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TURKEY

PUBLIC INTEGRITY SYSTEM

ASSESSMENT MAY 2008

Introduction

This report updates the Sigma assessment report on the public integrity system in Turkey of August 2006.

The 9th Reform Package 2007-2013, formally adopted by the Turkish Grand National Assembly (TGNA) on 28 June 2006, included the short-term priorities of the government concerning the enactment of legal instruments to better prevent and combat corruption. Among other measures, the package included changes in asset declarations and in the financing of political parties and elections, which are widely considered to be the key aspects for increasing transparency and reducing corruption in the political sphere. In fact, these items were among the priorities of the Action Plan issued by the government when it took office in 2002. The 9th Reform Package included draft laws that were to be passed in the short term (before the end of summer 2006) and in the medium term.

Short-term reforms included draft laws that were already on the parliamentary agenda prior to the summer of 2006: a) draft Law on the Public Comptroller (Ombudsman), with a nationwide jurisdictional authority (previous drafts had created only provincial ombudsmen); b) draft law amending the Law on the Court of Accounts so as to include in its remit auditing expenditures and state assets under the control of the Turkish Armed Forces.

Several other new draft laws were to be passed in the medium term. The draft Law on the Establishment of the Political Ethics Committee and Amendments to Other Laws amended, among others, Law 3628 on Asset Declaration of 1990.

Other drafts were under discussion within the government: draft General Law on Administrative Procedures; draft Law on Administrative Justice to amend Law 2577 on Administrative Legal Procedures of 1982.

In the framework of the 9th reform package, the government proposed in April 2006 a draft law on Fundamental Principles for Elections and Election Registers, which would amend the Law on Financing Political Parties and Electoral Campaigns. The objectives of this new draft law were: a) to require political candidates to open a special account for an election, to be used to register all revenues connected to the election; and b) to introduce ceilings on election expenditures. The opposition parties rejected the draft and the government then withdrew it. In March 2007, the prime minister asked the Parliamentary Commission of Ethics to provide new deputies with training on ethical matters, with a view to paving the way for the adoption of the above-mentioned new draft law. This initiative was equally rejected by the opposition parties.

This 9th Reform Package also included a proposal to establish a Commission on Increasing Transparency and Good Governance in the Public Sector to co-ordinate the institutions that were fighting corruption under the Prime Ministry Inspection Board. The Board was to simultaneously provide secretariat services to the new commission.

No significant achievement was recorded during the assessment period.

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None of these projects has reached fruition, possibly because anti-corruption policies were crowded out of the political agenda of the government by other political issues. For the period under review (September 2006 – May 2008), no progress can be recorded in strengthening the legal framework and institutional set-up to fight against corruption, except for the formal ratification of the UN Convention against Corruption (UNCAC), which Turkey signed on 11 August 2006 (published in the *Official Journal* of 2 October 2006).

Soon after the publication of the 9th Reform Package, the government's policies shifted away from the original goals. Today, the anti-corruption policies seriously lack ownership. Effectively, the fight against corruption, which was a major policy plank in the 2002 elections, was not given a significant place in the July 2007 elections and now seems to be absent from the policy agenda, in spite of its inclusion in the 2007 EU Accession Partnership¹.

Corruption has nevertheless continued to be a matter of concern.

Corruption has nevertheless continued to be a problem. While in the 2006 assessment, corruption was regarded as widespread mainly in local governments, during the current assessment period corruption cases have been revealed in universities and hospitals in İstanbul and various cities of Anatolia, where most of the corruption accusations concern bribery, mismanagement of public procurement, extortion, abuse of contracts, threats, etc.

The main areas of grand corruption continue to concern the financing of political parties and the monitoring of expenditures related to elections, privatisation of energy, construction, and the media

The main areas of administrative corruption still seem to be the tax revenue authorities and the police. Some progress has been registered in reducing corruption in tax administration. A report by Transparency International further indicates that 46% of those surveyed believe that corruption in Turkey is likely to increase, while a significant number of those surveyed (49%) considered that the current government had been successful in combating corruption.²

At the local administration level, the worst areas are procurement, city planning and personnel, including the mayors themselves. The most common crimes are related to bribery, embezzlement and abuse of power.

The aggravation of penalties resulting from recent amendments to the Penal Code may have positive effects. The sanction for embezzlement, ranging from 5 to 12 years of imprisonment, is after all a dissuasive factor for corruptive practices.

It should be noted that anti-corruption action in the Customs Undersecretariat dependent on the Prime Ministry (143 customs offices nationwide, as well as posts in airports, seaports, railway stations and land posts, with some 10,000 civil servants) has significantly improved in the last year through resolute disciplinary action (31 customs officials were dismissed from the civil service in 2007 because of smuggling, embezzlement and unjustified benefit), but also due to the implementation of the new Anti-Smuggling Law (Law 5607) passed in 2007 and the further implantation of the e-customs initiative (called e-document in foreign trade), whereby 84% of customs declarations were made electronically in 2007, compared to 30% in 2003. These efforts are accompanied by a strong internal customs inspectorate and a sound system of staff rotation. The Customs Undersecretariat has also established positive incentives for promoting ethical behaviour and integrity among customs officials, such as the annual granting of an award. In the period 2005-2007 503 commendation letters were issued and 270 awards were granted.

The European Bank for Reconstruction and Development (EBRD) – World Bank Business Environment and Enterprise Performance Surveys (BEEPS)³ indicate improvements in many areas vulnerable to corruption (including business licensing, tax administration, customs and the courts) and reductions in overall bribe frequency and in the perception of state capture. The BEEPS also show a higher level of confidence in the legal system in Turkey than in the eight countries that acceded to the EU in 2004. Doing Business ranks Turkey higher than the EU8 average for starting a business and registering property, but Turkey is worse for dealing with licenses, employing workers, and closing a business.

¹ Decision adopted by the Council of the European Union on 13 February 2008, on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC.

² See *Global Corruption Barometer*, www.transparency.org.

³ See www.worldbank.org/eca/governance for more information on the BEEPS.

Integrity in Parliament and Government

No changes have been introduced in the legislative framework (immunities, incompatibilities, conflicts of interest and asset declarations) subsequent to the Sigma's 2006 assessment report. Control mechanisms are weak and sanctions are rarely applied. There has always been a huge resistance to lifting immunities and to disclosing assets of MPs and government members, which hampers transparency and integrity.

Immunity continues to be a very critical political issue and raises debate among political parties. In 2005 a parliamentary research commission on MPs' immunity was set up to analyse this issue, but no outputs have been produced. From July 2007 to April 2008 there were 170 requests to lift immunity. However, since 2002 there has been no case of lifting immunity.

The lack of control and verification of asset declarations continues to be a weak point in protecting the integrity system in parliament and government. No commission has been set up to assess the situations of conflict of interests, which shows the minor importance attached to this issue among politicians and high-ranking government officials. Since the 2006 Sigma assessment, there has been no case of conflict of interest, among a total of 550 MPs, reported to the Parliament's Directorate of Personnel and Register, which is in charge of MPs' asset declarations. The failure to disclose assets is a law violation subject to strong penalties. The severity of the penalties leads to their scarce imposition, and regulations keep assets confidential, thereby favouring the maintenance of possible incompatibilities and irregularities. No sanctions were imposed on MPs in 2007.

Members of parliament and of the government are not subject to any restriction after their term of office. The lack of regulation in such a sensitive area is a deficiency of the legal system.

The two external oversight bodies over the government are the Turkish Grand National Assembly (TGNA) and the Turkish Court of Accounts (TCA; Law 832). The audit mandate of the TCA is discharged in a two-phase process: the first phase is the audit of the accounts, while the second phase is the trial of these accounts. The end-product of the latter is a legal document called a writ, which either acquits officials or holds them responsible for their financial management. The judicial assessment is to establish "public loss" resulting from the misuse of resources as an individual responsibility of the accountant. A draft law tabled in the TGNA aims to enlarge the current audit scope of the TCA. The current major exemptions are the Central Bank and other state banks, municipal enterprises and State Economic Enterprises (SEEs). In addition, the audit of the Ministry of Defence is circumscribed by some restrictions. However, by May 2008 the draft law had still not been passed.

The Parliamentary Audit Commission oversees SEEs, which are also audited by the Prime Ministry High Auditing Board; this Board is accountable to a state minister within the Prime Ministry.

Financing of Political Parties

No changes in the regulations or practices have been noticed. The need remains for better control of the veracity of accounts submitted by political parties. A mandatory disclosure of political party financial reports should be introduced. Serious consideration should also be given to the possibility of taking away responsibility for the financial auditing of political parties from the Constitutional Court and assigning it to another independent institution that has the technical capacity and investigation competencies to efficiently perform this task; this institution would report to parliament. This reassignment would free the judges of the Constitutional Court from having to deal with political party matters, enabling them to devote themselves to the task that should be theirs, i.e. appraising the constitutionality, both formal and in substance, of the legislation. The penal framework for situations of non-compliance in this regard should be revised so as to lay down more severe sanctions.

Integrity in the Judiciary

The reform of the judiciary is a priority, and the increase of the Ministry of Justice budget is seen as an indicator of the government commitment to this priority. An integrated reform is needed, which would include the courts, case management, human resources, information technologies and infrastructures. By now there is no overall national reform strategy of the judiciary, only isolated initiatives. Although changes are needed, there is no consensus within the judiciary on the strategy to follow. Some think that quick

changes are not useful, because it implies amending too many laws; others think that transformations must be done quickly. The deadline foreseen to finish the strategic judicial plan is by the end of 2008.

The Ministry of Justice, more precisely the Strategic Development Unit, is preparing the strategic judicial plan for 2010-2015, composed of short, medium and long-term activities, with the participation of all units of the ministry, judges' associations, the Judicial Council, universities, lawyers and other judiciary stakeholders, and NGOs. Six seminars have already been organised and attended by judges, prosecutors and representatives of other judicial institutions in order to obtain their opinions on the issues that should be part of the strategic plan. The gathering of news on the judiciary by the press is another initiative that it is envisaged.

The government programme and the 9th Reform Package were taken into account in the drafting of the strategic plan. It covers: a) the internal reorganisation of the Ministry of Justice, through the restructuring of its units, and the revision of its responsibilities and rights to increase the ministry's efficiency; and b) judicial reform. The latter comprises two main goals: to follow up the harmonisation process of primary and secondary legislation with the *acquis communautaire* up to 2013 and to strengthen the administrative capacity of courts of the first instance (including administrative courts) through strategic management in order to improve the quality of services provided by these courts as well as their internal functioning.

At the end of 2007, lawyers, judges and other citizens protested against a law, passed by parliament on 1 December 2007, which in their opinion would undermine judicial independence by introducing changes in the appointment of judges and prosecutors, such as the requirement of an oral interview with the Ministry of Justice for lawyers entering judicial office. Critics say that the law will politicise the courts and undermine secularist values. As was already pinpointed in Sigma's 2006 assessment report, the performance appraisal criteria for the promotion of judges are very defective. Currently this appraisal is based on several criteria, including the number of times that the High Court of Appeals has confirmed the rulings or adjudications of judges and public prosecutors. This criterion is unfair because if both parties agree with the adjudication or the ruling there will be no appeals. In these cases, there is no performance appraisal, and after three successive periods without an appraisal, the concerned magistrates can be dismissed. The performance should be based on objective factors depending exclusively on the activity of a judge and on the quality of his/her decisions, and should not take into account external factors, such as the decision by parties to appeal or not before a higher court.

The training of judges is steadily improving through the activities of the Justice Academy. In addition, interactions between Turkish judges and their European counterparts have also contributed to vocational updating of the knowledge of magistrates through the exchange of information on the diverse judicial systems. It can be stated that young and middle-aged judges and prosecutors are in a better situation than the older judges to follow up the new improvements in the judiciary.

However, the number of specific courses focused on the fight against corruption, organised crime and financial crime continues to be insufficient. There is still a lack of expertise in these fields. Generally, in small cities, due to the lack of judges and prosecutors, there is no possibility to have specialised magistrates, as they are obliged to resolve all kind of cases submitted to the court. In addition, judges do not have sufficient time to read or carry out research because of the heavy workload.

The recent decision to decrease the duration of induction training to one year (instead of two) on a temporary basis so as to make more judges available to the courts, does not seem to be a positive measure. What can be gained in quantitative terms, by having more judges working in the courts, is lost in terms of judges' quality, which has a direct impact on the quality of services provided by the courts as well as on the efficiency of the judiciary.

In 2007, 14 judges faced disciplinary proceedings, including some for corruption. The institutionalisation of a rotation policy for judges is still needed, taking into account the fact that the judiciary is a corruption-risk sector. In cities with a higher perception of corruption, magistrates should be transferred after a certain time to another court, thereby avoiding the traffic of influence, bribes, and other corruptive behaviour.

Remuneration of judges

In Sigma's 2006 assessment it was noted that magistrates' salaries were not very different from those of senior civil servants in the administration. In 2007 the remuneration situation of judges and prosecutors changed substantially so as to take into consideration the accountability, complexity, workload and social prestige, as well as the neutralisation of corruption temptations. About ten years ago, becoming a judge or

prosecutor was not very popular in Turkey, as the working conditions, salaries and other social benefits were not very attractive, but now the situation is completely different. The salaries and the social standing of judges have improved, along with the importance of the judiciary in the framework of the EU membership negotiations.

In 2005 a judge/public prosecutor nominee had a net monthly salary of 1047 YTL, and with 22 years in the profession a judge earned 2861 YTL. In 2008, in the same professional classification, the salary is 2000 YTL and 5200 YTL respectively. Judges live in official houses, which are considered to be very comfortable and with a low rent. In addition, free daily official transportation services are available for judges. Taking into account these social benefits, the remuneration of a judge may be estimated to be 6500 YTL.

Although the remuneration of magistrates has improved, the same cannot be stated in relation to court clerks. The volume and the responsibility of their work are not reflected in the level of remuneration. Their low salaries are a demotivating factor and result in low productivity. This situation should be revised by the Ministry of Justice.

Capacity of the judiciary to combat corruption

The capacity of the judiciary to combat corruption has improved due to changes in key pieces of legislation: Criminal Code, Criminal Procedural Code (reducing the deadline for starting an investigation to 10 days), Civil Code, Law on the Establishment of the Regional Courts of Appeal, and Law on the Establishment of the Justice Academy.

In the revision of the Civil Procedural Code, a new procedure for pre-examination of cases by judges is envisaged, which could significantly reduce the delay in the collection of evidence and in the scheduling of hearings. The new draft gives more power to judges to speed up court proceedings. Measures are envisaged to eliminate delays caused by bad faith parties. The draft code proposes to eliminate the differentiation of rules between international and domestic arbitration. The enactment of this code should lead to the increase of efficiency in the judiciary. The establishment of the Intermediate Courts of Appeal in 2005 also represented an important legal initiative aimed at reducing the case load of the Court of Appeals.

To enhance the capacity and performance of the judiciary it will be necessary to ensure sufficient human resources and physical infrastructure and to reorient systems so as to increase the efficiency of these resources. In Turkey there are in total 10,526 judges and public prosecutors, distributed as follows: 4916 judges and 3724 public prosecutors in courts of first instance; 468 judges and 141 public prosecutors in courts of appeal; 888 judges in administrative courts, including regional courts; 13 judges in the Constitutional Court and 371 judges in the Ministry of Justice. For a population of 74.3 million inhabitants (Turkish Board of Statistics), the number of judges and public prosecutors is considered to be highly insufficient in comparison to real needs, where an estimated number of more than 14,500 – 15,000 judges and prosecutors would be required. At present there are about eight judges and 26 judicial support personnel per 100,000 inhabitants⁴. The regional courts of appeal that it is foreseen to establish will introduce more pressure to increase the number of judges and prosecutors.

This situation constitutes one of the serious problems in the judiciary system. To cope with the increased workload, many judges and prosecutors are obliged to work at weekends, together with other court staff. Their geographical concentration is greater in large cities, due to the excessive workload in these courts. However, the insufficient human resources in the courts affect not only magistrates but also auxiliary staff (court clerks).

The working conditions in the judiciary are another factor to be taken into consideration, as they are not good and have an impact on the quality of decision-making. The buildings are old and the courtrooms are not adjusted to the increase of court customers. To cope with this situation, a programme has been elaborated to upgrade courthouses and IT facilities. Currently, there are about 145 projects to either upgrade existing courts or to construct new ones. The Ministry of Justice foresees that within four to five years new and modern courts will be built throughout the country.

Judicial procedures are not computerised, and trials are not recorded; reforms in this regard would streamline the work. However, other advances have been made in the IT area. The Ministry of Justice has developed and implemented an advanced IT system (called the National Judicial Network Project or by its Turkish acronym UYAP), aimed at improving the judiciary's ability to collect information and data and to

⁴ Council of Europe's European Commission for the Efficiency of Justice (CEPEJ), 2006.

communicate with other state institutions. Through the UYAP, cases have been distributed electronically among the relevant courts and judges since 2003⁵, which has ensured a transparent and objective system for distributing cases at national level. However, in the majority of first-instance courts a technological infrastructure is still needed.

The high courts' network is centralised in Ankara. Taking into account the Turkish territorial dimension, these courts should be spread in accordance with the territorial design of the courts, which responds to the criterion of functionality and which may not coincide with the administrative regions of the country, as occurs in EU countries. The deconcentration of second-instance courts is necessary and, if implemented, would permit a more balanced distribution of the work to the courts and consequently a reduction in the time required for the settlement of cases and an increased facility of access to justice of citizens. Public access to judicial decisions seems to be slow, expensive, very time-consuming and formalistic.

The current regulatory framework needs to be improved. There are problems with the consistency and implementation of laws, some implementing decrees are missing, and other laws are not implemented. There is an excessive number of laws on the same subject, which slows down the decision-making process. This situation is aggravated by the high number of special laws applicable to civil servants and public employees, which is a constraint on effective investigations.

Investigations have to cope with serious problems in ascertaining the truth and in applying justice. The commencement of any investigation by the public prosecutor, other than exceptional cases provided for by law, depends on the permission of the top manager of the institution where the person to be investigated is performing his/her functions. Appeal to the administrative courts is possible against these managers' decisions.

In 2006 the "Circle Opinion Bureau" (network) was set up, composed of four judges in office in the Ministry of Justice, the tasks of which are to respond to questions related to corruption raised by public prosecutors, police and gendarmerie, to share opinions among peers, and to focus on institutional co-ordination. However, the opinions of this circle are not binding.

The measures that are envisaged to improve the regulatory framework, the courts' network, its infrastructure and court management, some of which are included in the strategic judicial plan for 2010-2015 that is under preparation by the Ministry of Justice, will increase the effectiveness, efficiency and quality of the judiciary system, but they are not sufficient. Structural changes are needed in very sensitive areas (immunities, incompatibilities, conflicts of interest, asset declarations, and investigation permissions). Otherwise, the capacity of the judiciary to effectively fulfil its role in the fight against corruption will remain limited.

Co-ordination of the Fight against Corruption

On the occasion of multi-disciplinary investigations, trained working teams are set up, with members delegated from various specialised inspection bodies. The frequency of joint operations in the fight against corruption has increased, which is a positive step. However, the existing administrative culture of distrust explains the high number of inspections that exists in Turkey, which is uncommon in EU Member States.

Within the context of a relative immobility as far as initiatives to combat corruption are concerned, the issuing of a circular by the Prime Minister in October 2006 should be emphasised. The aim of this circular was to strengthen the institutional structures involved in the fight against corruption. The circular reinforced the role of the inter-ministerial steering group for fighting against corruption by extending its duties to cover co-operation with international anti-fraud organisations, such as OLAF, and establishing principles and measures in such a context. The circular also identified the Prime Ministry Inspection Board as the secretariat for the Ministerial Committee for Enhancing Transparency and Improving Good Governance, and assigned the Board with the task of providing technical and administrative assistance to the committee in developing national anti-corruption strategies and monitoring their effectiveness.

As stated in previous Sigma assessment reports, there are some inspection and investigation bodies with powers and duties that are not confined to their concerned ministries, and these bodies can be considered as external investigation bodies. This is the case of the State Supervisory Council, the Prime Ministry Inspection Board, the Inspection Board of the Ministry of Finance, and the Inspection Board of the Ministry

⁵ Special provisions of special laws apply when distributing cases to judges (Constitution; Law 1086 on Legal Trial Procedure; Law 5271 on Penal Trial; Law 2577 on Administrative Trial; and Law 2247 on Court Disputes).

of Interior. A reform seems to be necessary; inspection bodies with competences in the same area should have their scope more clearly defined so as to prevent conflicts resulting from overlapping responsibilities. In addition, the permissions that are currently necessary to initiate an investigation put in question the independence of inspectors, particularly in serious cases of corruption, where the supervising minister has the possibility of restricting the investigation according to his/her political interests.

Two inspectorates are today salient in the fight against corruption in the administration and compete between themselves in a somehow unjustified bureaucratic turf war, which undermines the effectiveness of the anti-corruption effort: the Inspection Board of the Ministry of Finance and the Prime Ministry Board of Inspectors⁶:

1) *Inspection Board of the Ministry of Finance*: The Inspection Board has a corps of skilled inspectors. As the Board also assumed the role of an internal audit body, it has an extended power and influence over all public administration settings. It sees itself as the central organisation in the fight against corruption, invoking the large scope of its current competences, the highly skilled qualifications of its inspectors, and its long and extensive experience in matters pertaining to inspection (it has been active since its foundation in 1879 under Ottoman rule). 2) *Prime Ministry Board of Inspectors*: This inspection body claims to have the same central co-ordinating role in the fight against corruption and in the same terms as the Inspection Board of the Ministry of Finance, based on the fact that it is under the direct supervision of the Prime Minister.

Both bodies are highly professional and have highly skilled and well-trained staff. Perhaps it would be possible, by encouraging these two inspectorates to increasingly carry out more activities together in a co-ordinated way, to set up a unified command structure that would render the fight against corruption more effective on the whole. At the same time, the competences of other inspectorates should also be delimited more clearly, as indicated above.

However, more co-ordination does not necessarily mean the creation of a new, all-powerful anti-corruption body on the preventive side. In terms of prevention policies, perhaps it would be better to promote the institutionalisation of a public integrity framework in such a way that would make a plurality of administrative bodies, inspectorates, and management settings feel responsible for attaining a corruption-free public life.

On the repressive side, it might be useful, as has been demonstrated in other countries, to establish a specialised anti-corruption prosecution office with a nationwide jurisdiction.

The OECD has expressed serious concern about Turkey's implementation of its Convention.

The Phase 2 [Report on the Application](#) of the 1997 Convention on Combating Bribery of Foreign Public Officials⁷, approved on 7 December 2007 by the OECD Working Group on Bribery, expressed serious concerns about Turkey's implementation of the Convention. Turkey, a party to the Convention since 2000, has yet to implement key elements of the Convention, including the introduction of corporate liability for the bribery of foreign public officials and the effective enforcement of its foreign bribery offence. The Working Group recommended carrying out another on-site visit to Turkey within one year to check on progress by the Turkish authorities to remedy these and other issues.

In addition to recommending that Turkey urgently rectify these problems, the Working Group recommended that Turkey: 1) repeal a provision in the Turkish Criminal Code that releases offenders from penalties for the foreign bribery offence in exchange for having reported the offence to the law enforcement authorities; 2) expressly deny the tax deductibility of bribes to foreign public officials in the tax law; and 3) urgently establish awareness-raising programmes on foreign bribery for the Turkish public and private sectors.

⁶ See Sigma's 2006 assessment of the public integrity system in Turkey for more details on the organisation of these two inspectorates.

⁷ Available at <http://www.oecd.org/dataoecd/13/46/39862163.pdf>.

Conclusions

- No major reforms in the institutional capacity and legal instruments to protect the public integrity system have been recorded during the two-year assessment period, except to some extent in the aggravation of certain corruption-related penalties in the Criminal Code. Strengthening the institutional capacity of the state as a whole to control and curb corruption should be a permanent policy.
- The salaries of the judiciary have been increased, which is a positive measure.
- Improvements in reducing corruption are noticeable in certain areas of the administration, while in others no changes are to be seen, whereas corruption has grown and continues to be a matter of concern.
- Political corruption is still a major problem.
- The country could perhaps make better use of its assets to improve the co-ordination of anti-corruption efforts by managing more effectively the existing professional inspection bodies.
- Turkey needs to fully implement the UNCAC and the OECD Convention.