The Checks and Balances Network
Weekly Report

We Call for Consensus on a Wide-Ranging Judicial Reform!

As the Checks and Balances Network, we think that the Bill proposing changes to the structure of the Supreme Council of Judges and Prosecutors (SCJP), already modified through the referendum held in 2010, will, if adopted by Parliament, not produce lasting results. **We think that enacting this Bill, which introduces comprehensive changes regarding such an important supreme judicial body, so quickly and without operating a transparent and broad-based negotiating process with civil society, all political parties, and experts, will lead to further controversies in the future.**

The agenda concerning the SCJP that has preoccupied all of us for some time now is a consequence of the fact that an effective system of checks and balances has not been established in Turkey.

We call upon all political actors for consensus so that a wide-ranging judicial reform and constitutional process may start again with the aim of guaranteeing mechanisms of checks and balances, with a mind that gives priority to a constructive debate and a solution-oriented consensus.

Article 159 of the Turkish Constitution states: “The Supreme Council of Judges and Prosecutors shall be established and function according to the principles of the independence of courts and the judge’s tenure”. This is a provision intended to ensure the independence of judges and an impartial and fair trial. The structure and functioning of the SCJP, the judicial review of its decisions, and many similar issues have been covered in the Progress Reports of the European Commission, the Accession Partnership documents and the opinions of the Venice Commission.

As the Checks and Balances Network, we shared with the public in 2011 a report that takes a constructive debate and a solution-oriented questioning as a basis, including about 100 agreed proposals in the areas of judicial, legislative, political party and electoral system reform with the aim of creating and guaranteeing mechanisms of checks and balances in the new Constitution. **The proposals in our report titled “Strengthening Turkey’s System of Checks and Balances through Constitutional Reform” were developed by over 120 participants including academics, journalists and bureaucrats as well as representatives of Turkey’s leading non-governmental organizations, professional associations, trade unions, think-tanks and political parties**. At the end of our work, we saw once more how important it is to have a wide-ranging judicial reform and to build a new Constitution.

**The Current Situation is a Consequence of the Lack of Judicial Reform**

Separation of powers and the rule of law are indispensable principles of modern pluralistic democracies based on checks and balances. The “independence and impartiality of the judiciary” is the most fundamental element for putting these principles into practice. An independent and impartial judiciary ensures that the rule of law based on separation of powers effectively operates and that human rights and freedoms are guaranteed.

As the Checks and Balances Network, we think that one of the foundation stones of the rule of law is for the judiciary to perform its duty of protecting democracy, personal rights and freedoms and the constitutional order independently for a working separation of powers and an effective system of checks and balances. All legislation, including the Constitution in particular, practices and state structures must be rested on a strong mechanism of checks and balances. However, implementing radical constitutional and legal reforms alone is not sufficient to protect human rights, the rule of law

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1 For detailed information, see http://ipc.sabanciuniv.edu/wp-content/uploads/2012/07/Anaayasa-Raporu-denge-denetleme.pdf
and democratic values. A change of mentality adopting a consensual and pluralistic structure is also needed to protect them.

The reason that the debates on the current SCJP have come down to the present day is the fact that a new Constitution has not been created. For a response to this need, an urgent arrangement is required. The problem is one that arises from the existing Constitution. The solution lies in starting a process toward a new Constitution that will truly secure the independence and impartiality of the judiciary.

In view of these points, we the Checks and Balances Network propose the following:

- A process toward a new Constitution should be started taking mechanisms of checks and balances as a basis.
- In the light of the international conventions to which Turkey is party, the principles adopted by the Venice Commission, and international standards, a wide-ranging judicial reform rather than partial changes should be carried out.
- The decisions of the SCJP should be transparent with annual reports prepared and made public.
- All decisions of the SCJP should be open to judicial review.
- Judges and prosecutors should be separated from each other both institutionally and in terms of physical environment to protect the principle of judicial independence and impartiality.
- The democratic accountability of the judiciary should be enhanced. A balance should be established between independence and accountability.

As the Checks and Balances Network, we think that in a Turkey where judicial independence and fundamental rights and freedoms are secured taking the principles of the “rule of law” and “separation of powers” as a basis, citizens will have a greater feeling of confidence in the State, and social peace and solidarity will prevail. To this end, we urge that a wide-ranging judicial reform and a process toward a new Constitution should begin without delay.