REPUBLIC of TURKEY MINISTRY of JUSTICE

TURKISH MINISTRY OF JUSTICE

JUDICIAL REFORM STRATEGY

ANKARA 2009

C O N T E N T S

ABBREVIATIONS

CPC	**:** Civil Procedure Code
ECtHR	**:** European Court of Human Rights
ECHR	**:** European Convention for Human Rights
HAMC	**:** High Administrative Military Court
HCJP	**:** High Council of Judges and Prosecutors
MoD	**:** Ministry of Defence
MoE	**:** Ministry of Education
MoF	**:** Ministry of Finance
MoI	**:** Ministry of Interior
MoJ	**:** Ministry of Justice
TBA	**:** Turkish Bar Association
TGNA	**:** Turkish Grand National Assembly
TJA	**:** Turkish Justice Academy
TNA	**:** Turkish Notary Association
UYAP	**:** National Judicial Network Project

DEFINITIONS

Members of the Judiciary **:** Judges, Public Prosecutors, Presidents and Members of High Courts

Judicial Staff **:** Personnel working at the Courts, Prosecution Offices, Enforcement Offices, Penitentiaries and other judicial units other than Judges and Public Prosecutors.

Judicial Professionals **:** Members of the Judiciary, Judicial Staff and lawyers & notaries

Short Term : 0 - 2 years

Medium Term : 2 - 4 years

Long Term : 4 years or over[1]

[1] Terms are indicated in the Action Plan annexed to the document which shows attainment process of relevant objectives.

SOURCES

- 9th Development Plan (Including the Special Commission Report on Judicial Services) Official Gazzette, 01/07/2006, no: 26215
- National Programme for Adopting the EU Acquis (Official Gazzette of 31/12/2008, No.27097)
- 60th Government Programme (www.basbakanlik.gov.tr)
- 2008 Accession Partnership for Turkey (Council Decision of 18/02/2008, EU Official Gazzette of 2008/157/EC, 26/02/2008, L51)
- ECHR and ECtHR case law (www.echr.coe.int)
- Council of Europe recommendations (www.coe.int)
- Chapter 23 Screening Meeting Documents
- UN Bangalore Judicial Ethics Principles (www.yayin.adalet.gov.tr) (2003/43)
- UN Basic Principles on the Independence of the Judiciary (www.abgm.adalet.gov.tr)
- Council of Europe Recommendation No. R (94) 12 of Committee of Ministers on The Independence, Efficiency And Role of Judges (www.coe.int)
- Turkey Progress Reports of EU Commission (2005 – 2008) (www.abm.adalet.gov.tr)
- Advisory Visit Reports on Functioning of the Turkish Judiciary (2003-2004-2005-2008) (www.abgm.adalet.gov.tr)
- Ministry of Justice Action Plan for 2007-2012 (unpublished)

PREPARATION PROCESS OF THE JUDICIAL REFORM STRATEGY

Screening meetings of Chapter 23 completed on 13th October 2006, unoffical screeing report of Chapter 23 delivered to the Ministry of Justice in August 2007. From this date onwards summary of preparation process of Judicial Reform Strategy is as follows:

- For the purpose of preparing Judicial Reform Strategy a Commission was established with wide participation of different departments of the Ministry of Justice on 3rd January 2008.

- The Commission has started its deliberations in coordination with General Secretariat for EU Affairs which is the coordinator of Chapter 23.

- Contributions of the EU Commission's experts were taken at the meeting held at the General Secretariat for EU Affairs.

- The preliminary draft Judicial Reform Strategy was prepared by the MoJ Commission in order to discuss with stakeholders and take public opinion.

- Preliminary draft was released on the web-site of the Ministry on 14th April 2008 and opinions for the Draft were elaborated.

- The Preliminary Draft was deliberated with participation of chief public prosecutors, heads of justice commission of courts of first instance, presidents of regional administrative courts across the Country and senior officials of the Ministry of Justice on 20-25th May 2008 in Antalya.

- Representatives of the Ministry of Justice presented the Draft Judicial Reform Strategy at the conference organized by the Union of Turkish Bar Associations "Judicial Reform under the shadow of MoJ's Judicial Reform Strategy" and informed the attendants on the draft Judicial Reform Strategy.

- The Draft was sent to the High Council of Judges and Prosecutors, the Constitutional Court, the Court of Cassation, the Council of State, Military Court of Cassation, High Administrative Military Court, Ministry of the National Defense, the Union of Turkish Bar Associations, the Union of Turkish Notaries, Bars and Law Faculties.

The opinions of these institutions were released on the web-site of the Ministry and opened to discussion in order to ensure transparency.

- A workshop was organized in Kızılcahamam Judges Guest House between 8-10th June 2009 and Draft Judicial Reform Strategy was negotiated with the participation of representatives of the Constitutional Court, the Court of Cassation, the Council of State, Military Court of Cassation, High Administrative Military Court, the Ministry of the National Defense, the Union of Turkish Bar Associations, the Union of Turkish Notaries, Bars and Law Faculties and a consensus was reached.

- All the opinions were taken into consideration and necessary revision done and a meeting was held with the EU Commission in order to brief about the process and the Draft on 7th July 2009.

- At the Reform Monitoring Group meeting held in Hatay on 11th July 2009 a decision was taken to submit the Draft to the Council of Ministers for approval and revision according to opinions and recommendations of the Council in order to finalize the Draft.

It is planned that the Judicial Reform Strategy will be submitted to the EU Commission in September 2009.

MAIN OBJECTIVES of the JUDICIAL REFORM

- STRENGTHENING INDEPENDENCE OF THE JUDICIARY
- PROMOTING IMPARTIALITY OF THE JUDICIARY
- ENHANCING EFFICIENCY AND EFFECTIVENESS IN THE JUDICIARY
- ENHANCING PROFESSIONALISM IN THE JUDICIARY
- IMPROVING MANAGEMENT SYSTEM OF THE JUDICIAL ORGANIZATION
- ENHANCING CONFIDENCE IN THE JUDICIARY
- FACILITATING ACCESS TO JUSTICE
- ENSURING EFFECTIVE IMPLEMENTATION OF MEASURES TO PREVENT DISPUTES AND IMPROVING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS
- IMPROVING PENITENTIARY SYSTEM
- NEEDS OF OUR COUNTRY AND CONTINUATION OF LEGISLATIVE WORKS FOR EU HARMONIZATION

INTRODUCTION

Turkey has entered 21st century by making great reforms in the field of law. Apart from the accelerating effect stemming from the Turkey's accession process to the European Union (EU), the requirement for the achievement of contemporary needs for reaching a democratic society has become the utmost care for the law reform.

In December 1999 at the EU Summit, the Heads of the States and Governments of the EU Member States have adopted and declared Turkey's candidacy to full membership to the EU in case of fulfilment of the criteria which have been put before the other candidate countries. To this end, in order to launch the accession negotiations Turkey has been asked to fulfil the Copenhagen Political Criteria, in other words, to take the necessary steps for ensuring "good functioning of the institutions which guarantee democracy, rule of law and fundamental rights and respect for the rights of the minorities".

After the proclamation of Republic in 1923, Turkey has turned her face completely to the west and has shown her determination to adopt and integrate the European values until the current stage of the EU full membership process. The steps which had been taken in order to comply with the Copenhagen Political Criteria gave their result at the end of 2004 and at the EU Summit in Brussels on 17 December 2004, it was decided to launch the accession negotiations between the EU and Turkey. To this end, accession negotiations started on 3 October 2005 under 35 EU Acquis Chapters.

The full membership accession negotiations have been carried out simultaneously with Croatia's negotiations and in the first stage the screening meetings have been held on the Turkish legislation and Acquis Communitaire mutually in order to determine the harmonization level of Turkish legislation to the Acquis. Accordingly, bilateral screening meetings have been held on Chapter 23, "Judiciary and Fundamental Rights" which was separated from Chapter 24 "Justice, Freedom and Security" and put before Turkey and Croatia for observation of Copenhagen Political Criteria during the negotiation process. Although the screening report of this chapter has been adopted by the EC Commission and submitted to the Member States for approval, this process has not been completed yet.. However, the Commission officials have emphasized the need for submission of a "Judicial Reform Strategy" by Turkey to the Commission towards strengthening impartiality, independence and efficiency of judiciary.

In recent years there have been many important studies and works achieved regarding the legislation and implementation in judiciary in Turkey. In a wide scale these studies have been carried out in order to achieve the urgent needs but did not have a solid plan of work. For this reason, the need for continuation of reform studies under a framework of a plan and principle of envisioning has been emerged. With this regard, the 9th Development Plan which comprises the years 2007 to 2013 and was adopted by the Parliament with the decision dated 28 June 2006 and No: 877 seems one of the most important documents. This plan, which is also in line with the full membership negotiation process, determines the next 7 years development strategy of Turkey. Under the topic of 5.6.5 "Improving the Judicial System" of the said plan, after indication of the recent years' developments in the judicial system and the insufficiencies on this field have been determined and needs for a contemporary judiciary have been emphasized. Accordingly, within the framework of 9th Development Plan studies a commission called "Special Expertise Commission of Judicial Service" which has been composed of participants from universities, judicial institutions, civil society and Ministry of Justice has prepared a report in order to determine the concrete steps to be taken for sound and contemporary functioning of Turkish Judiciary.

An important reference has been made in the 60th Government Program for independent, impartial and efficient functioning of judicial system. With this regard, the Government has declared the impartiality and independence as prerequisites for ensuring the justice and committed itself to continue the justice reforms with determination; adopt new legislation on alternative dispute resolutions in order to ensure speedy, simple, cheap and efficient resolution of disputes and diminish the current workload of the courts. Besides, the Government has commitments in its program to reach the EU standards with regard to legislation and increasing the judicial and administrative capacity of the judiciary.

The Strategic Development Department of the Ministry of Justice has established a commission to draft a "Judicial Reform Strategy" which will comprise the years 2009-2013 by taking the commitments of Turkey to the EU and the priorities in the 9th Development Plan and its "Special Expertise Committee of Judicial Service" report into account. Apart from Strategic Development Department, many experts from different departments of the Ministry of Justice have been involved in this commission. In preparation of the draft strategy, first of all, the main objectives depending on fundamental rights and freedoms to ensure the independence, impartiality and efficiency have been determined and then the aims (purposes) to achieve the main objectives have been described.

The draft "Judicial Reform Strategy" has prepared under the following ten main objectives:

1. Strengthening Independence of the Judiciary
2. Promoting Impartiality of the Judiciary
3. Enhancing Efficiency and Effectiveness in the Judiciary
4. Enhancing Professionalism in the Judiciary
5. Improving Management System of the Judicial Organization
6. Enhancing Confidence in the Judiciary
7. Facilitating Access to Justice
8. Ensuring Effective Implementation of Measures to Prevent Disputes and Improving Alternative Dispute Resolution Mechanisms
9. Improving Penitentiary System
10. Needs of Our Country and Continuation of Legislation Work for EU Harmonization

Apart from the domestic resources, the international conventions to which Turkey is a party and the relevant EU Acquis have also taken into consideration in drafting the Reform Strategy. In this regard the following documents represent basis for the Reform Strategy:

1. 9th Development Plan (Including Justice Services Special Expert Commission Report)
2. National Programme for Adopting the EU Acquis
3. 60th Government Programme
4. 2008 Accession Partnership for Turkey (26th February 2008)
5. ECHR and ECtHR case law
6. Council of Europe recommendations
7. Chapter 23 Screening Meeting Documents

8. UN Bangalore Judicial Ethics Principles (2003/43)

9. UN Basic Principles on the Independence of the Judiciary

10. Council of Europe Recommendation No. R (94) 12 of Committee of Ministers on the Independence, Efficiency And Role of Judges

11. EU Commission's Progress Reports on Turkey

12. Advisory Visit Reports on Functioning of the Turkish Judiciary

13. Ministry of Justice Action Plan for 2007-2012

The Draft Judicial Reform Strategy will be implemented through an Action Plan which will cover the activities, timetable and the necessary budget in order to reach the objectives and purposes foreseen in this document.

The Draft Judicial Reform Strategy will be revised annually by the Ministry of Justice considering the fulfilment of the designated objectives and purposes in order to ensure flexibility of implementation.

1. STRENGHTENING INDEPENDENCE OF THE JUDICIARY

The issue of independence of the judiciary which has continuously been on the agenda of the country as it was in the past years continues to be the one of rigorously argued matters.

Articles 138, 139 and 140 of Constitution of 1982 are the basic domestic provisions in the field of independence of the judiciary. Under Article 138, judges shall be independent as regards their tasks. They render their judgements according to their conscience in compliance with law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, no questions shall be asked, debates held, or statements made in the Parliament relating to the exercise of judicial power concerning a case under trial. Likewise, Article 139 of the Constitution guarantees profession of judge and public prosecutors and prevents dismissal, retirement or abolishing their post arbitrarily which will impede functioning of judges independently. They can't be deprived from salary, allocation and other rights, even a court

and permanent staff is abolished. There are exceptions in the view of the ones who received a sentence due to a crime which requires to be dismissed from the profession, who cannot fulfil their tasks due to health reasons or who are considered not suitable to remain in the profession.

The issue of independence of the judiciary has continuously been in the agenda of the country for a quarter century particularly after adoption of the 1982 Constitution. However, it had been intensively discussed for decades before and after the 1961 Constitution as well.

In Turkey, Articles 138, 139 and 140 of the 1982 Constitution are the basic domestic law rules in the field of independence of the judiciary. According to Article 138 of the Constitution, judges shall be independent in discharging their duties; no organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, no questions shall be asked, debates held, or statements made in the Parliament relating to the exercise of judicial power concerning a case under trial. Likewise, Article 139 of the Constitution guarantees profession of judge and public prosecutors and prevents dismissal, retirement or abolishing their post arbitrarily which will impede functioning of judges independently.

The High Council of Judges and Prosecutors (HCJP) is charged with selection of members of the Court of Cassation and the Council of State, appointment, transfer, promotion, disciplinary procedures and other personnel processes of all judges as well as public prosecutors according to Article 159 of the Constitution.

The HCJP is composed of the Minister of Justice as the President of the Council, the Undersecretary of the Minister of Justice, members of the Court of Cassation and the Council of State nominated by the Plenary Session of each High Court and appointed by the President of the State.

In parallel with the efforts for strengthening independence of the judiciary in Turkey, 9th Development Plan and 60th Government Programme has attached great importance to this issue. In this context, taking into consideration of the European Union accession process, these issues will be reviewed in the ongoing constitutional drafting studies. Steps planned to realize that objective are given below.

1.1. In the light of international instruments, redefining tasks of Constitutional Court and restructuring it accordingly[2]

Considering gradually increasing workload and work type, it is getting harder for Constitutional Court, comprised of one board with 11 members, to perform effectively and efficiently and to produce case law bringing new dimensions for fundamental rights and freedoms therefore, towards the goal of restructuring the Court, in line with tasks and types of composition of constitutional courts in the European countries and taking into consideration the draft prepared by Constitutional Court in the past years, it will be ensured to restructure the Court and define its tasks.

1.2.Restructuring High Council of Judges and Prosecutors to provide representation of the judiciary as a whole on the grounds of objectiveness, impartiality and transparency in the light of the international documents and providing an effective objection procedure against decisions of the High Council and providing judicial remedy.

As mentioned above Article 159 of the Constitution regulates the HCJP. Accordingly, president of the High Council is Minister of Justice. The Undersecretary of the Ministry of Justice is ex-officio member. 3 regular and 3 substitute members of the Council shall be appointed by the President of the Republic for a term of four years from a list of 3 candidates nominated by the Plenary Assembly of Court of Cassation to each vacant post from among its members. 2 regular and 2 substitute members shall be similarly appointed from a list of three candidates nominated for each vacant post by the Plenary Assembly of the Council of State. Members of the High Council may be re-elected at the end of their term of office. A Deputy Chairman of HCJP is elected among its regular members.

The HCJP is competent with the admission of judges and public prosecutors within the civil, criminal and administrative judiciary into the profession, appointment, transfer to other posts, temporarily authorization in a different courthouse, promotion and designation to first class, allocation of posts, deciding against those whose continuation in the profession is found to be unsuitable, imposition of disciplinary sanctions, and dismissal from the post. Additionally, it performs other duties bestowed in the Constitution and laws. Decisions of the High Council cannot be appealed at any court. The Law on High Council of Judges and Prosecutors, Law no: 2461, regulates High Council's performing of its duties, selection and working procedures and criteria for reviewing objections. Under the Article 16 of the Law proceedings and relevant delibrations in the High Council are confidential.

[2] This aim was added by MoJ after Kızılcahamam meeting

In Turkey, there are certain criticisms on formation and working method of the High Council which have been expressed by different circles and have been subject to academic studies for years. Thus the aim is restructuring the High Council of Judges and Prosecutors to provide representation of the judiciary as a whole on the grounds of objectiveness, impartiality and transparency in the light of the international documents and providing an effective objection procedure against decisions of the High Council and providing judicial remedy.

1.3.In parallel with the restructuring of the HCJP reorganization of secretariat of the High Council and the inspection system

The secretariat services of the HCJP is performed by the DG Personnel Affairs of the MoJ in accordance with the Article 18 of the Law on Organization of Ministry of Justice, No: 2992 and Article 10 of the Law on High Council of Judges and Public Prosecutors No: 2461. In parallel with the re-structuring of the HCJP based on a wider range representation of the judiciary, it is aimed to restructure the secretariat service of the HCJP by the expected Constitutional amendment in order to prevent unification of proposal and decision authorities in one hand. Besides, in order to ensure HCJP to work under more appropriate conditions, it is considered that the High Council should have fiscal autonomy and have an independent premise to conduct its administrative and fiscal tasks.

In contemporary legal systems allegation side and decision authority are separated institutionally and procedurally. Considering this principle, the inspection system will be re-structured in parallel with the re-structuring of the High Council in line with the principle of preventing unification of allegation side and decision authority.

1.4.Review of promotion system for judges and prosecutors including grading system with the restructuring of HCJP and functioning of Courts of Appeal

In accordance with Article 140 of the Constitution, the promotion of the judges and prosecutors in their careers would be regulated by law based on the principles of independence of the courts and guarantees for judges.

According to Article 159 of the Constitution and Article 18 of the Law on Judges and Prosecutors No: 2802, High Council of Judges and Public Prosecutors is the competent authority for deciding on promotion of the judges and public prosecutors.

Different from the systems that do not envisage promotion for judges and prosecutors, in

our country the system accepting promotion is adopted by the Law No: 2802. In this law the criteria regarding the evaluation of the performance of the judges and prosecutors are defined. In addition, with the resolutions of the HCJP, the criteria regarding the promotion are regulated and published in the Official Gazette.

However, for many years, there are some criticisms among judiciary regarding the criteria of grades given by the High Courts and number of files examined in appeal. These criticisms are focused on the following points:

- With the grading system for the promotion which is an administrative proceeding, High Courts become as administrative authorities over judges and public prosecutors besides being judicial authorities which examine the judgments of the lower instance courts

- Considering the importance of the grades for promotion, judges tend to obey the high courts' case law strictly while giving their judgments and this affects the development of case law negatively.

- The condition of having certain number of files which are graded in order to promote causes problems especially for the members of judiciary which have less workload.

Taking into consideration the criticism mentioned above regarding the grades, the promotion system will be revised with the functioning of appeal courts.

In the upcoming regulation, instead of assessing only the cases filed for the appeal which is beyond the judges and prosecutor's control, it is planned to take into account all the decisions filed or not filed for the appeal and the work accomplished directly by judges and prosecutors for the calculation of their success.

1.5. In the framework of the right to freedom of association, establishment of Union of Judges and Prosecutors without restricting freedom of association

Considering in most of the western countries there are professional associations of members of the judiciary, as in the other professions, in order to meet common needs of members

of the judiciary, to facilitate their professional activities, to safeguard professional discipline and professional ethics, an idea of establishing a professional union having legal entity status has for a long time been under consideration and stated by academicians and relevant professional organizations and NGOs.

In line with the aforementioned need, our Ministry has made studies regarding establishment of the Union of Judges and Prosecutors which will have administrative and financial autonomy and this issue has been discussed in the seminar with the participation of experts invited from Europe and from Turkish judiciary and the draft Law has been finalized after the evaluation of opinions and proposals raised in the seminar. The draft is currently before the Committees of the Turkish Grand National Assembly.

Under the draft law, it is considered to open branches wherever suitable and to select the Union and branch organs through procedures indicated by law with secret ballot under the judicial supervision. Furthermore, it is stated under the draft law that enrollment of judges and prosecutors to the Union will be subject to personal will.

Unlike the other associations in the country, it is envisaged that the Professional Union shall not be subject to the supervision of the Ministry of Interior and Governorships.

On the other hand, the provision which restricts right to freedom of association of judges and prosecutors will be removed from the draft which is on the agenda of the Parliament.

1.6. Studying on strengthening awareness of judicial professionals and the public on independence and impartiality of judiciary

In terms of rule of law, it is an obvious requirement to materialize the independence and impartiality of the judiciary in public life rather than keeping it as a principle laid down in the Constitution and in the laws. In this context, it is a must that judicial professionals shall internalize the independence and impartiality of the judiciary and make it a part of their culture.

In order to reach this aim, studies will be undertaken in order to raise awareness of all judicial professionals including trainee judges and public on the independence and impartiality of the judiciary. Towards this aim, it is planned to organize seminars and conferences by the Turkish Justice Academy in order to make judicial professionals internalize the independence and impartiality of the judiciary and make it a part of their culture.

1.7. Enabling formation of military courts only with professional military judges

Under Articles 2, 3 and 4 of the Law on Establishment and Procedure of Military Courts, qualification and appointment of army officers who are not from the judicial profession have been arranged. According to this, at the military courts working as a panel, one member is not from military judicial profession but from warrior class. Members from warrior class attracts criticism since it is assessed that their selection procedure, term of office and security of tenure may affect independence of judiciary.

In accordance with the criticisms raised in the reference documents, presence of officers at these courts will be reconsidered.

Appointment of Members from warrior class will be reviewed pursuant to criticism asserted by the judgment of the Constitutional Court dated 07/05/2009,which annulled the pertinent provision of Law No.353 and one year period was given for the amendment. Necessary regulations will be accomplished in line with the Constitutional Court's judgment.

1.8. Removing the military courts from the military forbidden zones

In terms of ensuring a fully fair trial and defence right, it is necessary to take relevant measures to provide physical areas in which relevant persons easily can enter and through which they can follow trials, by taking military court buildings outside the military security zones.

When this matter is being regulated, security will be one of the important issues that should be considered. Therefore, when these courts deemed necessary to be located in military zones, entrance of these buildings should be planned in a way that they should be separated from entrance of military buildings and easily ways for access of citizens to these buildings should be arranged.

1.9. Reconsidering duties and competence of the military courts

Amendments for preventing civilians to be tried before military courts have been made in relevant articles of the Law No: 353 on Establishment of Military Courts and Judgment Procedure through Law No: 5530 on 29 June 2006. According to this, the trials of civilians for their crimes subject to Military Criminal Law shall be conducted by general competent courts at the time of peace. In addition, by forthcoming provisions, the jurisdiction of military courts shall be redefined in the framework of the requirements of democracy and rule of law.

1.10. In the light of the principle of right to a fair trial transforming the High Administrative Military Court proceedings into two-level system

High Administrative Military Court has been set up as a court of first and last resort for the disputes concerning military officers and resulting from administrative transactions and actions of military nature even if they are conducted by non-military offices. Under Article 63 of the Law No. 1602 that governs the functioning of the Court, decisions of Chambers and the Board of Chambers are final and no mechanism for appeal against those decisions exists. Although, provisions as regards retrial and rectification of decision are set out under Articles 64 and 66 respectively, they are regarded as extraordinary appeal and cannot ensure proper legal remedy.

Besides, it is emphasized under Article 13 of the European Convention on Human Rights that those whose rights have been violated have the right to make an effective application to a national authority. Having regard to it, efforts will be made in cooperation with relevant authorities in order to create an effective mechanism for appeal against decisions taken by Chambers and the Board of Chambers of the HAMC as a court of first instance.

2. PROMOTING IMPARTIALITY OF JUDICIARY

Impartiality of judiciary is vitally important as much as independence of judiciary for establishing a strong and reliable judicial system. Impartiality of judges have been given great importance under the Bangalore Principles of Judicial Conduct which has been endorsed by the United Nations and Council of Europe. The Program of the 60th Government gives special emphasis to impartiality besides independence of the judiciary.

Although the Constitution of Republic of Turkey seems to give more emphasis to the notion of independence, elements of an impartial judiciary are also covered by the relevant provisions of the Constitution. While there has not been serious criticism towards the impartiality of Turkish judiciary, for some reasons arising from the implementation, some further steps need to be taken in order to ensure that judiciary is completely impartial in line with the Constitution and international instruments and, equally important, this principle of impartiality is internalized by judiciary members and perceived correctly by the public.

2.1. Studying in cooperation with high courts and HCJP in order to prescribe the code of ethics for judiciary members

"The Bangalore Principles of Judicial Conduct" which are accepted as general principles in the field of judicial conduct was adopted by the HCJP on 27th June 2006 with the decision No.315 and recommended to the judges and prosecutors. Furthermore, "the Budapest Principles" which set the ethical rules for prosecutors in Europe were adopted with the decision of HCJP No.424, dated 10th October 2006 and announced to the judiciary. Besides, a set of ethical principles for members of judiciary are mainly included in the Law on Judges and Public Prosecutors and in other pieces of legislation.

In addition to that, there does not exist a Code which properly brings together the various provisions envisaging ethical principles for members of judiciary in different laws. It is considered that such a Code would make important contribution to judicial impartiality and proper understanding of impartiality, among other things.

Therefore, taking into account the relevant international instruments, a document consisting of all judicial ethics and codes of conduct will be produced in cooperation with high courts and HCJP and training on this subject will be conducted for members of judiciary by the Turkish Justice Academy.

2.2. Raising awareness of media professionals on impartiality of the judiciary

Regarding the impartiality of the judiciary, discussions come out on the possibility of influences on the impartiality of the judiciary through broadcasts on pending cases or prosecutions that may be subject to future proceedings before courts. In fact the subject has importance from independence and impartiality of judiciary and freedom to receive and broadcast news points of view and hence, a delicate balance needs to be struck.

Provisions aiming to secure the right to a fair trial and impartiality of courts have been arranged under the second section of the Turkish Criminal Code, Law No: 5237 with the title "offences against judiciary". Awareness raising activities specifically and primarily about this issue will be conducted for media members.

2.3. Under the condition of protection of personal data, facilitation of access to High Court decisions

All judgments of Constitutional Court and Court of Jurisdictional Disputes are published in Official Gazette and they are available through Internet. On the other hand, few judgments of Court of Cassation and Council of State which are considered to be a sample for similar cases by the Chamber are published.

Since not all of the judgments of Council of State and Court of Cassation are published, members of judiciary, academics and public do not have a complete opportunity to access, examine and have a scientific criticism on the judgments. At the same time when it is taken into account that Court of Cassation and Council of State give judgments more than hundreds of thousands, it is understood that an advanced technology and human resources capacity is needed to publish all these judgments.

All the necessary legal and technical infrastructure will be established under the condition of protection of personal data and all necessary works will be undertaken in cooperation with the high courts which will enable judges, prosecutors, lawyers and academics to access all significant precedents of Court of Cassation and the Council of State and reach them online in order to make scientific research and criticism and ensuring better unification of case-law.

2.4 Under the condition of protection of personal data, providing public access to disciplinary decisions of the HCJP

Judges' and prosecutors' conduct which require disciplinary sanctions are set out in the Law on Judges and Prosecutors, Law No: 2802. Significant part of these conducts is deemed as a breach of "impartiality of judge." HCJP imposes disciplinary sanctions on judges and prosecutors who committed disciplinary offences. Since these decisions are only notified to the person concerned, it is not possible reaching them by the public.

As required by the principle of certainty in criminal offences and penalties which is one of the fundamental principles of law, judges and prosecutors are entitled to know the disciplinary offences and penalties by which they can be punished. Moreover, the principle of transparency requires publicity about the decisions taken regarding disciplinary penalties for judges and prosecutors.

Therefore, in order to obtain the result defined above, a regulation will be made to make

the decisions of HCJP on disciplinary penalties published while abiding by data protection rules.

Thus, disciplinary penalties imposed on judges and prosecutors will be an example to all members of judiciary and it will contribute to judicial impartiality, fight against corruption and increasing transparency of decisions of HCJP.

2.5. Reviewing disciplinary provisions in Law on Judges and Prosecutors (Law No:2802) to provide objective criteria

Under Article 62 of Law No 2802, seven types of disciplinary sanctions have been regulated;

- warning,

- deduction from salary,

- condemnation,

- suspension of grade promotion,

- suspension of degree promotion,

- change of location,

- dismissal from profession.

Some of these provisions are subject to criticism since vague terms were used in the text and are not based on objective criteria. Therefore, studies will be carried out to provide the disciplinary sanctions provisions for judicial professionals with precise, clear and well-defined.

3. ENHANCING EFFICIENCY AND EFFECTIVENESS IN THE JUDICIARY

Proper, efficient and effective functioning of the judiciary constitutes one of the essential elements of being a state governed by the rule of law. These characteristics are also sine qua non for creating trust to a judicial system.

Thanks to recent reforms in Turkey, significant developments were achieved. Within this

context, regional courts of appeal were introduced to the Turkish legal system by the Law No: 5235. Also, Turkish Civil Code, Turkish Criminal Code and Criminal Procedure Code were revised to constitute a contemporary legal system.

Besides developments in legislative area, in order to strengthen the infrastructure of the judiciary, new courthouses were constructed and are being constructed. Turkish judiciary widely benefits from the computer technology, the most leading invention of our era. The National Judicial Network Project (UYAP), for which works are still going on under the umbrella of the Ministry of Justice, provided the online connection of the Turkish courts with many state institutions as well as with other courthouses. Lawyers and citizens can also benefit from UYAP system and they may follow their cases at courthouses in a sppedy way.

Measures have been taken to improve the specialization in the judiciary and specialised courts such as family courts, intellectual property courts and juvenile courts have been established.

Considerable increase in the budget allocated from the general budget for the judiciary has been provided. Furthermore, to enable more efficient working of the personnel and to fill the vacant positions, courts with a less workload were closed down.

However, lack of enough personnel still continues to be a problem for the judiciary. To solve this, more importance is given to speed up the recruitment of new judges, prosecutors and judicial personnel and to increase their capacity of work.

Since the special characteristic of the judiciary, the mechanism functions slowly. Nevertheless, to make the Turkish judicial system modern and effective, legal amendments are made and necessary measures are taken to increase the number of personnel and to develop the infrastructure.

3.1. Providing operation of Courts of Appeal in civil and criminal judiciary

According to Law no: 5235, regional courts of appeal were established in 9 provinces in 2007 with the approval of the High Council for Judges and Prosecutors. However, because of insufficient infrastructure and vacancies, they are not currently functioning. The regional courts of appeal which will contribute to the efficiency and the effectiveness of the judiciary will start to function in 2010 following completion of the deficiencies which are mentioned above.

3.2. Establishing and making operational of Courts of Appeal in administrative judiciary

The highest judicial authority in the administrative judicial system; the Council of State has an excessive workload likewise the Court of Cassation. Consequently, the Council of State deals with the appellate reviews of the previous years and could not function as a case-law court which is the main task for such an authority.

In parallel to that of the general judicial system, the introduction of two level review procedure in the administrative judicial system; targets to enable the Council of State to function as a case-law court and contribute to the administrative judicial system to function in an effective and efficient way.

Different than in the civil judiciary, the presence of Regional Administrative Courts in the current administrative judicial system will facilitate the introduction of regional appeal system. Therefore, it is assumed that there will be no need for extra personnel and infrastructure for the introduction of this new review procedure in the administrative judicial system.

3.3. Carrying out activities in cooperation with the Turkish Bar Association for increasing the efficiency of the defence within the framework of the right to a fair trial and the principle of the equality of arms

Activities will be carried out together with the relevant stakeholders for increasing and improving the efficiency of the defence before and after the trial period as the defence constitutes the “striking element” and “stakeholder” of the independent judiciary.

The quality of a judgment is in direct proportion with the quality of its “stakeholders”. This reality initially requires the improvement of the law education. The advocacy which plays a significant role in terms of “ judicial dialectic”, faces some problems such as the conditions for the acceptance to the profession, in- service training, the limited possibilities of a broader and more efficacious internship, the status of the lawyers in view of the administrations and the fact that the working conditions of the young lawyers are not appropriate with the importance of their profession.

The lawyers which constitute the defence part of the judicial dialectic, play an important role in the criminal and civil judiciary in terms of the fair trial. It is necessary to take measures in cooperation with the relevant institutions regarding the collection of the evidences by the lawyers and their submittal to the court; the examination of the evidences by the lawyers submitted by the

other parties and the prosecution; improving the efficiency of the compulsory advocacy; enabling the family meetings in prisons without any obstacles except reasonable measures and effectuating the principle of "defence starts with allegation". The implementation of the "equality of arms" which is the most important element of " the right to a fair trial", depends on the existence of the above mentioned conditions. Moreover, its preventive effect for the human rights violation will be used.

Joint activities will be carried out with Turkish Bar Association regarding the competences of the Ministry of Justice in criminal investigations and prosecutions of the lawyers and the regulation that enables MoJ to annul and approve the decisions taken by the association.

3.4. Paying attention to the principles of availability to judicial control and objectiveness in selecting trainee judges and prosecutors and increasing quantity of judges, public prosecutors and judicial staff to a sufficient level

Currently, considerable vacant positions exist for judges and prosecutors and justice personnel.

Taking into account the start of the functioning of regional courts of appeal, and vacancies resulted from retirement, resignation, death and other reasons, it is aimed to fill in the mentioned vacancies and obtain new staff and in this way to eliminate human resources insufficiency of the judiciary.

Within this context, vacancies will be filled by 2012 respectively with human resources planning. On the other hand necessary efforts will be made in cooperation with relevant institutions in order to use objective and accountable criteria for selecting trainee judges and prosecutors.

3.5. Merging courthouses with the geographically close ones or courthouses with a less workload to the nearest one

In previous years 137 courts situated in very small provinces are closed, however, there are still others which do not have enough workload or established very close to each other, hence, constitute unnecessary use of resources. In addition to this, in some places, despite the closure of the courts in the same jurisdiction territory, enforcement offices still continue to serve inefficiently.

Consequently, by the closure of these enforcement offices and merging the closely situated courts or the ones which do not have enough workload, it will be contributed to offer more qualified

judicial services and efficiency in the employment of human resources.

3.6. Continuation of improvement of physical capacity of courthouses in the framework of determined principles

The MoJ aims to provide the judicial services in contemporary environment by benefiting from high technological facilities. Since 2003 construction of independent courthouses throughout the country have been started and most of them put in service. While carrying out these construction works, not only the courthouses which are in the government buildings become independent but also new projects are developed for the over-populated and over-burdened places such as Istanbul and Ankara whose courthouses are not sufficient. In deciding the projects of new courthouses the issues of convenience for working conditions and contemporary architectural aspects are taken into account. In order to produce buildings which serve for many years to judiciary the necessity lists are prepared by taking into consideration the population, population growth rate, workload and jurisdiction field of the district.

Furthermore, in the construction of new courthouses, the satisfaction of bars, lawyers, and other beneficiaries is aimed, in particular efforts are in place for the needs of disabled citizens in order to receive judicial services easily and comfortably.

Within this context, since 2003, construction of many courthouses including one forensic medicine building have been completed in 78 provinces and sub-provinces. Construction efforts will continue within a programme and with a great momentum.

3.7. Considering international practice and necessities wide spreading the specialized courts

The specialised courts will continue to be spread throughout the country by taking into account the geographical situation of the relevant territory and workload pursuant to opinions of HCJP.

3.8. Strengthening capacity of the Forensic Medicine Institution

Forensic Medicine Institution, an affiliated institution to the Ministry of Justice, is charged with offering expert witness services to judiciary, coordinating and implementing training programmes, symposiums and conferences within the context of its tasks, forensic medicine expertise and related topics of its expertise. Forensic Medicine Institution is a member of the European Networks of Forensic Sciences (ENFSI).

Until the year 2002 Forensic Medicine Institution served with 13 divisions, 20 specialized sub-divisions established within the divisions and 39 branches. Spreading the services of the Forensic Medicine Institution throughout the country has a paramount importance. For that reason, establishment of forensic medicine branches in all required aggravated felony court centres has been targeted.

Within this context from the year 2002 onwards, 1 division, 3 specialized sub-divisions and 46 branches were established. Thus currently Forensic Medicine Institution serves with total of 122 forensic medicine units comprising 14 divisions, 85 branches and 23 sub-divisions. Additionally, efforts to transfer to the MoJ forensic medicine experts employed within the Ministry of Health are underway.

In this regard cooperation has already been developed with 24 Universities which have Colleges of Medicine, and efforts to establish cooperation with Colleges of Medicine which have these kinds of facilities are continued. .

3.9. Appointment of judicial counsellors to Turkey's certain Embassies

In order not to delay in pending court proceedings due to correspondence with judicial institutions of foreign countries and which requires speedy cooperation in regard to extradition of criminals, mutual assistance and transfer of the convicted addressing issues as such faster and productive manner it is considered that having judicial counsellors will be beneficial in Turkish Embassies of certain countries such as Germany, France, Belgium and Netherlands in which Turkish citizens densely populated.

In particular with respect to extradition of criminals, Turkey is a Country that executes all the requests for mutual legal assistance from European Countries but its requests are not executed sufficiently by those states.

Specifically for Ministry of Justice that has a key role concerning the issues of political criteria, judiciary and fundamental rights, justice, freedom and security, it is considered that having representative of the Ministry will be beneficial at Turkey's Permanent Delegation to EU with regard to providing contribution to negotiations in this area.

3.10. Completing UYAP (National Judicial Network Project) and providing effective functioning of the system

UYAP is currently used in all judicial institutions including the Ministry, 134 Felony Court Centres, 588 Courthouse-Prosecution Offices, 25 Regional Administrative Courts, Penal Enforcement Institutions, 83 Forensic Medicine Centres.

While conducting judicial service, information and documents sent by other institutions are of paramount importance. The delays cause an extension in finalising the cases. In this context, to set an integration is of great importance with other institutions via e-justice.

UYAP was completely integrated to DG for Criminal Record of the MoJ, MERNIS, SECSIS, Court of Cassation Information System, Vakıfbank, KIHBI (smuggling and intelligence units), OSYM (Student Selection and Placement Centre), Central Bank, POLNET, TAKBIS(land registry and cadastral works), AVEA, TURKCELL and Telecommunication Institution. Work is underway to integrate UYAP to Ministry of Interior Department of Associations, MASAK, SGK, NOTER.NET (Notary Information System), Customs Information System, ASAL (department of military recruitment) and other related institutions.

It is very important for the infrastructure of hardware and software to comply with contemporary technological innovations. So, the infrastructure will be developed continuously.

Apart from renovating outdated equipment, obligation of the Ministry to establish voice and image recording system will be fulfilled in all regions of heavy penal courts. In this scope, centres of voice and image recording have been established in 1 law enforcement institution, 224 heavy penal courts, 225 places in total.

Qualified and trained technical staff will be recruited taking into consideration of the UYAP's coverage, size and advanced phase.

3.11. Spreading the usage of electronic signature in civil, criminal and administrative judiciary

Electronic signature is already applied in all judicial organisation in Turkey and currently 24. 244 who has electronic signature authorization such as judges and prosecutors are actively using it. Currently, 7848 lawyers can open cases in electronic environment. The transformation to the electronic signature for the efficient and effective usage of the UYAP by the entire judicial

organisation has been completed and efforts will be made for more effective use.

3.12. Continuation of training to enhance strategic management capacity and drafting MoJ's strategic plan

Under Article 9 of the Law No. 5018 on Public Financial Management and Control, all public institutions have to prepare strategic plan.

Strategic plan determines the activities to be carried out with budget allocated for the Ministry within the period 2010-2014

The Ministry has prepared a strategic plan. It has been sent to Undersecretary of State Planning Institution to obtain its opinion and recommendations. It has become ready to be publicized after necessary amendments made.

It is beyond doubt that the efficiency and effectiveness of the judiciary will be affected in a positive way when the activities of the Ministry of Justice which is responsible for the performance of judicial service are planned for long terms through a strategic plan and having a systematic and proper implementation in parallel with this plan.

3.13. Diminishing the types of cases heard by High Courts as first instance

The Court of Cassation and the Council of State deal with certain cases as courts of first instance pursuant to Articles 155 and 156 of the Constitution respectively although they are established as supreme courts by the Constitution.

In addition to the difficulty to reconcile the fact of functioning of these courts as first instance courts with their characteristics, the workload of the supreme courts increases due to their functions as first instance courts.

On the other hand, appeal to second instance has been established in civil and criminal procedures, and the regional courts of appeal will start functioning in 2010. Likewise the work is underway for setting up appeal courts in administrative judiciary.

Therefore efforts will be made to diminish the type of cases heard by Court of Cassation and Council of State as first instance in cooperation with High Courts.

3.14. Rearrangement of the "Law on Service"

The problems in connection with service occupies considerable space in judiciary and particularly legal transactions. Mistakes, deficiencies and misconduct in service may give rise to even violation of the right to a fair trial. On the one hand the service should be safe and smooth on the other hand in a shortest time, the cheapest and the simplest way.

The most important amendment made to overcome the problems encountered in practice is adoption of address record system adopted in the Law No. 5490 on Population Registry Service of 25/4/2006 to the Law on Service. By the new changes, labor and time consumption will be prevented.

With these provisions, while contribution is to be made to respect reasonable time limit principle of the right to fair trial, it is ensured that service is to reach the address safely. On the other hand, it is considered that in principle, the possibility for optional "service via e-mail" will be introduced and consequently "electronic notice by publication" will be introduced.

In addition, by efforts to be undertaken, simple and easy procedure will be developed for service to Turkish citizens in foreign countries. Furthermore, new provisions will be enacted as regards direct service to courts, prosecution offices and enforcement offices which has been well-rooted in practice but has had no legal basis.

3.15. Adoption of the new Civil Procedure Code

The Draft Law on Civil Procedure has been submitted TGNA and is on the agenda of Justice Commission which aims to eliminate the shortcomings arising from the implementation of the current Civil Procedure Law No:1086, to ensure that cases are dealt with rapid, simple, efficient and cost-effective and some disputes are handled by means of uncontested claim, reconciliation and mediation, to reflect recent developments made in the comparative law to civil trial, to revise the Law No:1086 and to bring it in conformation with the contemporary day's conditions.

3.16. Enhancing efficiency of civil enforcement and bankruptcy system

Ineffective functioning of civil enforcement and bankruptcy offices adversely affect economic life and undermine the confidence in judicial service. Attainment of legal security in economic life and protection of social peace depend on designation of this function in a fast, efficient and fair manner.

In its judgments on the right to a fair trial, the European Court of Human Rights interpret enforcement and bankruptcy proceedings within the concept of reasonable time limit.

Problematic areas in enforcement and bankruptcy system are summarized under the following titles; excessive workload, malfunctioning of organizational structure, deficiencies in quantity and quality of human resources, wrong practices, deficiencies in physical and technical infrastructure.

Revising the Law on Civil Enforcement and Bankruptcy is one of the important steps to improve the system. With the new amendments, compatibility with the EU legislation and international practices will be taken into consideration.

Currently, civil enforcement and bankruptcy-related powers conferred by law upon the Ministry of Justice are exercised by different bodies within the Ministry. With efforts to be exerted, a body regarding civil enforcement and bankruptcy system will be established to carry out studies for efficient functioning of civil enforcement and bankruptcy system.

Inspection of civil enforcement and bankruptcy offices are conducted by justice inspectors, enforcement judges and assigned public prosecutors. The goal is set to determine standards by a body to be established within the Ministry in order to make this inspection efficient.

In addition, efforts are planned to be made to increase the capacity of human resources of civil enforcement and bankruptcy offices. With the studies to be conducted, introduction of civil servants in civil enforcement and bankruptcy offices and abolishment of appointments from other bodies are envisaged. Ethical principles will be set for civil servants by taking into account different features of enforcement and bankruptcy offices.

No provision exists as regards trustee store of seized property in our country. Licensed trustee stores will be established and new provisions will be adopted as regards running these stores. After completion of legislative structure, efforts for license will be carried out.

Payment and reimbursement related transactions of civil enforcement and bankruptcy offices are carried out via automation to be established via banks. With the use of internet means for sale-related transactions, sale will be effective.

3.17. Reviewing expert witness system

Widespread complaints are raised in connection with problems arising from the institution

of legal expertise and experts. In particular, there is a complaint that experts act as if they give final judgment rather than expressing their views on issues requiring special knowledge and expertise. In addition, judges resort to experts' views very often due to excessive workload.

Field study in civil, administrative and military judiciary in civil, criminal and administrative procedure separately, taking into account geographical regions, the number of files receieved, specialized court and subject-matters of disputes will be conducted. In light of the outcomes attained, revising of institution of legal expertise, application of scientific and objective criteria in determination of experts only specialized in private and technical fields and selection and inspection of experts.

In this scope, the goal is to set ethical principles, to prepare a legal guide for experts and give it to TJA and to effectively draw up a list of experts by judicial commissions.

3.18. Restructuring the positions of counsellors, government and treasury lawyers in order to allow them to provide more effective service.

In the current system, almost all counsellors of the public institutions and government lawyers appeal against every adverse court decision.

It is aimed to grant counsellors and government lawyers broader discretion on some issues such as filing a case and appeal against court decisions for some cases where there is constant case law and applicant is explicitly cogent. In this way the workload of the judiciary will reduce and trials will gain speed.

With the new amendments, participation of government lawyers before administrative act and action is ensured in the process.

On the other hand status and social standings of counsellors and government lawyers will be strengthened in cooperation with related institutions.

3. 19. Continuation of activities for improving juvenile justice system in line with international documents.

Taking into account the principle of high interest of children, development of new juvenile justice system to protect them in civil and criminal law will continue

Within the scope of the approach that punishment is the last resort for children who have committed crime, effort will be undertaken to overcome the problems arising from arrest and imprisonment of children.

Due to problems of separation of couples and the need for children to pursue a separate life from their parents, the objective of the regulation is that separation of children from their parents shall be the last measure.

4. ENHANCING PROFESSIONALISM IN THE JUDICIARY

Distribution of justice without regard to sufficient knowledge will lead to jeopardize the right to a fair trial and the right to legal remedies and to endanger social peace.

One of the essential condition to raise the quality of judicial service is the existence of jurists who undergo better education, internalize the law, follow the recent developments, make right interpretations, reach right conclusion. Furthermore, professional ethics and impartiality can only be attained through proper education.

The nature of education at law faculties is of great importance to attain and strengthen these features. The objective of a modern legal education should be to have jurists who have the skills of judgment, self confidence, have advanced level of sense of justice and believe the rule of law.

There is a common opinion in judicial circles that the quality of education at law faculties have serious problems. Solution of the problems regarding law education in our country should be the priority of all judicial actors and it shall be a national policy. The Ministry has a plan to take steps for cooperation with all relevant stakeholders including particularly universities on this issue.

Providing pre-service and in-service training for the members of judiciary is essential in terms of quality of judicial activities. As a matter of fact, Council of Europe has stated in its decision regarding independence, impartiality and roles of judges that member states shall provide training for judges both after and before the appointment.

Traineeship is the first step for entry into profession. Training provided jointly by academicians and practitioners contributes in enabling trainees with necessary knowledge to enter

into profession and establishing professional culture. Further advancement of traineeship period exists as a goal in the Strategy Document.

In parallel with the extraordinary developments in today's world, legal problems and disputes undergo transformation in both quantity and quality and become more and more complex. Taking into account the above developments, in-service training of members of judiciary is of significant importance in order for judiciary to perform its tasks effectively.

Increase in the number of the members of judiciary who have good knowledge of foreign language is an important element to raise the professionalism in judiciary. Contribution of the members of judiciary who have advanced level of foreign language, closely follow the practices in comparative law and recent legal developments to judicial services will be no doubt significant.

Turkish Justice Academy, a great achievement for judiciary, is of vital importance for training of the members of judiciary. Establishment of the Academy has given a momentum to pre-service and in-service training. The goal is to increase the capacity of Academy with studies to be exerted within the scope of reform efforts.

Another important point in terms of professional competence is that the members of judiciary are able to follow scientific studies, case-law. Not only providing nation-wide publications for use of members of judiciary but also translation of important publications of other countries in Turkish is of great importance. It is for sure that contribution of important legal works in their respective fields in raising the achievement of our jurists is beyond doubt. On the other hand, translation of landmark judgments of high courts of other countries including particularly ECtHR in Turkish has the same importance.

Performing judicial activities by making use of academic studies is one of the essential factor to improve science and practice of law. For this reason, with the goal set, cooperation with academic actors is envisaged to be made in order to establish a bridge between practice and theory.

In the performance of judicial services apart from judges and prosecutors another important element is the judicial staff. In case that these judicial staff does not receive sufficient training, it will not be possible to carry out quality and effective judicial services.

4.1 Carrying out activities in cooperation with Ministry of Education, Higher Education Board

and law schools for increasing the efficiency of law education[3]

Carrying out activities in cooperation with Ministry of Education, Turkish Justice Academy, Higher Education Board, universities and bars for extending education period and improving curricula of law schools in order to increase efficiency of law education

The ongoing cooperation with Justice Vocational Colleges established for training judicial personnel and Justice Departments of other colleges will be improved.

Different countries' practices will be examined with mutual cooperation

Necessary legislation amendments will be done.

4.2. Continuation of training for members of judiciary and judicial staff on the subjects of enhancing professional competence and individual development

The ongoing training activities on the improvement of judicial competence and personal development which are carried out by the Justice Academy and the Training Department of the Ministry of Justice for the members of the judiciary and the auxiliary personnel will continue. In this context, the trainings will continue especially on the following subject matters:

- New legislation,
- Ethical rules,
- Contemporary information technologies,
- Effective communication

4.3. Reconsidering organizational structure of Turkish Justice Academy to enhance its capacity

The Law on Turkish Justice Academy (Law No: 4954) will be amended in order to increase its physical and training capacity through the following measures:

- Having a capacity to implement all of the tasks described in the Law on Turkish Justice

[3] This aim was added by MoJ after Kızılcahamam meeting

Academy,

- Activating the trainings for specialization on certain fields,
- Creation of permanent academic staff,
- Preparing the training curricula on European Union Law,
- Delivering training programs on the rule of law, independence and impartiality of the judiciary and fundamental rights and freedoms
- Providing training on human rights, international law, ECHR and ECtHR.

4.4. Organizing periodical meetings like seminars, symposiums on training of judicial professionals with participation of the Ministry of Justice, HCJP, TJA, universities and other relevant institutions

Scientific meetings have been organized in cooperation with universities and national and international institutions in different fields of law in recent years. These activities will continue by taking into consideration the new developments in law and problems arise in practice.

4.5. Continuation of foreign language training for judges, public prosecutors and other judicial staff

It is considered that increase in the number of judges and prosecutors who have good command of foreign language is an important factor in today's world where law and judiciary globalize and EU process becomes faster.

Moreover, since 2005, every year 20 judges and prosecutors have been sent abroad to attend foreign language courses.

In addition, judges and prosecutors have been enabled to attend foreign language training out of working hours in the framework of the cooperation with universities and language courses

It is foreseen that increasing number of members of judiciary will attend advanced training both at home and abroad by keeping these trainings.

The language courses for judges, public prosecutors and auxiliary personnel will continue with an increased capacity and resource.

4.6. Continuation of translation of the ECtHR case law and other relevant international documents related to the judiciary to Turkish and enabling access to mentioned documents.

The Ministry of Justice publicizes the judgments of the ECtHR and other international documents relevant with the judiciary on its website. These documents will be updated and the MoJ will continue to publicize on its website taking into consideration their importance.

5. IMPROVING MANAGEMENT SYSTEM of the JUDICIAL ORGANIZATION

It is observed that basic factors leading to need in public services for reform are developments and changes in social, economic and technologic fields. The said developments shall be carefully taken into consideration to make it possible for public management to turn into an efficient means to meet the needs of society.

The fundamental aim of the initiatives for reform in public sector is to perform public services in an efficient and effective manner.

Workload, caused as a result of changes in economic and social life and population increase, makes it necessary to build big courthouses. Performing the administration of big courthouses by professionals will ensure efficiency and effectiveness in performing judicial services.

Another essential problem of administration of justice is that job description and standards of judicial staff have not been identified.

Furthermore, some extra-judicial works are carried out by the members of judiciary in current system.

With the new amendments, the objective is to overcome these problems and re-determine the job description and opening criteria.

5.1. Reducing administrative and financial duties and responsibilities of judges and public

prosecutors

Problems in management of human resources and premises exist considering the combined courthouses in Istanbul.

Example: Covering 90.000 m2, accommodating 299 judges and prosecutors and 901 auxiliary staff, Bakirkoy courthouse is a place where serious difficulties regarding heating, security, cleaning and personnel management persist.

The goal is to have courthouses managed by professionals.

In the scope of the project on support to court management, jointly run with European Union and Council of Europe, practices are tested for this purpose in 5 pilot courthouses (Konya, Mardin, Rize, Aydın and Manavgat)

As positive outcomes are received, implementation will be spread out gradually.

5.2. Prescribing duties and working standards of judicial professionals other than judges and public prosecutors and improving personal rights

Task definitions and work standards (performance criteria) shall be designed on concrete basis for judicial personnel such as pedagogues, psychologists, social workers, clerks, chief clerks. Moreover, an improvement in incomes of the judicial personnel is planned but this will be resulted positively only if the Ministry of Finance approves the plan.

5.3. Rearranging the task definition and criteria for setting up notaries taking into consideration the practices of the EU member states.

The tasks of the notaries will be revised taking into consideration the practices of the EU member states and objective criteria will be set for their establishment.

6. ENHANCING CONFIDENCE IN THE JUDICIARY

Along with enactment of law, state based on rule of law is also responsible for establishment and development of a system that will practice the law and keeping it in operation. Maintenance of proper functioning of justice system created for this purpose shall only exist by

public confidence. Besides, a reliable justice system is the guarantee of human rights and democracy as well.

Today, there is a common understanding in the society that judicial system does not function properly. Judicial problems have grown over the years and become complex because of well-known reasons. Accumulated problems undermine public confidence in justice. This negative picture is reported by mass media, addressed on national and international level, and stated in basic documents.

In order to overcome these problems, legislation is harmonized with the European Union norms and contemporary understanding and great efforts have been made in National Judicial Network Project. Additionally, court buildings started to turn into court palaces and criminal enforcement institutions were brought in line with international standards.

Despite these developments, different perceptions of judicial independence and impartiality namely lengthy and ineffectiveness of trial process, heavy workload, failure to conclude cases in a reasonable time period, vacancies and lack of qualified personnel, improper functioning of judiciary-media relations, physical and technical infrastructure needs persist to be factors which have impact on confidence in judiciary.

A reliable justice system will be achieved by taking the steps included in Strategy Document which aims at solving longstanding problems and making it possible for the judiciary to function in a more effective and efficient way. Achieving these results will be possible by addressing judicial systems with multidimensional, monolith, participatory methods, instead of one-dimensional methods.

Setting up a reliable and powerful justice system is not a task for only Ministry of Justice. In parallel with foreign practices, under its constitutional frame Ministry is responsible for general functioning of the system. Attaining a reliable justice system can be possible in cooperation with the High Courts, Turkish Union of Bar Associations, Union of Turkish Notaries, and other relevant institutions and with their support.

6.1. Performing studies to prescribe factors positively or negatively effecting confidence in the

judiciary in the opinion of public

It is being planned that studies and researches which have already been started with TUBITAK (Turkish Scientific and Technical Research Institution) will be carried out on the confidence of the judiciary in cooperation with the universities and research companies and developing new projects according to results of these researches.

6.2. Continuation of delivering training to judicial employees on fight against corruption

In combating corruption, efforts continue on training of judges and prosecutors in cooperation with international organizations such as Council of Europe Group of States against Corruption (GRECO) and World Bank. In this context, 100 judges and prosecutors have been trained on cybercrimes and corruption in July 2009.

Training activities in the context of reform works are being carried out in cooperation with national and international institutions on the fight against corruption in the judiciary will be continued.

6.3. Developing the relations between the judiciary, media and public in cooperation with related institutions

In democratic societies the significance of media and public relations raise gradually in today's information and communication age.

It cannot be stated that in the functioning of the judiciary public relations are considered sufficiently like overall public in general. However, judicial services shall not be regarded out of public relation process. Proper functioning of this process is a significant part of providing effective and efficient judicial services. As regards the image of judiciary in public eye and lack of public confidence in the judiciary, inter alia ignorance of public relations has a great role as well.

Today, so many problems of the Judiciary such as image of judiciary, disregarding the principle of rule of law, impartiality and independency are directly linked to public relations.

Involvement of judiciary into a sound and regular public relation process will raise public confidence in the judiciary. As an integral part of public relation process, relations with the media is an essential issue for judicial system.

Although media is not regarded as a political power in positive law, it is referred as the

fourth power. This position creating a flexible space to media also brings some serious problems. Today, the process and procedure of reporting of investigations, prosecutions by audio visual media influence the principles of “privacy of private life”, “right to a fair trial”, “independence and impartiality of judiciary”, “presumption of innocence”. It is essential that media reports the news by keeping the balance between freedom of communication and the above mentioned principles.

Furthermore problems also exist between media and judiciary due to lack of sufficient and sound communication channels. As a nature of the work judicial members cannot make public statements. However, due to the fact that public and media keep an eye on the investigations and trials on the agenda of the judiciary, informing media correctly and timely is of great importance. Due to lack of correct information, usually, media reports the incidents on the basis of speculation, insufficient and incorrect information. The impacts of the said news and comments in public may not be recovered completely by denials and corrections.

In order to overcome the problems offices will be established for fast and correct information of media in courthouses of big cities within the context of judicial reform strategy.

With these offices, improving relationship between judiciary and media, decreasing the number of false and wrong news regarding the judicial services, increasing positive and correct news are aimed; thus preventing the negative effects of news on judicial proceedings and enhancing the public confidence on judiciary are targeted..

Furthermore, in quality of news concerning judicial services, information capacity of employees of media on functioning of judiciary as well as confidence on information sources are seen important. Taking into consideration the fact that main reason lying behind the wrong news is lack of information, therefore it is considered that to develop media briefing in cooperation with related agencies will be beneficial.

6.4. Establishing or improving public relations units in the High Courts and designated courthouses

Units like press spokesman offices and public relation units will be established or improved if they exist in the High Courts and designated courthouses with a view to timely and correctly informing the public and the media.

7. FACILITATING ACCESS TO JUSTICE

Access to justice is defined as to be able to easily access to justice by all segments of society and to provide them all kinds of means by state in order to seek right to judicial remedy by individuals and to inform effectively about the existence of these rights. Lack of efficiency in these facilities concerning access to justice may jeopardise public confidence to the judicial mechanism and therefore the state system.

It is not seen as possible to make effective the facilities of access to justice merely by means of measures based on positive legislative regulations. For this reason, learning to enjoy methods of right to seek judicial remedy by beneficiaries, for the purpose of raising awareness in legal matters, dissemination of information, information offices, information brochures, web-sites and such other means appear as methods to ease providing access to justice for citizens.

One of the requirements of rule of law is to establish a mechanism which will provide judicial services efficiently and fairly for all citizens. In particular, measures developed to solve disputes concerning disadvantaged persons (children, women, disabled, elderly and poor) are important elements of access to justice.

Within this context facilitating to access to justice is one of the priorities of the European Union, the Council of Europe and the European Court of Human Rights.

Right to access to justice is guaranteed by right to seek judicial remedy and concept of social state rooted in the Constitution of Turkey.

Although, certain institutions such as right to legal assistance, alternative dispute resolution methods, legal aid in civil disputes have been developed to facilitate access to justice, it is not possible to say that implementations in these areas are at satisfactory level yet. For these reasons within the scope of Judicial Reform Strategy, it is aimed to carry out works in a participatory manner in particular enhancing efficiency in legal aid in civil procedure, dissemination of information with regard to legal problems and judicial proceedings, designing web-sites for courthouses, standardizing interpretation services and taking precautions in order to provide facilitation of access to justice for disadvantaged groups in areas as such in which it is believed that implementation problems exist.

7.1. Reviewing legal aid system to enable effective access to the system

Although there are different legal aid regulations in criminal and civil procedures, the need of simplification and making effective of the system arise, considering effective and efficient use of public resources.

7.2. Opening web sites of the courthouses prepared in a standard format and providing their effective usage.

In order to facilitate access to justice, the websites of courts houses will be laid down according to certain standards. The IT Unit of the Ministry of Justice will work on this matter.

7.3. Finalizing the preparatory works for filing cases in electronic environment by individuals benefiting from the judicial services

Currently a large number of lawyers can follow their cases on the UYAP (National Judicial Network Program). The IT Unit of the Ministry of Justice is continuing its works to enable persons other than lawyers benefiting from the UYAP. This service will be operating in a short time.

7.4. Standardizing interpretation services at the judicial institutions

During the trial proceedings, especially in local languages spoken by public as it is not possible to find professional interpreters, sometimes civil servants in different public agencies who speak those local languages are employed as interpreters in courts. However, it is not always possible to provide good quality and reliable interpretation services.

In order to solve this problem and facilitate interpretation services for courts, it is also planned that interpreters who are known as reliable and impartial and who have good command of those languages will be determined and announced in lists in advance as applied in expert witness lists and will be presented to courts.

8. ENSURING EFFECTIVE IMPLEMENTATION OF MEASURES TO PREVENT DISPUTES AND IMPROVING ALTERNATIVE DISPUTE RESOLUTION MECHANISMS

Delays in court trials; seeking peaceful resolution for disputes and social reconciliation phenomenon have led to developing alternative methods for dispute resolution.

Currently, contemporary states apply alternative dispute resolution methods. These methods appear different kinds, generally a mediator invite parties to meet and encourage them to solve disputes. These methods are planned at first for simple disputes and afterwards scope of the methods are widened.

Alternative dispute resolution methods are also addressed in international fields. In the recommendation of the Council of Europe on prevention and decreasing excessive workloads in courts, alternative methods of dispute resolution is recommended.

Generally all over the world, excessive workload in court proceedings is indicated as one of the important problems for delay in justice. Alternative methods of dispute resolution serve the judiciary by decreasing the workload and therefore comprise an important part of the judicial reform. The decrease in workload at courts will better serve for the right to a fair trial.

Alternative dispute resolution methods including willingness to peaceful resolution, provide opportunity to parties of disputes to participate negotiations actively and serve to find possible different solutions and as there is no obligation for publicity, it is a preferable option.

It is believed that application of these methods that are used extensively in contemporary states will enhance effectiveness and efficiency of judiciary and promote facilities of access to justice in Turkey. For this reason, it is necessary to establish different alternative dispute resolution methods that will not infringe the right to seek judicial remedy for individuals and ruling provisions of the Constitution and laws and that will encompass disputes regarding rights of individuals which they can enjoy freely.

The first and most prevalent alternative dispute resolution method is arbitration. Arbitration means that instead of state courts' procedures, parties have their own will for resolution of disputes by the arbitrator or arbitrators. Currently, arbitration exists in many legal systems. In Turkish legal system, arbitration was adopted with little amendments from Switzerland and incorporated into Turkish legal system in 1925. So far, no amendment regarding our arbitration

system has been done in order to comply with new developments and changes in original law. Therefore the law on arbitration needs to be revised and amended that will make it more effective.

New criminal justice system started to operate in Turkey, on 1st June 2005. One of the novelty brought about by this new system is reconciliation in criminal procedure. It is important to enhance applicability and efficiency of provision concerning reconciliation. Within the scope of Judicial Reform Strategy it has been set as target that all aspects of reconciliation in criminal law will be reconsidered, problems will be determined and necessary measures will be taken to solve the problems.

Within the scope of this purpose raising public awareness with regard to alternative dispute resolution is of paramount importance. For this reason, it is planned that activities need to be carried out in order to raise awareness in public and to widespread the application of alternative dispute resolution.

Prevention of disputes beforehand is of paramount importance as well as resolution of disputes by alternative methods. For this reason, it is considered that raising public awareness regarding legal issues will be useful. Internalization and absorption of law will lead individuals mutually respect to each other's rights. It should be noted that prevalence of legal culture and having information by individuals concerning legal procedure will be useful with respect to prevention of disputes beforehand.

In cooperation with Ministry of Education, starting from the primary education, it is planned that work will be carried out to insert practical application of subject matters of law, rule of law, rights and responsibilities of individuals to curriculum of schools within the scope of Judicial Reform Strategy, in order to establish roots of training with regard to legal culture.

8.1. Teaching basic legal knowledge starting from the elementary classes at schools

It will be resorted to the way that, by cooperating with the Ministry of Education, basic legal knowledge is provided from the period of primary education and legal consciousness is created just at the age of childhood.

8.2. Informing the individuals in public institutions by using certain methods about their rights, duties and legal procedures before public institutions,

Under the heading of protective law in the Government Programme, providing information to citizens who benefit from services of public institutions and organizations of their rights and obligations has been arranged. Following a research and study in order to determine what must be done in pursuance of this objective; necessary works will be carried out in accordance with the obtained results.

8.3. Increasing the efficiency of reconciliation system in the Criminal Procedure

Activities shall be conducted aiming at improving legislation and organizing training courses in order to enable reconciliation method to be applied in a more effective and common manner.

8.4. Developing mediation and alternative dispute resolution methods for civil disputes

In order to improve effectiveness of the judiciary it is not enough to conduct studies only based on courts and lawsuit procedure. Unless alternative methods are developed which may resolve conflicts before or after coming to the judiciary, those studies does not provide the expected results .

A draft code has been drawn up and submitted to the consideration of relevant units , which contains provisions that aim at the objectives of making fast, simple, cost-effective and efficient handling of cases, enabling certain conflicts such as uncontested claims to be resolved by means of accord or reconciliation instead of coming before courts in the form of contested claims and reflecting developments in comparative law to civil legal procedure.

Legislative process of the draft code envisaging mediation method to resolve civil conflicts before coming to the courts will be followed by the Ministry and necessary steps will be taken.

8.5. Increasing the efficiency of the arbitration system,

Amendments to Civil Procedure Code and other codes will be made and necessary training studies will be conducted so as to make “arbitration” procedure, existing in Articles 516–536 of Civil Procedure Code, common and effective.

8.6. Taking necessary measures for the administration to take stable judicial decisions into account in its transactions and other activities

To prevent unnecessary workload over the judiciary and to reduce trial expenses, execution of steady judgments by the administration is aimed. Studies will be conducted within the concept of the draft General Administrative Procedure Code in order to provide an uniform usage of discretionary rights by the administration.

8.7. Developing and effectively implementing pre-judiciary dispute resolution procedures in administrative judiciary

Likewise the civil and criminal judiciary, pre-trial resolution methods for conflicts will also be developed in administrative judiciary by creating new application methods. The fact that certain conflicts (such as disputes between students and education institutions about grades), which fall under competence of the administrative judiciary and which are resolved by means of having conducted expert witness examination, an obligation of examination by a commission established under structure of the administration (like universities or the Ministry of Education) will be introduced. After the examination of this commission, persons concerned may still resort to the administrative judiciary if they wish. Those commissions will serve as filters for cases to come before the administrative judiciary.

8.8. Functioning of the Ombudsman Institution

Establishing the Ombudsman Institution; is identified as one of the opening criteria of Chapter 23 titled Judiciary and Fundamental Rights. Within this context, Law on Ombudsman no. 5521 was annulled by the Constitutional Court on 25 December 2008. Taking into consideration the justification mentioned in decision of the Constitutional Court and the Draft Law on General Administrative Procedure, necessary constitutional and legal regulations will be made

9. IMPROVING PENITENTIARY SYSTEM

Criminal procedure starts upon individuals' conducts carrying criminal suspicion and moves towards finding the material truth of the case namely ensuring the concrete justice. In case criminal procedure results in conviction or where between the investigation stage and in pending trial interlocutory measures taken, execution of conviction and probation system take place as

integral elements of penitentiary system . Within the scope of these activities, execution of custodial sentences, fines and probationary measures are included.

In contemporary democracies, humanity aspects of penitentiary systems appear as an important factor as its efficiency. In new approaches in penitentiary system; rehabilitation of criminals, reintegration into society and prevention of recidivism have priority.

In Turkey, the first step towards modern execution regime was taken with the Law No: 1721 on Administration of Prisons and Detention Houses in 1930. At the same years, workshops were established in prisons in order to regulate employment of convicts; in 1943 the Law on Organization and Duties of General Directorate for Penal and Detention Houses entered into force.

After 1940s in the field of execution of criminal judgments, the system which intend to protect society by means of isolation of criminals is abandoned; a new perception which facilitates rehabilitation of convict and afterwards reintegration into the society by means of certain training was adopted.

In line with contemporary penitentiary approach, there are significant new changes and transformation with the activities with regard to our penitentiary system in recent years. With the new criminal justice mechanism established by the Turkish Penal Code and Turkish Criminal Procedure Code, contemporary new approaches are adopted with respect to policies concerning punishment and rehabilitation. Furthermore, legal infrastructure of a contemporary execution mechanism was established with the Law no.5275 on Execution of Criminal Sentences and Security Measures and Law no.4402 on Probation and Help Centre and the Law on Protection Boards.

In order to reintegrate convicts into the society and prevent recidivism, rehabilitation programmes are developed and implemented by Turkish Ministry of Justice. Active participation of public agencies, NGOs, voluntary individuals to activities concerning the rehabilitation process is of paramount importance in the area of execution of criminal judgments. Within the scope of penitentiary system cooperation with NGOs will be enhanced and continued. In order to monitor the results of activities, establishing a measurement and evaluation system will be a priority taking into consideration the efficient management of prisons.

Another important issue identifying the humanistic and efficiency of penitentiary system is physical infrastructure of penitentiary institutions. It is necessary to establish physical places of modern execution system which have not security problems and focus on correction of convicts. Furthermore, taking into account the increasing needs, it emerges as an important obligation that

physical capacity of penitentiary institutions need to be increased. In order to meet this need, modern regional penitentiary institutions have been built and being planned to built which have better rehabilitation activities and higher living standards. Additionally, it is of importance to close down the small prisons which are not suitable for rehabilitation and sufficient in terms of capacity. So far plenty of prisons closed down because of this reason.

Adjusting the insufficiency of penitentiary system and ensuring the sustainability of success achieved so far will be possible with well trained, open minded, well motivated penitentiary staff. Within the scope of Judicial Reform Strategy, the Ministry of justice aims that training centres will be improved, human resources capacity in penitentiary services will be increased and thus a penitentiary system which is improved and renovated consistently is targeted.

The probation services which is an important reform in criminal justice system needs to be more efficient and effective. Probation services comprise of execution of optional sanctions such as judicial control instead of arrest, attending training institution or public work instead of custodial sentence, probationary works of prisoners after their release from prisons or convicts who are subject to probationary measures.

As a requirement of humanistic penitentiary system, improving health services provided to prisoners is one of the priorities of the Ministry of Justice. With the activities carried out in cooperation with relevant health institutions, establishment of well equipped health branches is aimed.

With the activities carried out by the Ministry of Justice, it is aimed to establish a more efficient approach which envisages rehabilitation and reintegration of prisoners into society and which is human oriented and follows new developments in the area of execution.

9.1. Continuation of the work to bring penitentiary institutions in line with the international standards

The construction of new penitentiary institutions in compliance with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules and healthy, secured, equipped with mechanic and electronic systems and suitable for rehabilitation activities have mostly completed. In addition to the aforementioned activities construction of campus type prisons especially in big provinces will continue.

9.2. Closing down the small and insufficient penitentiary institutions

The target has been set to construct modern regional prisons in accordance with international rules instead of prisons outdated and insufficient for carrying out training and not suitable for rehabilitation especially in terms of physical conditions.

Since 01/1/2003 180 sub-provincial prisons have been closed down and total number of prisons has decreased to 368. It has planned that this number will be decreased to 250 till 2013.

9.3. Strengthening and spreading probation system

The legal context of the Probation Services enshrined by the Law on Probation and Aid Centres and Boards of Protection (Law No: 5402). Probation Service functioning successfully within the Law will be improved by allocation of sufficient budget and staff.

In the light of this approach;

- The number of staff in Probation Services will be increased.
- The legal amendments which ensure the well and effective functioning of the Probation Service will be realized by revising the related legislation.
- The number of voluntary staff working for Probation Services will be raised.
- The efficiency of Protection Boards will be improved.

9.4. Efficient and widespread implementation of alternative sanctions instead of short term imprisonment

Article 50 of Turkish Criminal Code regulates the alternative sentences to short term imprisonment, such as working for public services, deprivation of the right to carry out a profession.. The training programs will be held to enable the provision on alternative sentences to be implemented widely and efficiently.

9.5. Continuation of spreading and improving of the workshops at the penitentiary institutions

The working facilities were founded to rehabilitate the prisoners by teaching new professions and enabling them to improve those professional skills. The number of professions and prisoners in working facilities will be raised.

9.6. Enhancing the capacity of the training centres in penitentiary institutions to provide training for other judicial staff

Staff of penitentiary institutions have been trained at the Training Centres for Penitentiary Institutions on numerous topics especially on human rights and psychology. Those in-service training programs will continue.

The efforts will be undertaken to strengthen the capacity of Training Centres which are of paramount importance in terms of training the penal enforcement officers and other judicial staff. Although there are Training Centres in Ankara, İstanbul, Erzurum and Kahramanmaraş, another training centre will be founded in Aegean region of Turkey to meet the requirement of the law. DG for Personnel Affairs will deal with the training of other judicial staff.

9.7. Transferring external security service of penitentiary institutions to the MoJ

The Draft Law on Penitentiary Institutions External Security Services is on the agenda of the Justice Commission in TGNA which empowers the Ministry of Justice as ultimate, competent authority on external security of penal enforcement institutions, transferring prisoners to courts, hospitals and other prisons, security of prisoners during trials. When the law enters into force, external security service will be handed over to the MoJ gradually.

9.8. Establishing efficient public relations units of the penitentiary institutions

Currently, there is no public relations unit within the penitentiary institutions . The efforts will be made to found these units and to put them in function effectively.

10. NEEDS OF OUR COUNTRY AND CONTINUATION OF LEGISLATION WORK FOR EU HARMONIZATION

With a significant legislative movement, the Republic of Turkey established modern Turkish legal system and raised on this foundation. The new legal system which was brought by this reform movement and became effective in all the areas of society and adopted by all agencies of Republic and nation was materialized.

As was known, law is a dynamic area which has to change and develop consistently. Our legal system which was established by significant reform, remained behind the contemporary developments after some time has passed. In order to overcome this inconvenience provisional measures have been taken by amending our legislation. However, the measures taken to meet existing needs, had driven the legal system into complexities and brought the system into insolvable situation.

Although this fact has been expressed for a long period of time, fundamental reforms which are required have not been able to be achieved.

On the other hand, economic, social and legal relationships have been intensified consistently with the advent of the globalization in this century. Terror, environment, and immigration which acquired international dimension by these developments have become common problems of humanity.

With these problems and developments in international area and developments in the process of the EU candidacy an effective judicial reform has become a necessity. Turkey has to address reform movements in the field of judiciary with a strategic future perspective.

Furthermore, significant steps have been taken in the field of legislative works, in order to harmonize Turkish legislation with the EU Acquis considering the goal of full membership to the EU.

In the legislative achievements, first of all opinions of judicial organs and bar associations, public demands and expectations have been taken into consideration with a participatory manner. With such an approach commissions in which all stakeholders are represented were established. Some of the draft laws of these commissions in which comparative laws have been taken into consideration have still been ongoing, while some other draft legislation are before the Parliament or at the Office of Prime Ministry.

The studies of Ministry of Justice on legislation continue in the framework of harmonization Program to the Acquis 2007-2013.

10.1. Draft Turkish Commercial Code

This draft code intends to put into effect a commercial code which includes parallel provisions with the latest developments in economy and trade in the world and in Turkey. The Draft Law is currently before the General Assembly of the Parliament.

10.2. Draft Law on Amending the Law on Court of Cassation

It is stated in Article 154 of the Constitution; the Court of Cassation is the final competent authority to examine the decisions given by civil courts of first instances and as well as other decisions which are not left to another civil judicial authority is not entitled to examine.

Furthermore, it is regulated that the decisions given by regional Court of Appeals established under the Law on the Establishment, Functions and Jurisdiction of Civil Courts of First Instances and Regional Courts of Appeals dated 26/09/2004 and numbered 5235 are subject to judicial review of the Court of Cassation. For this reason, it is aimed to introduce necessary amendments on the Law on Court of Cassation numbered 2797. The Draft Law is currently before the Justice Commission of the Parliament.

10.3. Draft Law on Union of Judges and Prosecutors;

In the preparation process of the draft law, existence of professional unions in most of the western countries has been taken into account. In line with Article 135 of the Constitution, provisions are laid down to establish the Union of Judges and Public Prosecutors; which will have legal personality, with the participation of the existing professional chambers of judges and prosecutors. In order to meet the professional needs of judges and prosecutors and to contribute to the development of the profession, to ensure honesty and confidence in relations among judges-prosecutors and with the public and to safeguard the professional discipline and ethics

The Draft Law is currently before the Justice Commission of the Parliament.

10.4. Draft Law on Obligations

This draft law intends to introduce provisions regrading the Code on Obligations.

The draft law lays down provisions to replace the existing Code of Obligations (Law No:818), which fall behind social, industrial, economic and technological developments in the world and in Turkey. Additionally, it includes a number of provisions in order to overcome the problems faced in practice. Furthermore, simplification of the language is aimed as well. The Draft law is currently before the General Assembly of the Parliament.

10.5. Draft Civil Procedure Code

In the framework of judicial reform, the draft law contains some provisions that will prevent problems encountered in application of the Law on Code of Civil Procedure (Dated 18/06/1927 and No 1086). It also includes general provisions to ensure thatcases are handled in a simple, rapid and economic manner as much as possible. Furthermore, it has some provisions concerning alternative dispute resolutions such as plea bargaining, mediation, settlement. There exists also an aim to reflect the latest developments of comparative law into domestic civil procedure code.

The Draft law is currently before the General Assembly of the Parliament.

10.6. Draft Law on Secrets of Trade, Bank and Customers

Draft contains provisions concerning commercial enterprises and companies, banks, insurance companies and intermediary institutions of capital market functioning in economy, trade and finance sectors in terms of production, consumption and services. In addition to this, the provisions relating on the principles and procedures of disclosure, transfer, unlawful deliver and usage of secrets of customers, trade and bank are regulated. The Draft Law is currently before the Justice Commission of the Parliament.

10.7. Draft Law on Data Protection

The Draft Law governs issues of the definition of personal data, determination of elements and basis of the matter and the establishment of Personal Data Protection Authority who will provide protection of personal data and protection of privacy of individuals. The Draft Law is currently before the Justice Commission of the Parliament.

10.8. Draft Law on State Secrets

The Draft Law covers provisions on the definition of the state secret and l information and documents needed to be kept secret as a result of their nature. . The provisions on competent authorities and boards entitled to form and keep State secrets circumstances under which they may be disclosed or sent to judicial organs and their obligations are laid down in this draft law. .The Draft Law is currently before the Justice Commission of the Parliament.

10.9. Draft Law on Amending Law on Administrative Adjudication Procedure

The draft law has been prepared to amend the Law Administrative Procedure Law (Law No:2577, Dated. 6/1/1982) so as to conclude cases brought by the individuals against administrative acts and actions in a reasonable time period and to respect judicial decisions to enhance efficiency of the judiciary and to transpose methods of contemporary law into national legal order and to improve relations between the State and individuals within the meaning of fundamental freedoms and human rights in the light of current developments in this field. The Drafting Commission is still working on the draft for inclusion of appeal procedure in administrative adjudication.

10.10. Draft Law on DNA Data and National Data Bank

The draft law lays down provisions to take biological samples such as blood, hair, saliva, nail from suspect, accused and victim in order to collect evidence associated with the crime in question as stated in the Article 75 and following articles of Criminal Procedure Code (Law No: 5271, dated 4/12/ 2004). It also covers provisions to conduct a genetic examination on the abovementioned samples. The outcome of the examination of samples acquired according to the provisions is qualified as personal data. Taking into consideration the sensitivity of the data protection in a rapidly changing world, in accordance with the provisions of the Criminal Procedure Code, the establishment of national DNA data bank and safekeeping of data are envisaged. The Draft Law is submitted for opinions of the relevant institutions.

10.11. Draft Law on Mediation in Civil Disputes

A draft law on mediation in civil disputes in the framework of judicial reform has been prepared to ensure that cases are handled in a simple, rapid and economic manner as much as possible. This draft law has been prepared and sent to relevant institutions to obtain their opinions. The draft intends to enable cases to be concluded by way of alternative dispute resolution mechanisms such as plea bargaining, mediation, settlement instead of handling cases as contested

disputes before courts. The Draft Law is currently before the Justice Commission of the Parliament.

10.12. Draft Law on External Security Services on Penitentiary Institutions

The draft law intends to hand over the external security of the prisons to the MoJ, to carry out modern service in prisons to bring current legislation in line with today/s needs in accordance with the international agreements to which turkey is a party. In line with the international agreements that Turkey is a party and in order to meet the requirements in execution system, it is aimed to update relevant legislation on prisons and detention centres for better service. In this context, provisions on transfer of external security services on penitentiary institutions to Ministry of Justice are envisaged in this draft. The Draft Law is currently before the Justice Commission of the Parliament.

10.13. Draft Law on the Enforcement and the Implementation of Commercial Code

The draft is prepared in order to prevent any gaps in implementation and to prevent any disorders the following the entry into force of Turkish Commercial Code. The Draft Law is currently before the General Assembly of the Parliament.

10.14. Draft Law on General Administrative Procedure

The draft law has been prepared to bring the functioning of the administration in line with the democratic rules and to enhance transparency in administrative matters. It also aims to govern the rules for the participation of individuals to the public services, and right to access to information. Moreover, it covers provisions to keep the individual constantly informed about legislation and to ensure public participation in governance of the administration and to avoid any uncertainty in administrative matters as well as facilitating the controlling of administration. The Draft Law is currently before the Office of Prime Ministry.

10.15. Draft Law on the Organization of the Ministry of Justice

In line with the decisions taken by the Board on Restructuring the Organization, a working group has been established with the permission of Minister (Dated 23.07.2007) and began to work on a draft in order to update the Law No: 2992 in accordance with daily requirements. With a approval of Minister dated 23/7/2007 working group still continues its deliberation.

10.16. Draft Law on the Assistance to the Victims of Violent of Crime

This draft law has been prepared to compensate the material and non-material damages stemming from a violent crime committed against children with the sense of solidarity , to assist them. Studies on draft concerning the procedures and the principles are underway.

10.17. Draft Law Amending the Law on Notaries

As known notaries are the units which are of great importance in social life. The efforts are ongoing to amend the Law on Notaries (Law No. 1512, Dates 18.1.1972) to overhaul the notary institution in line with the rapid changes in economic, social and legal lives of Turkey and to ensure alignment with EU Members legislation on notaries.

10.18. Draft Law Amending the Civil Code

Bearing in mind the provisions of European Convention on Human Rights, Convention on the Elimination of All Forms of Discrimination against Women and Articles 10, 41, 90 of the Turkish Constitution, it is decided to amend Article 187 of the Civil Code, no: 4721 in order to ensure the harmonization with supreme norms. Under article 321 of the Law no 4721 titled surname, is read as follows: “Child holds the surname of the family if mother and father are married; if it is not the case child holds the surname of the mother”. For this reason, even if the affinity is set through recognition or judicial decision, children born out of wedlock continue to carry the surname of their mother. The complaints and demands of fathers who would like to register their children with their surname. Currently work on this draft law is still underway.