572/18](#), 15 March 2022, para. 305. Venice Commission, [CDL-AD\(2015\)022](#), Bulgaria, Opinion on the draft Act to amend and supplement the Constitution (in the field of the Judiciary) of the Republic of Bulgaria, para. 39; [CDL-AD\(2017\)018](#), Bulgaria, Opinion on the Judicial System Act, para. 14; [CDL-AD\(2019\)031](#), Bulgaria, Opinion on draft amendments to the Criminal Procedure Code and the Judicial System Act, concerning criminal investigations against top magistrates, para. 69; and [CDL-AD\(2020\)035](#), Bulgaria, Urgent Interim Opinion on the draft new Constitution, para. 44; [CDL-AD\(2021\)032](#), Serbia, Opinion on the draft Constitutional Amendments on the Judiciary and draft Constitutional Law for the Implementation of the Constitutional Amendments, para. 64; [CDL-AD\(2022\)030](#), Serbia, Opinion on three draft laws implementing the constitutional amendments on Judiciary, para. 71; [CDL-AD\(2023\)015](#), France, Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the Superior Council of Magistracy and the status of the judiciary as regards nominations, mutations, promotions and disciplinary procedures, paras. 23-25.

<sup>29</sup> *Ibidem*.

<sup>30</sup> Venice Commission, [CDL-AD\(2011\)010](#), Montenegro, Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro, paras. 20-22; [CDL-AD\(2023\)029](#), The Netherlands, Joint opinion on the legal safeguards of the independence of the judiciary from the executive power, para. 42; [CDL-AD\(2023\)039](#), Bulgaria, Opinion on the draft amendments to the Constitution, para. 48.

- The risk of corporatism within the judiciary should be counterbalanced by the *participation of non-judicial (lay) members* belonging to other legal professions, e.g., attorneys, notaries, academics, and civil society.<sup>31</sup>
- Non-judicial members should have the same protection as judicial members especially as concerns security of tenure and the right to a fair hearing in case of discipline, suspension, and removal, as a crucial precondition for the independence of the Council.<sup>32</sup> Any difference in treatment between judicial and non-judicial members should be duly justified.<sup>33</sup>
- If non-judicial members are elected by Parliament, this should be done with the broadest agreement, in principle by a qualified majority vote which involves the opposition, following an open and transparent competition. Effective anti-deadlock mechanisms should be provided.<sup>34</sup>
- *Ex officio membership is in general discouraged*; it is considered particularly problematic when it concerns members or representatives of the legislature or the executive, even if it is only a passive presence, especially in disciplinary matters.<sup>35</sup>
- Members of judicial councils should enjoy security of tenure<sup>36</sup> and functional immunity as key safeguards of their independence.<sup>37</sup>
- Regarding prosecutorial councils, international standards are scarce, however sufficient autonomy must be ensured to shield prosecutorial authorities from undue political influence as well as inside the prosecution service. The concerns relating to the judiciary

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<sup>31</sup> See for example, Venice Commission, [CDL-AD\(2018\)003](#), Republic of Moldova, Opinion on the Law on amending and supplementing the Constitution (Judiciary) of the Republic of Moldova, para. 56. See also, Venice Commission, [CDL-AD\(2020\)015](#), Republic of Moldova, Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft law on amending the law No. 947/1996 on Superior Council of Magistracy. See also, Venice Commission, [CDL-AD\(2010\)004](#), Report on the Independence of the Judicial System Part I: The Independence of Judges, para. 32.

<sup>32</sup> CCJE, [Opinion No. 24 \(2021\)](#), *op. cit.*, paras. 37 and 38.

<sup>33</sup> Venice Commission, [CDL-AD\(2023\)029](#), *op. cit.*, paras. 55-56.

<sup>34</sup> Venice Commission, [CDL-PI\(2022\)005](#), *op. cit.*, General conclusions. Venice Commission, [CDL-AD\(2007\)028](#), Report on judicial appointments, paras. 29 and 50. Venice Commission, [CDL-AD\(2010\)040](#), Report on European Standards as regards the Independence of the Judicial System: Part II - the Prosecution Service, para. 66.

<sup>35</sup> Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, para. 16; [CDL-AD\(2014\)042](#), Montenegro, Interim opinion on the draft law on the state prosecution office of Montenegro, para. 38; [CDL-AD\(2015\)005](#), Republic of Moldova, Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, para. 131. CCJE, [Opinion No.10 \(2007\)](#) on the Council for the Judiciary at the service of society, paras. 23 and 26; CCJE, [Opinion No. 24 \(2021\)](#), *op. cit.*, para. 28. ECtHR, *Catana v. Republic of Moldova*, application no. [43237/13](#), 21 February 2023, para. 75.

<sup>36</sup> Venice Commission, Finland, [CDL-AD\(2008\)010](#), Opinion on the Constitution of Finland, para.113. See also, Venice Commission, Serbia, [CDL-AD\(2018\)011](#), Opinion on the draft amendments to the constitutional provisions on the judiciary of Serbia, para. 46; Albania, [CDL-AD\(2016\)009](#), Final Opinion on the revised draft constitutional amendments on the Judiciary (15 January 2016) of Albania, para. 35; Armenia, [CDL-AD\(2015\)037](#), First Opinion on the Draft Amendments to the Constitution (Chapters 1 to 7 and 10) of the Republic of Armenia, para. 156; Montenegro, [CDL-AD\(2011\)010](#), Opinion on the Draft Amendments to the Constitution of Montenegro, as well as on the Draft Amendments to the Law on Courts, the Law on the State Prosecutor's Office and the Law on the Judicial Council of Montenegro, para. 10; Georgia, [CDL-AD\(2005\)003](#), Joint opinion on a proposal for a constitutional law on the changes and amendments to the Constitution of Georgia by the Venice Commission and OSCE/ODIHR, para. 105; Kyrgyzstan, [CDL-AD\(2002\)033](#), Opinion on the draft amendments to the Constitution of Kyrgyzstan, para. 11.

<sup>37</sup> Venice Commission, Republic of Moldova, [CDL-AD\(2022\)019](#), Opinion on the draft law on amending some normative acts (Judiciary) of Moldova, para. 34. Venice Commission, Serbia, [CDL-AD\(2008\)006](#), Opinion on the Draft Law on the High Judicial Council of the Republic of Serbia, para. 26.

apply, *mutatis mutandis*, to the prosecution service.<sup>38</sup> This is particularly true in those systems characterised by the unity of the magistracy in one body, encompassing both judges and prosecutors.<sup>39</sup>

30. In line with Article 159 (2) and (3) of the Constitution, Article 3 of the Law on CJP establishes that the CJP has 13 members, as follows:

- *Four members appointed by the President of the Republic* among first category civil judges and public prosecutors (three) and first category administrative judges and public prosecutors (one);
- *Four members elected by the Turkish Grand National Assembly*, three among the High Court of Appeals (Court of Cassation), and one member of the Council of State;<sup>40</sup>
- *Three members elected by the Turkish Grand National Assembly* among Law professors at higher institutions and/or lawyers;
- *Two ex officio members*: the Minister of Justice (who is also the president of the CJP) and the Undersecretary to the Ministry of Justice.

### **1. Members of the CJP from among judges and prosecutors**

31. The Venice Commission recalls that according to the European standards, at least half of the members of the judicial council should be judges “elected by their peers”. The reason for this manner of election is to insulate the judicial component from political interference. The judicial members of the judicial council should represent the perspective of the community of judges and prosecutors only.

32. While eight members of the Turkish CJP are judges or prosecutors, they are not elected by their peers, that is to say by the other judges and prosecutors but are either appointed by the executive or elected by parliament. Indeed, four of them are appointed by the President of the Republic in a discretionary manner, as neither the Constitution nor the Law set any eligibility or ineligibility criteria, other than the formal membership of a specific category.<sup>41</sup> In their comments of 21 November 2024, the Turkish authorities reported the general criteria that the law sets forth for judges and prosecutors to be allocated as first-class, which do not include any ineligibility criteria related to political affiliation. The authorities also stated that the “legislation stipulates that the person concerned must meet a number of high-level professional requirements in the context of eligibility for selection as a CJP member and prescribes that the selected CJP members must hold a certain degree of merit.” The Commission recalls in this respect that following the constitutional reform of 2017, Türkiye changed from a parliamentary to a presidential system in which the President combines the functions of head of state and head of government, embodying the executive power and being actively engaged in party politics. The four members of the CJP appointed by the President of the Republic are therefore to be considered as political appointees and cannot be considered as “judicial members elected by peers” according to international standards. In their comments of 21 November 2024, the Turkish authorities contested that these members are considered “political appointees” and argued “that it would be more appropriate to consider the professional careers of these members and their ability to perform their duties impartially and independently, rather than the authority or body by which they were elected”.

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<sup>38</sup> Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, paras. 91-93; [CDL-AD\(2010\)040](#), *op. cit.*, para. 32.

<sup>39</sup> See Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, paras. 45 and 51.

<sup>40</sup> See also Article 1 (5) and article 18(1) of the Law on the CJP.

<sup>41</sup> Article 18 (4) of the Law on the CJP, the President receives a list of judges and prosecutors who are allocated as first-class and still hold the qualifications required for the first-class allocation; and administrative judges and prosecutors who are allocated as the first-class and still hold the qualifications required for the first-class allocation.

33. Similarly, the four other judges or prosecutors who are members of the CJP are elected by the Turkish Grand National Assembly, and not by their peers. Candidates<sup>42</sup> apply directly to the Presidency of the National Assembly and are elected with a qualified majority (three-fifths),<sup>43</sup> among three candidates shortlisted by a Joint Committee (or drawing lots between the two candidates with the most votes, if no consensus is reached).<sup>44</sup> The Venice Commission notes that a parliamentary vote will inevitably follow the party-logic, even if the qualified majority is meant to limit the political bias. The Turkish authorities, during the visit to Ankara, underlined that the majority of members is elected by the National Assembly (seven out of 13) which guarantees a democratic legitimisation of the body. However, the majority in the National Assembly is likely to correspond to the political alignment of the President of the Republic, especially considering that parliamentary elections are held alongside presidential elections. With enlarged majorities, if there is no compensation mechanism, there is a high risk of catch-all, without balanced representation of minorities. In fact, the strong political influence of the President of the Republic on the judiciary is thereby exacerbated. In their comments of 21 November 2024, the Turkish authorities contested that the members of the CJP elected by the National Assembly would act with political motives.

34. The Venice Commission reiterates what it had expressed in the 2017 Opinion: the President of the Republic (head of the executive) is able to appoint nearly half of the CJP members (two *ex officio* plus four judges and prosecutors out of 13), while several other members (three or four) are chosen by the party of the President in the National Assembly. This gives the executive complete control over the body that is supposed to guarantee the independence of the judiciary. The latter is inevitably compromised.<sup>45</sup>

35. This evident objective politicisation of the CJP entails a strong lack of public trust in the judiciary and the climate of fear and submission reported among judges and prosecutors witnessing what is perceived to be strategic dismissal, transfer or promotion of their colleagues.<sup>46</sup>

36. The Venice Commission highlights that the selection process should be transparent and free from political influence to maintain public trust. A formal appointment of the CJP members by the President of the Republic could be maintained, only if the actual selection were made according to criteria to be set up in the law, in line with the European standards reported above, that is at least half of the members of judicial councils should be judges elected by their peers,<sup>47</sup> and should respect the pluralism inside the judiciary.<sup>48</sup> In this respect, the Commission notes that Türkiye is an exception in Europe: a comparative analysis shows that almost all Judicial Councils include a high proportion of judges and prosecutors elected by their peers.<sup>49</sup> In their comments of 21 November 2024, the Turkish authorities expressed the view that this finding is erroneous.

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<sup>42</sup> Article 18 (1) (b) of the Law on the CJP.

<sup>43</sup> Article 20 of the Law on the CJP. The National Assembly votes on the nominated candidates through a secret ballot. In both phases (Joint Committee and Assembly), the nomination requires a two-thirds majority in the first ballot, reduced to a three-fifths majority if the initial threshold is not met. If no consensus is reached, the nomination is finalised by drawing lots between the two candidates with the most votes.

<sup>44</sup> Composed of members from the Committee on Constitution and the Committee on Justice.

<sup>45</sup> Venice Commission, [CDL-AD\(2017\)005](#), *op. cit.*, para. 119.

<sup>46</sup> See, for example, [CommDH\(2020\)1](#), Country report, 19 February 2020, paras. 117 and 121; [Türkiye Report 2024](#), SWD(2024)696, Brussels, 30 October 2024, pages 25-26; UN Human Rights Committee, 7 November 2024, [CCPR/C/TUR/CO/2](#), para. 4.

<sup>47</sup> See international standards reported above in the relevant section.

<sup>48</sup> *Ibidem*.

<sup>49</sup> CCJE, [Comparative Overview on Judicial Councils in Europe](#), DG I – DCJ (2022)1, 14 March 2022, pages 6 and 7. The study reports that “Judges (and prosecutors) are usually elected by their peers, and can be nominated by judges, associations of judges, courts, the conference of judges or by the different instances or courts they represent. In the process, not only a diversity of courts and instances, but also gender, language and region may be aimed at. In Poland, Spain and Turkey, judges are not elected by their peers but by parliament and/or the president” (emphasis added). It should be noted that Poland is currently reforming its system to introduce a majority of members elected by the judicial community, and in Spain, all members are elected by parliament with a qualified majority (three fifths) out of a list of candidates voted by judges.

37. The rapporteurs have been informed, during the visit to Ankara, of the difficulties in implementing the 2010 constitutional reform that introduced the election by their peers of judges and prosecutors. Reportedly, the electoral process triggered a tendency of candidates to express political, factional or religious affiliation and determined a form of politicisation of the judiciary. In their written comments of 21 November 2024, the Turkish authorities reiterated these concerns.

38. Whilst the Venice Commission understands the challenges posed by that experience and does not neglect the inherent risk of politicisation, it also recalls that while judges should refrain from political activities liable to compromise their independence or jeopardise the appearance of impartiality, they should be allowed to participate in certain debates concerning national judicial policy.<sup>50</sup> They should play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system.<sup>51</sup> Along the same lines, the ECtHR found that “the general right to freedom of expression of judges to address matters concerning the functioning of the justice system may be transformed into a corresponding duty to speak out in defence of the rule of law and judicial independence when those fundamental values come under threat”.<sup>52</sup>

39. Moreover, the current system is not exempt from similar risks of politicisation, given that for four positions, judges and prosecutors may submit their candidacy directly to the Parliamentary Assembly, which runs the risk of introducing signs of faction or partisan connotation (even if only objective or in appearance). This is even more problematic as far as judges of the Court of Cassation and the Council of State are concerned.

40. Another argument put forward against peer elections was that they would hinder judicial activities during electoral periods. However, this concern appears to be of a merely organisational nature that could be addressed through appropriate planning and management of the electoral process, without constituting a compelling argument against the principle of peer election itself.

41. In conclusion, the Venice Commission strongly recommends modifying the composition of the CJP so as to ensure that at least half of the members of the CJP are judges and prosecutors elected by their peers, by the different levels of the judicial system and ensuring an appropriate level of diversity in terms of gender, minorities, and geographical coverage.

## **2. Non-judicial (lay) members**

42. Article 159 (3) of the Constitution states that three members of the CJP “shall be elected among teaching staff working in the field of law at higher education institutions and lawyers, whose qualifications specified in law by the Grand National Assembly of Türkiye. Among the members elected from the teaching staff and lawyers, at least one member shall be a teaching staff and one member shall be a lawyer”.

43. According to Article 18 (1) (b) of the Law on the CJP, the lawyers should have completed 15 years of service at the profession and the law faculty members must be qualified for a judgeship. Among the three non-judicial members there must be at least one lawyer and one faculty member.

44. The procedure for the election is the same as described above for judges and prosecutors elected by Turkish Grand National Assembly.<sup>53</sup>

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<sup>50</sup> CCJE, Opinion no. 3 (2002) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality, paras 33 and 34.

<sup>51</sup> CCJE, Opinion no. 3 (2002) on the principles and rules governing judges’ professional conduct, in particular ethics, incompatible behaviour and impartiality, paras 33 and 34.

<sup>52</sup> ECtHR, *Case of Żurek v. Poland*, Application no. [27520/07](#), 25 October 2011, para. 222.

<sup>53</sup> Article 20 (5) of the Law on the CJP.

45. The Venice Commission recalls that the purpose of electing lay members to a judicial council is to obtain a plural, democratically legitimised composition that can help to strengthen the council's external legitimacy and reduce the negative aspects (and deviations) of corporatism. The Commission has concluded above that none of the members elected or appointed among judges and prosecutors are elected by their peers, and therefore these members are not representative of the judicial community. They are the expression of the executive and legislative powers, hence it is likely that alliances within the CJP aggregate along political views (with a strong influence of the executive, as already emphasised above). In their comments of 21 November 2024, the Turkish authorities contested that these members are considered “political appointees” and “believe that it would be more appropriate to consider the professional careers of these members and their ability to perform their duties impartially and independently, rather than the authority or body by which they were elected”.

46. The Commission reiterates in the first place that for the lay members to exercise their role of external overview and to counterbalance the risk of corporatism, the other members should be *elected* representatives of the judicial community, and the proportion between the two categories should be such that the lay members can have a meaningful influence on the decision-making process.

47. During the visit to Ankara, several interlocutors have insisted on the importance of assigning to the National Assembly the selection process of the majority of CJP members. In principle, entrusting the National Assembly with the election of lay members is a common and efficient manner of providing a democratic legitimacy to this body. However, any election within a parliament cannot escape the logic of the political compromise and the prevalence of the majoritarian forces, even if tempered by the requirement of a qualified majority. In order to reduce this factor, the Turkish authorities could consider introducing some legislative amendments, providing that other bodies, such as the Bar Association and universities, operate a pre-selection of candidates to be elected by the Joint Committee and subsequently the National Assembly. Also, while the professional qualifications and experience required to be a candidate appear appropriate for the tasks they are expected to undertake, it is opportune to introduce some ineligibility criteria,<sup>54</sup> excluding members of the executive and legislative powers as well as candidates with a clear political affiliation. Moreover, in the attempt to guarantee and preserve legitimacy while avoiding polarisation, politicisation and the erosion of trust in the body that guarantees the impartiality and independence of the justice system, the number of lay members should be increased: the National Assembly could be entitled to elect a significant proportion of the CJP members, who should not be judges and prosecutors and should not be active politicians.

### **3. Ex officio members**

#### **a. The Minister of Justice**

48. Article 159 (3) of the Constitution, like Article 1(3) of the Law on the CJP, provides that: “The President of the Council is the Minister of Justice.”

49. In respect of the presence of the Minister of Justice on the judicial council, the ECtHR, referring to the concerns already raised by the Venice Commission<sup>55</sup> and the Consultative

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<sup>54</sup> Venice Commission, Republic of Moldova, [CDL-AD\(2020\)001](#), Joint opinion on the draft law on amending and supplementing the constitution with respect to the Superior Council of Magistracy, para. 54.

<sup>55</sup> Venice Commission, Opinion on recent amendments to the law on the main constitutional provisions of the Republic of Albania, [CDL-INF\(1998\)09](#), para. 16; Report on judicial appointments, [CDL-AD\(2007\)028](#), para. 33; Joint opinion on the law on the judicial system and the status of judges of Ukraine by the Venice Commission and the Directorate of Co-operation of the Directorate General of Human Rights and Legal Affairs of the Council of Europe, [CDL-AD\(2010\)026](#).

Council of European Judges (CCJE),<sup>56</sup> has stated that “the presence, even if only passive, of a member of the Government on a body empowered to impose disciplinary sanctions on members of the judiciary is, in itself, extremely problematic in the light of the requirements of Article 6 of the Convention and, in particular, the requirement that the disciplinary body be independent”.<sup>57</sup> In their comments of 21 November 2024, the Turkish authorities did not agree with the assessment in this paragraph and considered that the presence of the Minister of Justice in the Council does not hinder the Council’s ability to carry out its duties impartially and independently.

50. The Venice Commission observes that the Constitution of Türkiye provides that the President of the CJP shall not participate in the works of the chambers,<sup>58</sup> and therefore does not take part in decisions related to the appointments of judges and prosecutors or disciplinary matters.

51. However, Article 159 (12) of the Constitution vests the Minister of Justice with the authority to appoint judges, public prosecutors, judiciary inspectors and internal auditors, who are also judges or prosecutors, to temporary or permanent roles within the central, subordinate or affiliated institutions of the Ministry of Justice, with their consent. The precise scope of this constitutional provision is unclear. It is important to note that, in accordance with international standards, the authority responsible for making decisions regarding the selection and career progression of judges must be independent of both executive and legislative powers. “Where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary [...] should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice”.<sup>59</sup>

52. Moreover, the President's role in consenting to inspections and investigations of judges and prosecutors raises significant concerns about potential executive overreach into judicial accountability mechanisms.<sup>60</sup> Although the President (Minister of Justice) cannot participate in decisions on disciplinary matters,<sup>61</sup> the combination of roles creates an unwarranted interference in the independent exercise of the functions of the CJP. By authorising or rejecting requests to start inspections and investigations, the President/Minister is already expressing a view on the seriousness of the charge. It is unlikely that the CJP deciding on disciplinary matters would then not be biased. Further, it is especially worrying that the President/Minister may refuse her/his consent to investigate certain cases. Inspections and investigation are preliminary phases that could lead to the initiation of disciplinary proceedings or even criminal prosecution. The Venice Commission recalls that there is a European tendency to make the prosecution independent from the executive.<sup>62</sup> If instructions to prosecute in individual cases are discouraged, European standards are particularly strict as regards instructions not to prosecute, and such instructions must be prohibited or remain exceptional. On the other hand, instructions to prosecute must be

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para. 97; and Urgent Joint Opinion of the Venice Commission and the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe on the draft law amending Law No. 947/1996 on the Superior Council of Magistracy of the Republic of Moldova, [CDL-AD\(2020\)015](#), para. 21 .See also, Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, para. 16; [CDL-AD\(2014\)042](#), *op. cit.*, para. 38; [CDL-AD\(2015\)005](#), *op. cit.*, para. 131.

<sup>56</sup> CCJE, [Opinion No.10 \(2007\)](#), *op. cit.*, paras. 23 and 26; CCJE, [Opinion No. 24 \(2021\)](#), *op. cit.*, para. 28

<sup>57</sup> *Catana v. Republic of Moldova*, *op. cit.*, para. 75.

<sup>58</sup> Article 159(7) of the Constitution.

<sup>59</sup> Committee of Ministers of the Council of Europe, [CM/Rec\(2010\)12](#), *op. cit.*, paras. 46-47. More specifically, the recent ODIHR [Warsaw Recommendations](#) (para. 3), with respect to transfer of judges (to another court or other body) state: “There should be no members of the executive or legislative branches on judicial councils. Where such members are already in place, they should not have the right to vote or participate in decision-making processes concerning matters of judicial independence, including on the disciplinary accountability, evaluation, transfer, selection or appointment of judges [...]”

<sup>60</sup> Likewise, Article 6 (2) (ç) of the Law on CJP.

<sup>61</sup> Article 6 (3/a, 3/b) of the Law on CJP.

<sup>62</sup> Venice Commission, [CDL-AD\(2017\)028](#), Poland - Opinion on the Act on the Public Prosecutor's office, para. 27; Venice Commission, [CDL-AD\(2023\)029](#), *op. cit.*, para. 70.

accompanied by adequate guarantees of transparency and fairness in accordance with national law.<sup>63</sup> While the same standards related to prosecution cannot be applied as such to inspections and investigations, certain considerations can be transposed especially as regards the instruction not to inspect or investigate, which would hamper the collection of relevant elements of proof and *de facto* impede criminal prosecution or initiation of disciplinary proceedings. If such instruction stems from the President of the CJP, who is also the Minister of Justice, the risk of political interference to cover up sensitive cases is high. Equally, an instruction to inspect and investigate may be a strong tool to exercise pressure on judges and prosecutors. Investigations in respect of judges can be conducted for the purpose of putting pressure and have a deterrent effect which are likely to influence the content of the judicial decisions that those judges are called upon to give. The mere prospect of such disciplinary investigations being opened is, as such, liable to exert pressure on those who have the task of adjudicating in a dispute.<sup>64</sup> Along the same line, the ECtHR found that the imposition or the threat of imposition of disciplinary liability in connection with the adoption of a judicial decision must be seen as an exceptional measure and be subject to a restrictive interpretation, having regard to the principle of judicial independence.<sup>65</sup> In their comments of 21 November 2024, the Turkish authorities underlined that the President of the Council “only has the authority to give “consent” to the decision of the relevant chamber, which has the authority to decide on the disciplinary affairs and procedures in respect of judges and public prosecutors, and does not have the authority to make any decisions directly in terms of disciplinary law about members of the judiciary.”

53. Likewise, the power of the President related to criminal investigations and disciplinary investigations and prosecutions concerning the members of the CJP<sup>66</sup> may have a chilling effect on the members of the CJP (see the section on immunity below), as they must fear that non-adherence to the President/Minister’s policy could result in the opening of criminal and/or disciplinary proceedings. In view of these powers, the fact that the President/Minister may not take part in plenary sessions relating to disciplinary proceedings and the work of the Chambers is of secondary importance.<sup>67</sup> In their comments of 21 November 2024, the Turkish authorities contended that “the President of the Council does not have a substantive authority as regards the disciplinary responsibility of the Council members, and the action taken by the President is to “filter” the notifications and complaints to some extent. Thus, the practice in question is considered necessary and important to prevent the Council members from being subjected to unnecessary disciplinary examinations and investigations.”

54. The extensive involvement of the Minister of Justice in the CJP's operations, particularly in areas directly affecting judges' and prosecutors' career, as well as in relations to the inspections and investigations of judges, prosecutors and the members of the CJP, poses a substantial risk to the separation of powers and the independence of the judiciary. It also significantly affects the appearances of independence of the CJP.

55. During the visit to Ankara, the rapporteurs were informed that the Minister of Justice had never attended any of the meetings and deliberations of the CJP in 2023. The Venice Commission positively notes that Article 159 (7) of the Constitution provides that the Deputy President, to whom the President can delegate certain powers, is elected by the CJP itself. Yet, while appreciating the appropriate conduct of the Minister of Justice to refrain from participating in the work of the CJP, the Commission strongly recommends modifying the relevant provisions

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<sup>63</sup> Venice Commission, [CDL-AD\(2023\)029](#), *op. cit.*, paras. 67-72. Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2000\)19](#), on the Role of Public Prosecution in the Criminal Justice System, paras. 9 - 10 - 13 - 14 - 17 - 19 - 36.

<sup>64</sup> CJEU, [Case C-791/19](#), *Commission v. Poland (Disciplinary regime for judges)*, 15 July 2021 paras. 156 and 229-236; as well as judgment in *Asociația ‘Forumul Judecătorilor din România’ and Others*, para. 199.

<sup>65</sup> ECtHR, [Tuleya v. Poland](#), Applications nos. [21181/19](#) and [51751/20](#), 6 July 2023, para. 437.

<sup>66</sup> Article 6 (2) (e) of the Law on the CJP.

<sup>67</sup> Article 6 (3) (a) and (b) of the Law on the CJP.

of the Constitution and the Law on the CJP in order to remove the Minister of Justice from the CJP.

#### b. The Undersecretary of the Minister of Justice

56. As provided in Article 159 (3) of the Constitution and in Article 3 (5) of the Law on the CJP, the Undersecretary to the Ministry of Justice (that is the Deputy Minister of Justice) shall be an *ex officio* member of the Council. The Law on the CJP provides that she/he is a member of the CJP's First Chamber (see relevant competences below, related to appointments and career of judges).<sup>68</sup> As the Plenary "shall determine through voting the distribution of regular and supplementary members across the chambers under the above-stated principles",<sup>69</sup> it is not excluded that the Deputy Minister of Justice also acts as a supplementary member in the Second Chamber of the CJP (with competences on disciplinary matters).

57. The Undersecretary, by virtue of her/his role, is likely to carry the priorities and perspectives of the Ministry of Justice into the CJP's deliberations. The presence of the Undersecretary, particularly in a voting capacity, raises further concerns about interference with judicial independence. The inclusion of the Undersecretary within the CJP allows the executive branch to have a direct role in decisions related to the appointment, promotion, and discipline of judges and prosecutors. In their comments of 21 November 2024, the Turkish authorities did not agree with the assessment in this paragraph and considered that the presence of the Undersecretary to the Ministry of Justice in the Council does not hinder the Council's ability to carry out its duties impartially and independently.

58. The Venice Commission recalls that European standards discourage *ex officio* membership of the judicial councils.<sup>70</sup> Furthermore, *ex officio* members who are part of the executive are extremely problematic. As with the Minister of Justice, the Venice Commission strongly recommends removing the Undersecretary of Justice from the CJP.

#### 4. Security of tenure and functional immunity

59. Members of judicial councils should enjoy security of tenure and functional immunity as key safeguards of their independence. In light of the principle of security of tenure, it is essential to specify the substantive grounds for termination of office and introduce adequate procedural safeguards in the relevant proceedings against CJP members. Granting immunity to members of the CJP allows them to carry out their work without having to defend themselves against, for instance, unfounded and vexatious accusations.<sup>71</sup> Ensuring that individual members enjoy appropriate guarantees of independence is essential to ensure the independence of the council as such. Only an independent council can be the guarantor of the independence of the judiciary.

60. The Venice Commission observes that the members of the CJP are elected for a term of four years.<sup>72</sup> Their tenure is rather short. Moreover, they can be re-elected (once), which could make them dependent on the appointing/electing authority.

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<sup>68</sup> Article 8 (1) (a) of the Law on the CJP.

<sup>69</sup> Article 8 (2) of the Law on the CJP.

<sup>70</sup> Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, para. 16; [CDL-AD\(2014\)042](#), Montenegro, Interim opinion on the draft law on the state prosecution office of Montenegro, para. 38; [CDL-AD\(2015\)005](#), Republic of Moldova, Joint Opinion on the draft Law on the Prosecution Service of the Republic of Moldova, para. 131. CCJE, [Opinion No.10 \(2007\)](#) on the Council for the Judiciary at the service of society, paras. 23 and 26; CCJE, [Opinion No. 24 \(2021\)](#), *op. cit.*, para. 28. ECtHR, *Catana v. Republic of Moldova*, application no. [43237/13](#), 21 February 2023, para. 75.

<sup>71</sup> Venice Commission, Republic of Moldova, [CDL-AD\(2022\)019](#), Opinion on the draft law on amending some normative acts (Judiciary) of Moldova, para. 34.

<sup>72</sup> Article 18 of the Law on the CJP.

61. Although Article 3 (7) of the Law on the CJP declares the principle of security of tenure of judges and prosecutors in general, neither the Constitution nor the Law provide for the principle and the guarantees of security of tenure and functional immunity of the members of the CJP. In their comments of 21 November 2024, the Turkish authorities stated that this paragraph does not reflect the truth and listed a series of constitutional and legislative provisions that provide for the security of tenure of judges in general (albeit not specifically of CJP members) and some specific rights of the CJP members (although not encompassing explicitly the security of tenure and immunity).

62. In addition, the Venice Commission remarks that the elected members of the CJP may be subject to disciplinary investigation and prosecution,<sup>73</sup> which could lead to dismissal.<sup>74</sup> Conversely, the President of the CJP is exempted by this provision. The Venice Commission expresses serious doubts about the provision establishing that “the elected members of Council shall be warned or invited to withdraw from the Council membership depending on the nature and gravity of the acts if it is established that their acts and manners have caused delays in the service or been incompatible with the dignity and honour of the Council membership”.<sup>75</sup> In their comments of 21 November 2024, the Turkish authorities argued that the fact that the Plenary, which is composed of all members of the Council, has the right of discretion in terms of the penalty to be imposed on the relevant member of the Council would constitute a guarantee for that member.

63. Because of their primary role as guarantors of the independence of the whole judiciary, the security of tenure and functional immunity of the members of the CJP should be set out in the Constitution. The Constitution should refer to the law for the establishment of clear and limited grounds for disciplinary actions and possibly dismissal,<sup>76</sup> which should not relate to the exercise of their functions as members of the CJP. The legislation should also ensure all appropriate / necessary procedural safeguards, in line with the Constitution.

64. The lack of constitutional guarantees combined with broad and vague legal provisions (“their acts and manners have caused delays in the service or been incompatible with the dignity and honour of the Council membership”), applicable to acts committed in the performance of the members’ function and leading to extreme consequences (resignation or dismissal), constitutes a clear violation of the principle of security of tenure and the guarantee of functional immunity.

65. Therefore, the Venice Commission recommends establishing clearly, at constitutional and legislative level, that members of the CJP should enjoy security of tenure, as well as strong safeguards setting clear and limited grounds for sanction and dismissal.

##### **5. Lack of distinction between judges or prosecutors in the CJP**

66. The Constitution and legislation fail to indicate the proportion of judges and prosecutors. Furthermore, judges and prosecutors are both magistrates with the same status in the Turkish judicial system. No distinction seems to be made in the law according to the two categories, therefore there is no specific provision for either group and the *ratio* for the composition of the CJP is not specified.

67. During the visit to Ankara, the Turkish authorities explained that judges and prosecutors receive the same legal training and are subsequently appointed to one or the other category by the CJP according to the needs of the system, and not on the basis of the individual magistrate’s

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<sup>73</sup> Article 36 (1) of the Law on the CJP.

<sup>74</sup> Article 37 of the Law on the CJP.

<sup>75</sup> Article 37 (1) of the Law on the CJP.

<sup>76</sup> Venice Commission, [CDL-AD\(2008\)010](#), *op. cit.*, para.113. See also, Venice Commission, [CDL-AD\(2018\)011](#), *op. cit.*, para. 46; [CDL-AD\(2016\)009](#), *op. cit.*, para. 35; [CDL-AD\(2015\)037](#), *op. cit.*, para. 156; [CDL-AD\(2011\)010](#), *op. cit.*, para. 10; [CDL-AD\(2005\)003](#), *op. cit.*, para. 105; [CDL-AD\(2002\)033](#), *op. cit.*, para. 11.

choice, who can then make a request to change the professional path. The authorities also reported that it is extremely rare that a magistrate changes category in the course of the professional career and that in recent years the training curricula have been gradually differentiated between the judicial and prosecutorial professions; also, the individual preference of the candidate magistrate is taken into account in her/his appointment.

68. Contemporary European standards tend to opt for a bifurcated approach to judicial and prosecutorial governance. This involves the establishment of two separate councils: one dedicated to judicial matters and the other to prosecutorial issues, but possibly within a joint framework. This dual-council system is designed to ensure that the perspectives of judges and prosecutors are appropriately represented and managed within their respective spheres.<sup>77</sup> In their comments of 21 November 2024, the Turkish authorities recalled that “the structure of supreme judicial councils varies according to the legal system in each country, and there is no typical or standardised model for high councils for the judiciary”.

69. Sectoral committees within a council can also be established to fulfil the functions of judicial and prosecutorial oversight. That is the case in France<sup>78</sup> for example, or in Bosnia and Herzegovina.<sup>79</sup> These committees operate with a similar objective but are tailored to the specific needs of their sector. Each council or committee should be predominantly composed of members who are elected by their peers within that sector — judges electing judges and prosecutors electing prosecutors. This structure ensures that decisions affecting the careers and professional conduct of judges are made by a majority of their peers, thereby enhancing the council's credibility and fairness in handling judicial matters.<sup>80</sup>

70. In the system of Türkiye, the CJP's two Chambers are not divided along judicial-prosecutorial lines, but rather by function: one Chamber handles appointments and career development, while the other deals with disciplinary matters, for both judges and prosecutors alike (see relevant section below). The Venice Commission recommends envisaging, at least at legislative level, setting up two separate sections within each chamber (as well as in the Inspector Board), deciding respectively on judicial and prosecutorial matters, where the majority of members is represented by the relevant category. A minimum number of judges and of prosecutors should be indicated. An increase of the overall size of the CJP, with a higher number of judges and prosecutors, would facilitate such a restructuring. In their comments of 21 November 2024, the Turkish authorities noted that in their judicial system judges and prosecutors receive the same (or similar) training and can be affected to (or move between) either category. Both judges and prosecutors are subject to the Law on Judges and Prosecutors (Law no. 2802) and serve under the same constitutional guarantee.

71. As far as the Plenary of the CJP is concerned, “three members shall be elected among the members of the High Court of Appeals” and “one member shall be elected among the members of the Council of State”, which is a court under the Constitution of Türkiye.<sup>81</sup> Therefore, it can be inferred that *at least* four members of the CJP will be judges, but it is not excluded that *only* four out of 13 members of the CJP are in fact judges. This may appear problematic in light of the international standards recalled above, requiring at least half of the members of a council taking decisions on judicial matters to be judges.<sup>82</sup> Considering that judges and prosecutors can be seen as a unitary body, inasmuch as they receive the same (or similar) training and can be affected to (or move between) either category, this solution can be considered acceptable (yet

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<sup>77</sup> Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, para. 31.

<sup>78</sup> Venice Commission, [CDL-AD\(2023\)015](#), *op. cit.*, paras. 19-22.

<sup>79</sup> Venice Commission, [CDL-AD\(2024\)009](#), *op. cit.* para. 32.

<sup>80</sup> Venice Commission, [CDL-AD\(2021\)015](#), Bosnia and Herzegovina, Opinion on the draft law on amendments to the Law on the High Judicial and Prosecutorial Council, para. 13.

<sup>81</sup> According to Article 55 of the Constitution, “the Council of State is the last instance for reviewing decisions and judgments given by administrative courts and not referred by law to other administrative courts”.

<sup>82</sup> See the section on international standards above.

not ideal), but only if strong guarantees of security in office are provided to prosecutors, similar to those provided to judges. In their comments of 21 November 2024, the Turkish authorities reiterated that CJP members should not be considered “political appointees”.

## **6. Size and representativity of the Council**

72. It is important that the composition of the Council, in numbers and categories of its members, be adapted to the nature, status, dimension and relevance of the judicial system in a given State. In this respect, it is relevant to recall the above-mentioned principle that the judicial component in a council should represent the entire judiciary and should respect the pluralism within the judiciary. Hence, there should be a balanced representation of judges from all different levels and courts and the widest possible diversity and representation of gender and regions (see standards reported above). Also, as indicated above, a minimum number of judges and of prosecutors should be indicated for the two categories to decide separately on judicial and prosecutorial matters.

73. As regards the system of Türkiye, the number of Council members (13) appears to hardly ensure a balanced representation of the large number of judges and prosecutors (about 25.000) in the various courts at all levels as well as throughout the territory. The Venice Commission recommends considering an increase of the size of the CJP, as was attempted following the 2010 constitutional reform. This would allow for a much broader and more pluralistic composition which would grant a better representation of the two categories of magistrates (judges and prosecutors), as well as greater diversity in terms of gender, minorities, geographical regions and different levels of the judiciary.

### **B. The function of the CJP**

#### **1. The role of the CJP as a guarantor of the independence of the judiciary**

74. According to Article 159 of the Constitution, the CJP shall “exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges”.<sup>83</sup> Such principle is reiterated in Article 3 (6) of the Law on the CJP, stating that “The Council shall be independent in performing its duties and exercising its powers. No organ, authority, office or individual may give orders or instructions to the Council.” This is in line with the overarching constitutional principle enshrined in Article 9 of the Constitution, which provides that “judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation.”

75. The Venice Commission acknowledges that the constitutional and legal framework of Türkiye clearly proclaim the principle of independence of the judiciary and require the CJP to function accordingly.

76. The Venice Commission notes, however, that the term “supervising” in Article 159 (9) of the Constitution may raise some concerns as regards the role of the CJP. The task of a judicial council should not be to supervise judges and prosecutors but to “protect the independence of both the judicial system and individual judges and to guarantee at the same time the efficiency and quality of justice as defined in Article 6 of the ECHR in order to reinforce public confidence in the justice system.”<sup>84</sup> Even though the oversight is a critical function of the Council, with the aim of ensuring accountability within the judiciary, it would be advisable to use a term which does not imply a possible control of the CJP over the judges and prosecutors. Judges should not be subject to supervision by their fellow-judges or judicial self-governing bodies as such supervision

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<sup>83</sup> Article 159 (1) of the Constitution.

<sup>84</sup> CCJE, [Opinion No.10 \(2007\)](#), *op; cit.*, Summary of recommendations. Points (A) (b).

would contravene their individual independence.<sup>85</sup> In their comments of 21 November 2024, the Turkish authorities stated that the term “supervision” in the text of the article cannot be interpreted as a means of control of the CJP over judges and prosecutors and it refers to “an activity that focuses on professional information and work”. The Turkish authorities also contended that the “purpose of the CJP is to ensure that members of the judiciary serve impartially and independently” and that “the supervision of judges and prosecutors by inspectors who are also judges/prosecutors constitutes a guarantee for themselves”.

77. Both the Constitution and the Law on the CJP entrust the Council with duties regarding the administration of courts, the appointment, transfer, promotion of judges and prosecutors, as well as on disciplinary matters.<sup>86</sup> In addition, the CJP supervises<sup>87</sup> judges’ and prosecutors’ performance, conduct, actions, whether they have committed offences and if deemed necessary, conducts an examination or investigation.<sup>88</sup>

78. The CJP is responsible for electing the members to the Court of Cassation and the Council of State.<sup>89</sup> Hence, the CJP plays a significant role in shaping the leadership and direction of the judiciary at its highest levels.

79. The CJP is also empowered to issue circulars which help standardise procedures and ensure consistency across the judiciary and decides, *inter alia*, on those whose stay in the profession is deemed inconvenient.<sup>90</sup>

80. The term “inconvenient” in this respect is problematic as it contradicts the principles of security of tenure of office and the immovability of judges. In fact, the criterion - or basis - of inconvenience in permanence of the profession cannot, as such, be applied in relation to the status of judges. «Convenience» is a typical concept of administrative law relating to the exercise of discretionary powers by the public administration in achieving a certain public interest. It is not a category or concept compatible with the nature and exercise of judicial functions, which judges must exercise only in accordance with the law and normative principles, without making judgments of opportunity or convenience. The principles of the rule of law that apply to the status of judges cannot allow judges to be dismissed for reasons of convenience.

81. Nevertheless, during the visit to Ankara, some interlocutors explained that the term refers to those incapacitated to work for objective reasons (e.g., physical or psychological disability, etc.) and that it is regularly interpreted and applied this way. The Venice Commission therefore understands that this is either an issue of translation or the term is anyway understood in the sense that the exercise of judicial functions, as well as the permanence of a judge in a post to which she/he has been duly appointed, cannot be terminated for reasons or grounds of opportunity or convenience, but only in cases of objective impossibility to perform judicial functions or of disciplinary sanction for very serious misconduct, and in accordance with a fair and equitable procedure. The Venice Commission recommends clarifying this term and its applicability. In their comments of 21 November 2024, the Turkish authorities stated that it “is natural for judges and prosecutors to be dismissed from the profession if they no longer possess the qualifications they possessed when they were admitted to the profession” and listed a series of constitutional and legislative provisions that allow the CJP to proceed to such dismissal.

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<sup>85</sup> See, for example, Venice Commission, [CDL-AD\(2016\)007](#), *op. cit.*, para. 87.

<sup>86</sup> Article 159 (8) of the Constitution and Article 4 (1) (a) and (b) of the Law on the CJP.

<sup>87</sup> Article 159 (9) of the Constitution. Article 4 (1) (c) of the Law on the CJP, in the English translation, uses the term “inspect”. However, in their comments of 21 November 2024, the Turkish authorities clarified that the Constitution and the CJP Law use the same term in Turkish language.

<sup>88</sup> Article 159 (9) of the Constitution and Article 4 (1) (c) of the Law on the CJP.

<sup>89</sup> Article 4 (1) (d) of the Law on the CJP.

<sup>90</sup> Article 4 (1) (ç) of the Law on the CJP.

82. Finally, during the visit to Ankara, the national authorities referred to the fact that the CJP is an administrative body, which justify the role of the Minister of Justice as President of the CJP, the presence of the Undersecretary to the Ministry of Justice as a full-fledged member for the CJP and the high level of influence of the executive over the CJP (see relevant sections above), as well as the interchange between the administrative staff and the inspectors of the Ministry of Justice and the CJP (see relevant sections below).

83. The Venice Commission recalls and underscores that only an independent judicial council, whose functioning is shielded from interference of the executive and legislative powers, can be the guarantor of the independence of the judiciary, which is a pillar of the separation of powers and lays at the core of the rule of law. Respecting the rule of law is a prerequisite for the protection of the citizens' rights and freedoms in a democratic country.<sup>91</sup>

## 2. Judicial review of CJP decisions

84. Article 159 (10) of the Constitution provides that decisions of the CJP, other than dismissal from the profession, shall not be subject to judicial review. Along the same lines, Article 33 (5) of the Law on the CJP declares: "Final decisions on dismissal from profession taken by the Plenary or Chambers may be challenged before the court; however, other decisions shall not be subject to judicial review. The Council of State shall review cases against dismissals from profession as the first instance court. Such cases shall be deemed urgent matters." All other decisions can be re-examined by the original decision maker or in the case of the Chambers, by the Plenary. Re-examination decisions are final.<sup>92</sup>

85. During the visit to Ankara, the national authorities have repeatedly emphasized the administrative nature of the CJP, and this was used as an argument to justify this provision.

86. According to European standards, the decisions of a judicial council should be subject to judicial review, allowing an independent body to assess the fairness and legality of the Council's decisions; this is true for disciplinary decisions<sup>93</sup> as well as for all matters concerning the career of a judge and prosecutor, including their recruitment/appointment.<sup>94</sup> In a previous opinion on Türkiye, the Commission found that "the need for provisions that introduce an appeal to a court of law should not be limited to disciplinary sanctions but should also cover other acts that have negative effects on the status or the activities of judges, for instance: denial of a promotion, adding (negative) comments to files, class allocation, changes of location etc. [...]."<sup>95</sup> The Venice Commission therefore recommends introducing judicial review against all decisions of the CJP. In their comments of 21 November 2024, the Turkish authorities stated that a two-tier system of objection was introduced against the decisions of the CJP (re-examination by the Plenary) and contended that "since the other personnel affairs of judges and prosecutors [other than dismissals] are decided on by two chambers, the majority of which are composed of members of the judiciary, according to the procedures stipulated by the legislation, no separate judicial review is envisaged."

<sup>91</sup> Venice Commission, [CDL-AD\(2016\)007](#), *op. cit.*, para. 21.

<sup>92</sup> See for example, for disciplinary penalties, article 37 of the Law on CJP.

<sup>93</sup> Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2010\)12](#), *op. cit.*, para. 69.

<sup>94</sup> Article 6 (1) of the European Convention on Human Rights. ECtHR, GC, *Denisov v. Ukraine*, application no. [76639/11](#), 25 September 2018, para. 51; *Dolińska-Ficek and Ozimek v. Poland*, application nos. [49868/19](#) and [57511/19](#), 8 November 2021, paras. 222 and 224. Under the ECtHR's case-law, although the judiciary is not part of the ordinary civil service, it is considered part of "typical public service". See also ECtHR, GC, *Grzęda v. Poland*, application no. [43572/18](#), *op. cit.*, paras. 262-263; *Oktay Alkan v. Türkiye*, application n. [24492/21](#), 20 June 2023; *Juričić v. Croatia*, application n. [54711/15](#), 26 July 2011. See also Committee of Ministers of the Council of Europe, Recommendation [CM/Rec\(2010\)12](#), *op. cit.*, para. 48, CCJE, [Opinion No. 21 \(2018\)](#) on Preventing Corruption among Judges, para. 25; CCJE, [Opinion 24 \(2021\)](#), paras. 15 and 21.

<sup>95</sup> Venice Commission, [CDL-AD\(2011\)004](#), *op. cit.*, para. 76.

### C. Structure of the CJP

87. Article 3 of the Law on the CJP, in line with the Constitution, provides that the Council works and deliberates in Plenary sessions and in two chambers.

88. Article 8 (1) (a) of the Law on the CJP provides that the First Chamber comprises six members including the relevant Undersecretary to the Ministry of Justice, one member elected from among members of the Court of Cassation, two members elected from among the civil and criminal judiciary judges and prosecutors, one member elected from among the administrative judiciary judges and prosecutors and one member elected from among faculty members or lawyers.

89. According to Article 8 (1) (b) of the Law on the CJP, the Second Chamber comprises six members of which two elected from among members of the Court of Cassation, one elected from among members of the Council of State, one elected from among civil and criminal judiciary judges and prosecutors, and two elected from among faculty members or lawyers.

90. The First Chamber focuses on operational aspects such as appointments, transfers, authorisations, and inspections, ensuring that the judiciary functions smoothly on a day-to-day basis.<sup>96</sup>

91. The Second Chamber deals primarily with career-related decisions, such as promotions, disciplinary actions, and admissions (to the judicial and prosecutorial professions), focusing on the long-term integrity and quality of the judiciary.<sup>97</sup>

92. The institutional organisation of the judicial councils, whether as a single body or in different formations, depends on the conditions and choices of each system. Several solutions are possible - comparative experience is plural - and each system adopts the one best suited to its circumstances.

93. In the case of the Council of Türkiye, the balanced distribution of powers between the Plenary and the Chambers certainly constitutes a means that can better respond to the high level of demands of a judicial (and prosecutorial) system of enormous size and complexity. In this organisational and operational regime, the CJP, in its Plenary formation, has its own competences,<sup>98</sup> as do the Chambers,<sup>99</sup> but the Plenary has the power to re-examine decisions of the Chambers and decide on conflicts of competence between the Chambers.<sup>100</sup> The Venice Commission recommends envisaging the possibility to increase the number of members of the CJP, and therefore the number of members of each Chamber. In addition, the Venice Commission notes that chambers composed of an even number of members (six each) are not ideal for taking decisions and recommends modifying the composition of each chamber to have an odd number of members or setting up an anti-deadlock mechanism.

#### 1. President of the CJP

94. Article 6 of the Law on the CJP entrusts the President of the CJP, who is also the Minister of Justice, with the following powers:

- Administering and representing the CJP, as well as presiding over the works of the Plenary and voting with the exceptions laid down in the laws.<sup>101</sup>

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<sup>96</sup> Article 9 (1) of the Law on the CJP.

<sup>97</sup> Article 9 (2) of the Law on the CJP.

<sup>98</sup> Article 7 of the Law on the CJP.

<sup>99</sup> Article 9 of the Law on the CJP.

<sup>100</sup> Article 7 (2) (b) and (c) of the Law on the CJP.

<sup>101</sup> Article 6, (2/a, 2/b). Article 7 (1) of the Law on the CJP.

- Appointing the Secretary General (SG)<sup>102</sup> and its Deputies.<sup>103</sup> Regarding the appointment of the SG (foreseen also at constitutional level) and even more as regards the Deputies SG (see relevant section below), the President of the CJP seems to have broad discretion and seemingly does not have to reason her/his choices. Article 12 of the Law on the CJP entrusts her/him also with the power to assign duties to the rapporteur judges.
- Consenting to inspections, examinations and investigations, as well as non-examination and non-prosecution of judges and prosecutors (also foreseen at constitutional level)<sup>104</sup>. In addition, Article 14(4) (a) establishes that the Inspection Board (see relevant section below) acts under the supervision of the President of the Council.
- Performing the duties assigned by the Law on the CJP regarding the criminal investigations and disciplinary investigations and prosecutions related to the members of the Council.<sup>105</sup> Also, Article 38 (2) of the Law on the CJP establishes that the President may assign one of the heads of chambers with the task of preliminary examination of the notices and complaints raised against the elected members of the Council before bringing the matter to the Plenary.

95. The powers assigned to the President in Article 6 of the Law on CJP are very broad and become even broader when read in conjunction with other provisions. As the Plenary shall comprise all the members of the Council,<sup>106</sup> the President as a rule takes part in the Plenary sessions, with the exception of sessions on disciplinary procedures,<sup>107</sup> and therefore decides on a large number of issues. For example, the Plenary elects members to the Court of Cassation and the Council of State.<sup>108</sup> As members of these courts are also members of the CJP, there might be an issue of internal independence.

96. In addition, according to Article 7 (2) (i) of the Law on the CJP, the Plenary (including the President, with the exceptions mentioned above) issues regulations and circulars exclusively for the admission, appointment and transfer, granting temporary authorisation, promotion and the first-class allocation, distribution of cadres, making decisions on those whose stay in the profession is deemed inappropriate, imposing disciplinary sanctions, suspension from office and the inspections, examinations and investigations about the civil, criminal and administrative judiciary judges and prosecutors.<sup>109</sup>

97. Along the same lines, Article 33 (2) and (3) of the Law on the CJP sets forth that if the President objects to a decision taken by the CJP, he/she (and the parties concerned) may request re-examination from the Plenary within ten days from the date of notification of those decisions; the decisions taken after the re-examination shall be final.<sup>110</sup> Also, the President (or the parties concerned) may request re-examination from the chambers for their decisions and can file an objection with the Plenary against decisions rendered by chambers upon a request for re-examination; decisions taken upon objection are final.<sup>111</sup> In their comments of 21 November 2024, the Turkish authorities argued that “by introducing a two-tier system of objection against the said decisions, it is envisaged that members of the judiciary, in particular, may be able to effectively file an objection against decisions concerning them”.

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<sup>102</sup> Article 159 (11) of the Constitution and Articles 6 (2) (c) and 11 (1) of the Law on the CJP.

<sup>103</sup> Article 6 (2) (d) and Article 11 (4) of the Law on the CJP.

<sup>104</sup> Article 159 (9) of the Constitution and Article 6(2)(ç) of the Law on CJP.

<sup>105</sup> Article 6 (2) (e) of the Law on the CJP.

<sup>106</sup> Article 7 (1) of the Law on the CJP.

<sup>107</sup> Article 6(3)(a) of the Law on the CJP.

<sup>108</sup> Article 7 (2) (g) of the Law on the CJP.

<sup>109</sup> Article 7 (2) (i) of the Law on the CJP.

<sup>110</sup> Article 33 (1) of the Law on the CJP.

<sup>111</sup> Article 33 (2) and (3) of the Law on the CJP.

98. The concentration of powers in one person, the President of the CJP, is problematic *per se*. Furthermore, as noted above, the President of the CJP being also the Minister of Justice, the combination of roles aggravates the concentration of powers in one person, that is also a member of the Government. For example, as concerns the constitutional and legislative provisions that the CJP shall 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,<sup>112</sup> it is questionable whether the CJP will be independent in its decision, being chaired by a President who, in the vest of Minister of Justice, has made the proposal.

99. According to the Consultative Council of European Judges (CCJE), “it is necessary to ensure that the Chair of the Council for the Judiciary is held by an impartial person who is not close to political parties. Therefore, in parliamentary systems where the President / Head of State only has formal powers, there is no objection to appointing the Head of State as the chair of the Council for the Judiciary, whereas in other systems the chair should be elected by the Council itself and should be a judge”.<sup>113</sup> This requirement becomes crucial in the system of Türkiye, considering the broad and substantial powers conferred to the President of the CJP combined with his role as Minister of Justice. The combination of roles aggravates the interference of the executive power with the independence of the judiciary.

100. Moreover, as mentioned above (see the section related to the Minister of Justice as *ex officio* member), although the President of the CJP does not participate in the work of the chambers,<sup>114</sup> and therefore does not take part in decisions related to the appointments of judges and prosecutors or disciplinary matters, she/he has a key role in consenting to inspections and investigations of judges and prosecutors<sup>115</sup> as well as to criminal investigations and disciplinary investigations and prosecutions related to the members of the CJP.<sup>116</sup> The Venice Commission therefore recommends that the President of the CJP should be a neutral figure, elected by its members; that the overall powers of the President of the CJP be reduced, irrespective of who shall become the President; and in particular that the power to consent to inspections and investigations of judges and prosecutors, as well as the power related to criminal investigations and disciplinary investigations and prosecutions of members of the CJP should be removed. In their comments of 21 November 2024, the Turkish authorities reiterated that the President of the Council “does not have a substantive authority as regards the disciplinary responsibility of the Council members, and the action taken by the President is to “filter” the notifications and complaints to some extent.”

## 2. Secretariat General

101. The Secretariat-General is established to handle the secretarial, administrative, and financial services of the CJP. It comprises the Secretary General, five deputy secretaries-general (including one from the administrative judiciary), and a sufficient number of rapporteur judges and bureaux.<sup>117</sup>

102. The Secretariat General is responsible for all administrative tasks, which include managing documents and communications for the CJP. The Secretariat-General represents the CJP in legal matters, handling civil, criminal, and administrative cases, as well as debt enforcement proceedings. This centralises the legal operations, ensuring consistency in legal representation.

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<sup>112</sup> Article 159 (8) of the Constitution and Article 4 (1) (a) of the Law on CJP.

<sup>113</sup> Consultative Council of European Judges (CCJE), [Opinion no.10\(2007\)](#) on the Council for the Judiciary at the service of society, para. 33.

<sup>114</sup> Article 159(7) of the Constitution.

<sup>115</sup> Article 6 (2) (ç) of the Law on CJP.

<sup>116</sup> Article 6 (2) (e) of the Law on the CJP.

<sup>117</sup> Article 10 (1) of the Law on the CJP.

103. The Secretariat-General manages the records and files of judges and prosecutors, reflecting its role in overseeing the careers and professional histories of judicial officers.

104. The Secretary General is appointed by the President of the Council from among three first-class judges and prosecutors proposed by the Plenary.<sup>118</sup> Deputy Secretaries-General are appointed by the President of the CJP from first-class judges and prosecutors, without further requirements for selection.<sup>119</sup>

105. There is also a provision for the appointment of rapporteur judges.<sup>120</sup> They are appointed by the Plenary, reflecting a merit-based selection from experienced judges and prosecutors. These judges perform duties as assigned by the President, the relevant head of chamber, and the Secretary-General.

106. The organisation of the Secretariat General appears appropriate to the tasks assigned to it. The President of the CJP has relevant powers in appointing the top positions and assigning tasks to the rapporteur judges. This in itself would not be problematic if the President of the CJP were a neutral figure. In the case of the Turkish CJP, however, the President is the Minister of Justice and therefore the executive power can interfere with the functioning of the CJP; such interference is coupled with the exchange of non-judicial staff between the two institutions. The Venice Commission therefore recommends that such role be assigned to a judge elected by his/her peers or another neutral position within the CJP, and that the CJP and the Ministry of Justice be two fully separated entities.

### **3. Inspection Board**

107. The primary role of the Inspection Board is to inspect whether judges and prosecutors are performing their duties in accordance with laws and regulations, including administrative circulars. This involves evaluating their compliance with legal requirements and professional standards. The Board is empowered to investigate potential offences committed by judges and prosecutors in connection with their duties, as well as any conduct that may be inconsistent with their roles. The Board is also tasked with identifying legal gaps observed in practice and proposing necessary measures to the CJP, thus playing a crucial role in legal and administrative reforms within the judiciary. The Board performs additional duties as specified by law or as assigned by the CJP, allowing it to adapt to evolving legal and administrative needs.<sup>121</sup>

108. CJP inspectors are appointed by the Plenary from among those who have actually exercised judgeship and prosecution for at least five years and are deemed to be beneficial to the CJP for their overachievement. They are not members of the CJP itself and are tasked with ensuring that judges and prosecutors perform their duties in compliance with laws and regulations. They also investigate whether any offences have been committed in connection with judicial duties or whether conduct is inconsistent with the responsibilities of their positions. CJP inspectors have broad powers to collect evidence, take sworn statements, and gather necessary information from public institutions during their inquiries. These powers, akin to those granted to prosecutors under the Criminal Procedure Code, enable inspectors to conduct thorough and effective investigations.<sup>122</sup>

109. CJP inspectors, judicial inspectors and internal auditors at the Ministry can easily be moved from one position to the other.<sup>123</sup> Notwithstanding the practical advantages, the issue seems problematic as it raises questions about the balance between judicial independence and

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<sup>118</sup> Article 11 (1) of the Law on the CJP and Article 159(11) of the Constitution.

<sup>119</sup> Article 11 (4) of the Law on the CJP.

<sup>120</sup> Article 12 of the Law on the CJP.

<sup>121</sup> Article 14 of the Law on the CJP.

<sup>122</sup> Article 17 of the Law on the CJP.

<sup>123</sup> Article 15 (3) of the Law on the CJP.

executive oversight. The movement of inspectors and auditors between the judiciary and the Ministry of Justice could potentially blur the lines of independence between these institutions. Inspectors who frequently move between these roles might bring with them the influence or priorities of the Ministry, which could impact their objectivity when inspecting judicial matters. By strategically placing inspectors who are more aligned with executive policies, the Ministry could subtly influence the outcomes of judicial inspections and the overall administrative functioning of the judiciary. The tenure of inspectors and auditors is maintained across roles, ensuring that their career progression is uninterrupted as they move between the judiciary and the Ministry. Inspectors may have an incentive to align their actions and decisions with the expectations of the executive branch, knowing that their future career opportunities — including promotion or reappointment — may depend on their perceived loyalty or effectiveness in roles within the Ministry. This could lead inspectors to favour executive preferences when conducting inspections or audits within the judiciary. The Venice Commission recommends separating more clearly the judicial and ministerial institutions as regards the mobility of the inspectors, except when required for questions of judicial organisation. In their comments of 21 November 2024, the Turkish authorities contended that “it is not possible for a judicial inspector or internal auditor to be assigned as a CJP inspector or for a CJP inspector to be assigned as a judicial inspector or internal auditor without the approval of the Plenary of the CJP. It should not be disregarded that the Minister of Justice has only one vote in the Plenary of the CJP. An assignment between internal auditors and judicial inspectors takes place within the Ministry of Justice and has nothing to do with the CJP”.

110. While inspectors have significant investigative authority, they are explicitly prohibited from interfering with matters that fall within judicial discretion.<sup>124</sup> While the Board is equipped with significant powers to investigate and ensure compliance, the legal framework seeks to protect judicial discretion from undue interference, which is vital for maintaining the judiciary's independence and integrity.

111. The Inspection Board is composed of a President, three deputies, a sufficient number of chief inspectors, inspectors, and supporting bureaux.<sup>125</sup> The Inspection Board acts on behalf of the Council and operates under the supervision of the Council President.<sup>126</sup> Inspectors are accountable to the President of the Inspection Board, who in turn is accountable to the Council.<sup>127</sup> The Plenary of the Council is responsible for electing the President and deputy presidents of the Inspection Board from among first-class judges and prosecutors.<sup>128</sup>

112. Overall, the organisation of the Inspection Board appears to be appropriate to its function. However, Article 14(2) of the Law on the CJP, by foreseeing the supervision of the President of the Council over the Inspection Board, implies *de facto* an oversight of the executive in the investigation of judges and prosecutors. The Venice Commission recommends assigning this role to a different and neutral figure in the CJP, especially in consideration of the dominant position of the Minister of Justice in the CJP, as described in the relevant section above. In their comments of 21 November 2024, the Turkish authorities reiterated their view concerning the “supervision” of judges and prosecutors and they contended that the “Minister of Justice as the President of CJP does not have the authority to interfere with the reports and appraisal reports drawn by the Inspection Board” and “the inspection authority of the Minister of Justice over the inspection board is a symbolic authority stemming from his/her capacity as the President of the Council”.

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<sup>124</sup> Article 17 (4) of the Law on the CJP.

<sup>125</sup> Article 14 (1) of the Law on the CJP.

<sup>126</sup> Article 14 (2) of the Law on the CJP.

<sup>127</sup> Article 14 (3) of the Law on the CJP.

<sup>128</sup> Article 15 (1) of the Law on the CJP.

## V. Conclusion

113. The Venice Commission has been requested by the PACE Monitoring Committee to prepare an opinion on the composition of the Council of Judges and Prosecutors of Türkiye and the procedure for the election of its members.

114. The Opinion has examined the different categories of members of the CJP, i.e. judges and prosecutors, the non-judicial or lay members, and the *ex-officio* members (the Minister of Justice and her/his Undersecretary), taking into account the manner in which they are elected or appointed, their security of tenure and their functional immunity. It has also examined the size and representativity of the Council, its role in the overall system and its structure: the two Chambers, the Secretariat General and the Inspection Board.

115. The Venice Commission took stock of the past legislative and constitutional reforms affecting the CJP, and its previous opinions dealing with those changes. It paid particular attention to the major modification of the Turkish form of government from a parliamentary to a presidential system, in the aftermath of the attempted *coup* in 2016, and its significant impact on the independence of the judiciary and the separation of powers, which require strongest checks and balances.

116. The Commission assessed the provisions under the Constitution and laws of Türkiye in relation to the CJP against the European and international standards as well as in the light of the social, historical and political context in Türkiye, taking into account that the CJP's powers of discipline and dismissal have been used to a very significant extent since the attempted *coup* of 2016.

117. The Venice Commission recalls that according to the European standards, at least half of the members of the judicial council should be judges "elected by their peers". The reason for this manner of election is to insulate the judicial component from political interference. The judicial members of the judicial council should represent the perspective of the community of judges and prosecutors only. Conversely, the purpose of electing lay members to a judicial council is to obtain a plural, democratically legitimised composition that can help to strengthen the council's external legitimacy and reduce the negative aspects (and deviations) of corporatism.

118. The Commission notes that while eight members of the Turkish CJP are judges or prosecutors, they are not elected by their peers, that is to say by the other judges and prosecutors but are either appointed by the executive or elected by parliament. Indeed, four of them are appointed by the President of the Republic in a discretionary manner, as neither the Constitution nor the Law sets any eligibility or ineligibility criteria, other than the formal membership of a specific category. The Commission recalls in this respect that following the constitutional reform of 2017, Türkiye changed from a parliamentary to a presidential system where the President combines the functions of head of state and head of government, embodying the executive power and being actively engaged in party politics. The four members of the CJP appointed by the President of the Republic are therefore to be considered as political appointees and cannot be considered as "judicial members" within the meaning of international standards. Furthermore, the majority of the seven members elected by the National Assembly are likely to be of the same political persuasion as the President of the Republic, especially given that parliamentary elections are held at the same time as presidential elections. Finally, as the President of the Republic also appoints the two *ex officio* members, the executive can *de facto* choose at least ten out of 13 members of the CJP, thus exerting a strong political influence on the judiciary. In their comments of 21 November 2024, the Turkish authorities argued "that it would be more appropriate to consider the professional careers of these members and their ability to perform their duties impartially and independently, rather than the authority or body by which they were elected". The authorities pointed to the fact that a substantial number of the members appointed through Parliament had a wide level of support behind them.

119. The Commission recalls that only an independent judicial council, whose functioning is shielded from interference by the executive and legislative powers, can guarantee the independence of the judiciary, which is a pillar of the separation of powers and lays at the core of the rule of law. Respecting the rule of law is a prerequisite for the protection of the citizens' rights and freedoms in a democratic country.

120. The Venice Commission therefore makes the following key recommendations:

- Modifying the relevant constitutional and legislative provisions in order to establish a system where at least half of the members of the CJP are judges and prosecutors elected by the different levels of the judicial system and ensuring an appropriate level of diversity in terms of gender, minorities, and geographical coverage, excluding the President of the Republic from the selection procedure, except for a purely formal role of appointment, as well as the National Assembly, as far as judicial (and prosecutorial) members are concerned.
- Removing the Minister of Justice and the Undersecretary of Justice from the CJP.
- Increasing the size of the CJP and the number of non-judicial members elected by the National Assembly, excluding members of the executive and legislative powers as well as candidates with a clear political affiliation, and introducing some legislative amendments, providing that other bodies, such as the Bar Association and universities, operate a pre-selection of candidates to be selected by the Joint Committee, prior to the National Assembly.
- Establishing clearly, at constitutional and legislative level, that members of the CJP should enjoy security of tenure and functional immunity. Strong safeguards should be provided by setting clear and limited grounds for sanction and dismissal, lest of grounds for discipline and dismissal unrelated to the exercise of their functions.
- Providing that the President of the CJP should be a neutral figure, elected by its members; reducing the overall powers of the President of the CJP, irrespective of who shall become the President; and removing in particular the power to consent to inspections and investigations of judges and prosecutors, as well as the power related to criminal investigations and disciplinary investigations and prosecutions related to the members of the CJP.
- Introducing judicial review against all decisions of the CJP.

121. The Commission also recommends:

- Envisaging, at least at legislative level, the possibility to set up two separate sections within each Chamber (as well as in the Inspector Board), deciding respectively on judicial and prosecutorial matters, where the majority of members is represented by the relevant category, as well as modifying the composition of each chamber to have an odd number of members, or providing for other anti-deadlock mechanisms. A minimum number of judges and of prosecutors should be indicated.
- Separating clearly the CJP from the Ministry of Justice, especially regarding the mobility of the inspectors. Attributing to a judge or another neutral position in the CJP the role of appointing the top positions in the Secretariat General and assigning duties to the rapporteur judges, as well as to supervise the Inspection Board.

- Replacing the word “supervising” in Article 159 (9) of the Constitution (that is translated with “inspect” in the Law on the CJP) by a term which does not infer a possible control of the CJP over the judges and prosecutors, and clarifying that the word “inconvenient” in Article 4 (1) (ç) of the Law on the CJP is understood in the sense that the exercise of judicial functions, as well as the permanence of a judge in a post to which she/he has been duly appointed, cannot be terminated for reasons or grounds of opportunity or convenience, but only in cases of objective impossibility to perform the judicial function or disciplinary sanction for very serious misconduct, and in accordance with a fair and equitable procedure.

122. The Commission invites the Turkish authorities to address the above-mentioned recommendations in the course of the “constitutional talks” that are expected to take place in Türkiye in the next months.

123. The Venice Commission remains at the disposal of the Turkish authorities and the Parliamentary Assembly for further assistance in this matter.