

Introductory Remarks

One focus of the ongoing accession negotiations of the EU with Turkey are the independence and impartiality of the judiciary. Since 2008, Professor Giegerich has visited Turkey several times as an independent expert of the European Commission to evaluate the independence and impartiality of the Turkish judiciary. He submitted four pertinent reports to the Commission which were transmitted to the Turkish Government as well as the Governments of the EU Member States. The reports have meanwhile been made public by the Turkish Government and the European Commission. They are also made available on this website.

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**Peer Assessment on Judicial Training (27th – 31st May 2013) – Chapter 23: Judiciary
and Fundamental Rights**

Report on

Judicial Training Offered at Graduate and Post-Graduate Level

Table of Contents

Executive Summary	2
1. Introduction	3
1.1. Law Schools as “Breeding Grounds” of an Independent, Impartial and Effective Judiciary	3
1.2. Visit to Selected Universities and the Council of Higher Education	4
2. Universities in Turkey: Organizational Structure, Academic Staff and Academic Freedom	5
2.1. Academic Freedom in General	5
2.2. The Council of Higher Education (YÖK).....	7
2.3. Organizational Structure of Universities	8
2.4. Academic Staff	9
3. The Recent Expansion of the Turkish University System	11
4. Brief Description of the Visited Universities	12
4.1. Bilkent University	12
4.2. Ankara University	13
4.3. Selçuk University in Konya	15
5. The Organization of Legal Education in Turkey	16
5.1. Legal Bases	16
5.2. Law School Admission for Undergraduates	17
5.3. Postgraduate Legal Studies and Continuing Academic Education of Judges and Prosecutors	17

5.4.	Participation in Foreign Exchange Programmes (ERASMUS)	18
6.	Law School Curricula and Examinations	19
6.1.	Curricula	19
6.1.1.	Current Situation	19
6.1.2.	Reform Proposals	20
6.1.2.1.	The Goal of Law School Education and the Duration of Undergraduate Studies	20
6.1.2.2.	Bridging the Gap between Theory and Practice	22
6.1.2.3.	Internationalization and Europeanization of Legal Studies	23
6.2.	Examinations	24
6.2.1.	Current Situation	24
6.2.2.	Reform Proposals	24
7.	From the Law School to a Career in the Judiciary	25

Executive Summary

The process of judicial reform in Turkey has progressed far towards ensuring the implementation of common European standards of effectiveness, independence and impartiality. Now the time has come to look beyond the judiciary as such and consider the human resources groundwork for it that is laid at university level. There the pool of potential new recruits is educated at the law schools and prepared to assume responsibility as judges and prosecutors. Just like the judiciary, legal education in Turkey is in a process of modernization, Europeanization and enormous expansion. Certain problems have already been identified and possible solutions discussed and initiated. Often, however, the development of a long-term policy is required so that quick results cannot be expected. In this respect, more decisive action needs to be taken.

The legal education in Turkey is not yet sufficiently geared towards producing graduates who are both highly qualified in the law, including its international, European and comparative aspects, and capable of becoming efficient, effective as well as truly independent and impartial judges and prosecutors. The standard four-year undergraduate law school programme is too short, so that graduates are released into the legal professions too early. It is still too narrowly focussed on national law. It puts too much emphasis on teaching legal techniques and too little on the foundations of the legal system, and it includes too few interactive elements, not least because of overcrowded classrooms. The legal education is also too far apart from real-life legal practice, because there are too few connections between the law faculties and the court houses, prosecutors' offices and lawyers in private practice.

The knowledge of foreign languages is too underdeveloped both at the student and faculty levels. This makes the exchange of students and faculty members with foreign universities difficult. There is no system in place which ensures that law school graduates have an adequate and equal level of knowledge of the law before being permitted to enter any legal profession. The current judicial entrance examination does not provide an adequate filter to prevent poorly educated or personally unsuitable bachelors of law from getting access to the judiciary. At the same time, the careers both in the judiciary and in academia are considered as unattractive by too many of the best law school graduates.

While the academic freedom is constitutionally guaranteed, the "general climate" in Turkey is not in all circumstances conducive to the uninhibited, robust and wide-open discussion of controversial issues, including legal and constitutional issues. This

inevitably has negative repercussions also on the academic freedom in the universities. Law students do not sufficiently learn that the constant public criticism of authorities, including the high courts and the government, no matter how large its popular support, is the lifeline of democracy and the rule of law. Nor do they experience that the formation of non-extremist political associations and the organization of peaceful assemblies and demonstrations constitute legitimate contributions to the formation of public opinion in a democratic society. How can they then be expected to resolutely uphold the freedom of expression, assembly and association against governmental interferences, if they later become prosecutors and judges?

1. Introduction

1.1. Law Schools as “Breeding Grounds” of an Independent, Impartial and Effective Judiciary

The focus of the various peer-review missions which I have undertaken since 2008 has been the independence, impartiality and effectiveness of the judiciary in Turkey. While I previously concentrated on the institutional set-up of the third branch of government and its reforms, this time I have looked into the training which all future judges and public prosecutors – as well as their indispensable counterparts in the administration of justice, the lawyers in private practice – receive in the law schools of the universities. There, the initial steps toward the establishment of a truly independent, impartial and effective judiciary are made. One cannot become a judge or public prosecutor in Turkey without a law degree from a university, with a certain exception for the administrative judiciary whose judges and prosecutors are also recruited from the faculties of social sciences, finance and economics, provided that they have sufficient knowledge of the law.¹

Each and every member of the judiciary must first of all have an excellent knowledge of the applicable positive law, including the international human rights provisions enshrined in the European Convention on Human Rights and other human rights treaties ratified by Turkey, the EU (association) law as well as the historical, philosophical and sociological bases of the law. But more is needed: The judges’ and prosecutors’ concept of statehood, government and the judiciary must be compatible with the democratic concept underlying both the European Convention on Human Rights and EU law.

Future members of the democratic judiciary have to learn how to effectively and efficiently distribute justice to the Turkish people. They also need to internalize the virtues of independence and impartiality and turn these virtues into the self-evident cornerstone of their professional behaviour at any time and in all circumstances. This requires a well-developed sensitivity with regard to possible threats to independence and impartiality from whatever source they might come, as well as bad appearances. It also requires a critical mind and courage *vis-à-vis* established authorities, both within and outside the judiciary.

While it is the task of the pre-service training of candidate judges and prosecutors in the Justice Academy to perfect these professional qualities and core standards of judicial ethics,² the groundwork has to be laid in the law schools in Turkey through which all the members of the legal profession pass before they enter the Justice Academy. There, they all must develop a keen sense of the importance of judicial independence and impartiality for the health of the legal system as a whole. This applies also to the future lawyers in private practice who will

¹ See below para. 5.1.

² The pre-service and in-service training organized by the Justice Academy was looked into by Judge Luca Perilli in parallel to my visit to the universities. Judge Perilli will report separately on his findings.

later be in close professional contact with the judges and public prosecutors and thus immediately affected by violations of judicial ethics. It is primarily them who can exercise a watchdog function in this respect, including against bad appearances.

1.2. Visit to Selected Universities and the Council of Higher Education

On my recent five-day stay in Turkey, I was able to visit the law faculties and central administrations of no more than three different universities: Bilkent University, a foundation university in Ankara; Ankara University, a state university; and Selçuk University, a state university in Konya which can easily be reached by a high-speed train from Ankara.

Those three universities were suggested to me by the Ministry of Justice when I asked them for a representative selection which included public and private as well as metropolitan and provincial universities. There are currently 170 universities in Turkey, 104 of them state-funded state universities and 66 of them privately-funded foundation universities,³ each of them established by statute. Whereas the foundation universities require the payment of tuition fees (but offer a limited number of full and partial scholarships), the state universities do not (with an exception concerning foreign students⁴). Pursuant to Art. 130 (2) of the Constitution, foundation universities are non-profit bodies. Although they are more expensive, the well-established ones of them are usually also more attractive than state universities because they offer more and better scholarships and have smaller classes.

In view of that high number of universities, my visit could give me no more than an initial impression of the legal education in Turkey. I am of course conscious of the fact that generalizations of my selective impressions are difficult to make, all the more since the three universities I visited are all well-established, well-equipped and have a good reputation. There are huge differences in this regard among the Turkish law schools, in particular in view of the many newly established ones and the enormous rise in the number of students in the last ten years (which more than doubled), a rise with which the simultaneous considerable increase in teaching staff has not been able to keep pace.⁵

In all three universities I spoke with either the rector or his representative, the dean of the law school, a number of full professors (including vice deans), associate professors, assistant professors, research assistants and students. Even though my visit coincided with the period of final examinations, a considerable number of students in all three universities were ready to meet me. As many of my interlocutors were not fluent enough in English, I usually needed the assistance of an interpreter. All the discussions I had were very open and provided me with a true and fair view of the situation in the respective institution.

Apart from those universities, I also paid a visit to the Council of Higher Education (YÖK)⁶ where I had the opportunity to speak with the deans of the law schools of several other Turkish universities (Hacettepe University, the Turkish-German University, Gazi University, İstanbul Şehir University and TOBB University of Economics and Technology).

³ Despite the high number of foundation universities, only approximately 5% (i.e. ca. 200,000) of the students are enrolled in them (Mehmet Durman, *Higher Education in Turkey: Developments & Challenges* [2013], p. 11 – available at http://www.euras-edu.org/dosyalar/EURAS-Prof.Dr.Mehmet_Durman-Higher_Education_in_Turkey_MD.pdf [accessed on 21 July 2013]).

⁴ Thus, Ankara University Faculty of Law charges foreign undergraduate and graduate students annual tuition fees of 1,627 Turkish Lira.

⁵ The increase in teaching staff amounted to only ca. 60% (see Durman [footnote 3], p. 7, 12).

⁶ See below para. 2.2.

My report is based on those talks as well as information material in English provided by the universities and the Ministry of Justice that had the pertinent legal provisions and other materials translated for me.

2. Universities in Turkey: Organizational Structure, Academic Staff and Academic Freedom

2.1. Academic Freedom in General

Art. 130 (1) of the Constitution sets forth that universities shall have scientific autonomy and public legal personality. Art. 130 (4) of the Constitution provides as follows: “Universities, members of the teaching staff and their assistants may freely engage in all kinds of scientific research and publication. However, this shall not include the liberty to engage in activities against the existence and independence of the State, and against the integrity and indivisibility of the nation and the country.” That provision is complemented by the fundamental right guaranteed in Art. 27 of the Constitution: “Everyone has the right to study and teach freely, explain, and disseminate science and arts and to carry out research in these fields. The right to disseminate shall not be exercised for the purpose of changing the provisions of Articles 1, 2, and 3 of this Constitution.⁷ The provisions of this article shall not preclude regulation by law of the entry and distribution of foreign publications in the country.”

There are some passages in the Law No. 2547 on Higher Education which indicate that the scientific research and publication activities are subject to planning on the university and faculty levels and accordingly not entrusted to the autonomous decisions of the academics.⁸ My interlocutors, however, confirmed that they had not experienced interferences with their freedom of research, teaching and publication from any authority inside or outside the university. The aforementioned passages of the Law are thus apparently not applied in a way which threatens academic freedom. University bodies can suggest or recommend that professors concentrate on certain research areas or they can subsidize research in those areas as long as professors remain free not to follow those recommendations. A compromise must be struck between the academic freedom of the entire university or faculty, as determined by the respective representative bodies, and the academic freedom of the individual researchers.

On the other hand, some of my interlocutors indicated that the “general climate” in Turkey was not always conducive to the uninhibited, robust and wide-open discussion of controversial issues, including legal and constitutional issues – which inevitably had negative repercussions also on the academic freedom in the universities in general and in the law faculties in particular. This is confirmed by the Turkey 2012 Human Rights Report of the U.S. Department of State: “Government restrictions on freedom of speech at times limited academic freedom and cultural events. Some academics and event organizers stated they practiced self-censorship on sensitive topics.”⁹

It is also confirmed by the numerous convictions of Turkey for violations of the freedoms of expression, assembly and association (Art. 10 and 11 of the European Convention on Human

⁷ These three articles regulate the fundamental constitutional principles such as republicanism, democracy, secularism, the social state principle, the rule of law, human rights and Atatürk nationalism.

⁸ See Art. 14 lit. b (1) according to which the Senate makes decisions on the scientific research and publication activities of the universities. See also Art. 17 lit. b (1) according to which the Faculty Board decides on the scientific research and publication activities of the faculty.

⁹ Available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204348> (accessed on 22 July 2013).

Rights) by the European Court of Human Rights.¹⁰ According to the settled jurisprudence of that Court, “the freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”¹¹

I recommend that, for the sake of effective academic freedom, more should be done to establish and maintain a climate of uninhibited, robust and wide-open discussion of controversial issues in Turkey. The future judges and prosecutors need to learn, understand, experience and internalise the value of free expression, assembly and association in the law schools. One important step would be to develop a corresponding micro-climate within the universities, for instance by fostering student debating societies that organize regular public debates on campus. Those debates would take up current controversial issues (such as the recent restrictions on the sale and consumption of alcoholic beverages) with two speakers presenting opposing views followed by a general discussion with the audience.

The best way for students to experience academic freedom is to make use of it. Beyond the aforementioned public debates, the law faculties should encourage and promote the publication of student-edited law journals in print format or electronic format or both. E-journals are relatively cheap. Faculty members could and should serve as advisers, contributing to the maintenance of high academic standards, but the editorial decisions would be made by the students without any interference by the faculty or the university or any other institution. The student editors could publish general calls for papers. They could solicit individual articles on special topics by renowned experts. They could organize an annual student essay contest on a certain timely legal topic. The student editors should be recruited through a competition at the beginning of each academic year.

I recommend that the law faculties encourage and promote the publication of student-edited law journals as a first-hand experience in and a living testimony of academic freedom.

While student organizations exist, most of them seem to be apolitical. This seems to be due to the fact that political activities by students are disfavoured – which would be another instance where the unfavourable general climate has negative repercussions on academia. Thus, students participating in anti-government demonstrations appear to run a higher risk of prosecution and pre-trial detention than is usual in Council of Europe member states, including for terrorism-related crimes.¹² There are also reports that LGBT groups¹³ run into particular obstacles if they want to organize on campus, especially in universities in smaller

¹⁰ See the examples in the country profile of Turkey compiled by the press unit of the European Court of Human Rights (available at http://www.echr.coe.int/Documents/CP_Turkey_ENG.pdf [accessed on 6 August 2013]).

¹¹ Judgment of 7 December 1976 (No. 5493/72 – Handyside v. U.K.), paragraph 49.

¹² According to 2012 Human Rights Report of the U.S. Department of State (see footnote 9), at the end of July 2012 more than 1,700 students were held in pre-trial detention. One of those was a French citizen who studied in Turkey as an ERASMUS student. More than 1,000 students had been convicted, including 178 for being a member of an armed terrorist organization. More than 600 additional students were on trial on that same charge.

¹³ Lesbian, Gay, Bisexual and Transgender.

cities. From a human rights perspective, one positive development is also worth noting: You can now see female students wearing head-scarves on campus – this had been prohibited until quite recently.

The goal of legal education in member states of the Council of Europe should be graduates who are intellectually and psychologically capable of and intent on serving the rule of law, justice, freedom and human rights for all without discrimination, either as independent and impartial judges and prosecutors within a democratic judiciary or as lawyers in other functions within and outside democratic government. That goal can only be reached, if all the future lawyers learn, understand, experience and internalise the values of an open society from their first day in law school (at the latest).

2.2. The Council of Higher Education (YÖK)¹⁴

Art. 6 *et seq.* of Law No. 2547 on Higher Education of 1981 set up the Council of Higher Education (YÖK), defined as “a public legal entity which regulates all higher education and guides the activities of higher education institutions and which is autonomous within the framework of duties and powers granted by this law”.¹⁵ The establishment of YÖK is envisaged in Art. 131 of the Constitution. In that article, the functions of YÖK are defined as follows: “to plan, organize, administer, and supervise education provided by institutions of higher education, to orient teaching activities, education and scientific research, to ensure the establishment and development of these institutions in conformity with the objectives and principles set forth by law, to ensure the effective use of the resources allotted to the universities, and to plan for the training of the teaching staff.” The Turkish Council of Higher Education (YÖK) has no parallel in any other European country.

YÖK has 21 members. Seven of them are appointed by the President of the Republic, mainly from among prominent university presidents and academics; seven are appointed by the Council of Ministers from among prominent active or retired public servants;¹⁶ seven are elected by the Inter-University Board¹⁷ from among professors who are not already YÖK members. The appointment of members from the second and third group of seven requires the approval of the President of the Republic.

YÖK is the almighty central body running the Turkish higher education system. It was devised after the military coup of 1980 which led to the establishment of an authoritarian form of government. YÖK is involved in everything from the establishment of new universities and the merging of existing ones to the opening, closing or merging of faculties and institutes within universities, the evaluation of the performance of each university, the determination of the numbers of professors, associate professors and assistant professors in universities, the determination of the student numbers for each faculty, student admission, the allocation of budget resources to the universities, the nomination of candidates for the university presidency in state universities,¹⁸ the appointment of the deans of the faculties,¹⁹ the carrying

¹⁴ See the Council’s official website (in Turkish) at <http://www.yok.gov.tr/>.

¹⁵ Art. 6 of Law No. 2547.

¹⁶ The group of potential candidates includes judges and prosecutors. The appointment of any member from that group requires the consent of the Ministry of Justice and the consent of the appointee.

¹⁷ The Inter-University Board is an academic body established by Art. 11 of Law No. 2547. It consists of all the university rectors, one professor from the armed forces appointed by the General Staff and one professor from each university elected by the respective university senate.

¹⁸ According to Art. 13 of Law No. 2547 on Higher Education, all the professors of a university elect six candidates for the office of president by secret ballot. Three of those are chosen by YÖK and presented as candidates to the President of the Republic who then appoints one of them as the university president. The term

out of disciplinary proceedings against university presidents and the dismissal of teaching staff.²⁰ YÖK is also responsible for approving the filling of vacant professorships in state universities on the request of the university, but it is not involved in the selection and appointment of the individual professors. Moreover, specifically with regard to legal education, YÖK has opened the doctoral studies in law to graduates of other faculties.

Although the relationship between the universities and YÖK seems to have improved considerably during the last two years, I heard several complaints about YÖK's top-down approach. Such an approach is, for instance, used with regard to the determination (and in particular the sudden increase) of the number of students the law faculties have to admit and the closing or merging of institutes within the faculties. Apparently, this is often done without even consulting the faculties and faculty members affected. Thus, YÖK surprisingly closed the previously independent EU law department of the Ankara University Law Faculty and transferred all the staff to the private international law department.

YÖK has also recently increased the allotment of students to the universities considerably. Thus, the Law Faculty of the University of Ankara, which had admitted 820 new students in 2012, was unexpectedly ordered to admit 900 in 2013. There was no equivalent increase in the number of staff and the financial allocations. Such an unbalanced raise of the student population leads to serious overcrowding, a deterioration of the study conditions and ultimately a greater number of less well educated lawyers. For instance, overcrowded lecture halls will make ex cathedra teaching inevitable and active student participation and dialogue with the teachers difficult, if not impossible. When visiting YÖK I was told that they were aware of the fact that the number of law professors was too low and were trying to close the gap.

I recommend that YÖK should quite generally develop a culture of dialogue with the universities instead of a top-down approach, in particular when it interferes with the internal organization of a certain university or faculty. I more specifically recommend that if YÖK plans to increase the number of students which a certain law faculty has to admit, that faculty has to be involved before the final decision is made. Any increase in student numbers should be met by an equivalent increase in the allocation of staff and financial means.

2.3. Organizational Structure of Universities

Pursuant to Art. 13 *et seq.* of the Law No. 2547 on Higher Education, the most important university bodies are the president (assisted by an executive board of the university) and the senate. Their equivalents at the faculty level are the dean (assisted by a faculty executive board) and the faculty board. Both the presidents and the deans have disciplinary powers over students under Art. 53, 54 of the Law No. 2547 on Higher Education and the By-Law on the Disciplinary Matters of Students of Higher Education Institutions of 18 August 2012. They also have some supervisory functions over the academic staff according to the By-Law on the Academic Organization of Universities of 18 February 1982. From what I heard during my

of office is four years; one re-election is possible. The presidents of foundation universities are appointed by the respective board of trustees. Apparently, their appointment is subject to the approval by YÖK.

¹⁹ According to Art. 16 of Law No. 2547 on Higher Education, the university president proposes three candidates for the deanship from inside or outside the university; YÖK then selects one of them as the dean. The term of office is three years but reappointment is possible. Apparently, the university presidents are free to propose those candidates which the faculty boards elect.

²⁰ See Art. 7 of Law No. 2547 on Higher Education. Depending on the subject matter, YÖK sometimes makes only recommendations to the Ministry of Education, sometimes it makes the final decisions.

visit to the three universities, those functions are apparently not used in a way which interferes with academic freedom. The presidents and deans with whom I spoke confirmed to me that they believed in the democratic, and not authoritarian, government of their universities or faculties. In practice, they therefore consulted the representative bodies of the university or the faculty quite generally, even where it was not required.

The university senates and the faculty boards – the main representative bodies at the university and faculty level – consist only of professors. Neither the research assistants nor the students are represented. It is beyond the scope of my report to assess the structure of Turkish universities in general. I am, however, wondering whether law students are well prepared for their possible future role as independent and impartial judges and prosecutors in a democratic state governed by the rule of law, if they are educated at universities whose structure is excessively hierarchical and which are subject to top-down interferences by YÖK.

I recommend that the question be looked into whether the structure of the Turkish university system, including the Council of Higher Education (YÖK), is conducive to the education of lawyers who are well prepared to fulfil the function of independent and impartial judges and prosecutors in a democratic state governed by the rule of law.

In making this recommendation, I remember how long it took until the ordinary judges and prosecutors were conceded a representation in the High Council of Judges and Prosecutors, the body that has the power of making important decisions deeply affecting their careers. Previously, membership of the High Council had been reserved to high court judges and prosecutors and the Minister as well as the Undersecretary of the Ministry of Justice.

2.4. Academic Staff

The academic (teaching) staff consists of five categories: (full) professors, associate professors, assistant professors, lecturers and research assistants.²¹ I concentrate on the three professorial categories because the professors constitute the most important and numerous group of university teachers.

Vacant assistant professorships are advertised by the president of the respective university. The dean of the respective faculty obtains written opinion on each candidate by three professors or associate professors and, after consultation of the executive board of the faculty, presents his proposal to the president who then makes the appointment. The law requires that only persons holding a doctoral degree can be appointed as assistant professors in a law faculty. They must also pass a foreign language examination. The universities may stipulate additional objective and measurable criteria with the approval of the Council of Higher Education (YÖK) “for the sole purpose of raising scientific quality”.²² Assistant professorships are temporary positions.

The law provides for a specific associate professorship examination given by a jury of experts established by the Inter-University Board. The jury evaluates the publications of the candidates and conducts an oral examination. After passing that examination, the candidates are granted the title of associate professor in their respective field.²³ Only persons holding that title are eligible to be appointed to vacant associate professorships after a procedure similar to the one for the appointment to vacant assistant professorships. The universities may stipulate

²¹ See Art. 23 *et seq.* of Law No. 2547 on Higher Education.

²² Art. 23 of Law No. 2547 on Higher Education.

²³ Art. 24 of Law No. 2547 on Higher Education.

additional objective and measurable criteria with the approval of the Council of Higher Education (YÖK) “for the sole purpose of raising scientific quality”.²⁴ Associate professorships are tenure track positions.

After a minimum of five years, associate professors can be advanced to a (full) professorship, if they have published a main work of research and other original studies during that period. The universities may stipulate additional objective and measurable criteria with the approval of the Council of Higher Education (YÖK) “for the sole purpose of raising scientific quality”.²⁵ The appointment to a vacant professorship is subject to an evaluation by a board of five professors (including at least three professors from another university). On their recommendation, the appointment is made by the executive board of the respective faculty.

Tenured associate and full professors cannot be removed unless upon conviction for a criminal offence. Their average teaching workload is nine hours per week during the terms, which is reasonable.

While the law ensures that only candidates who are well-qualified researchers can become professors in any of the three categories, their competence as teachers plays no explicit role in the appointment and promotion process. Apparently, the student body is not consulted in that process, even though the students are directly affected by those appointments. I was told that student evaluations of lectures and other courses is optional but gradually becoming more common, especially at foundation universities. I am not sure whether the universities would be free to introduce additional requirements concerning the teaching quality of candidates for vacant assistant, associate or full professorships, because the law only permits additional criteria pertaining to the “scientific quality”. Since (1) the quality of the university instruction in law plays an important role in the maintenance of a high-quality judiciary and (2) the quality of the university instruction in law primarily depends on the teaching competence of the professors, that competence should continuously be promoted by upgrade training courses and evaluated at regular intervals. The students should be included in that evaluation as a matter of course.

I recommend that the teaching competence of candidates for vacant assistant, associate and full professorships be made an explicit selection criterion in the appointment process. The student body should be granted an advisory vote in this respect. The teaching competence of the academic staff of the law faculties should continuously be promoted and regularly evaluated.

One further problem is remuneration. The salaries of professors are comparatively low, especially in the state universities. This makes the academic career relatively unattractive for the most highly qualified candidates. It also induces the professors to have additional jobs as legal consultants and/or to teach at other (foundation) universities for financial reasons. There is a demand in the market for the expertise of many law professors. If the universities want to compete successfully for that expertise, they have to offer reasonably competitive salaries. Otherwise they will end up with an academic staff that is not entirely able to conduct first-class legal research and offer first-class legal education – which will ultimately decrease the percentage of first-class law graduates in the pool of candidates for the judiciary and thus lower the quality of the judiciary. On the other hand, the reasonable engagement of law professors in legal practice (which leaves enough time for teaching and research) should not be discouraged because it will improve the practice orientation of their courses.

²⁴ Art. 25 of Law No. 2547 on Higher Education.

²⁵ Art. 26 of Law No. 2547 on Higher Education.

I recommend that law professors be offered salaries which are reasonably competitive in the market for legal expertise. The reasonable engagement of law professors in legal practice should not be discouraged because it will improve the practice orientation of their courses.

Like in other countries, including Germany, there is a gap between the gender configuration of the student body and the faculty members. While around 50% of the law students are female, the number of female law professors is much lower. Women are also underrepresented in the Turkish judiciary. In particular, there are hardly any female prosecutors. Since talent, including academic and judicial talent, is equally distributed among men and women, a country that does not adequately utilize the academic and judicial talent of its female population wastes valuable resources and ends up with a lower-quality university system and judiciary.

I recommend that Turkey should do more to make the academic and the judicial careers attractive for talented women. One could think of targeted recruitment campaigns and more efforts at enabling an adequate work-life balance (in particular regarding family commitments), such as making part-time positions available, permitting flexibility with regard to the work schedule and reforming the judiciary's geographical redistribution (transfer of locations) system.²⁶

3. The Recent Expansion of the Turkish University System

The number of state and foundation universities has more than doubled within the last ten years.²⁷ This is apparently due to a deliberate government policy which aims at raising the level of education of the growing number of Turkish adolescents and opening up university education to previously excluded social strata.²⁸ According to another interpretation, the current government actually wants to raise lawyers politically closer to the governing party.

Whatever the government's goals might be, increasing the number of university graduates at all costs is not a reasonable policy. The expansion of the university system will result in poor-quality graduates unless accompanied by strict quality assurance measures with regard to the number and qualification of the newly-recruited teaching staff, the teacher-student ratio, the library facilities etc. of the new universities. My interlocutors were generally sceptical in this regard and pointed out in particular that there were too many new "law schools" with totally inadequate academic staff and library facilities. They emphasized in particular that each university/faculty could set its own standards with regard to teaching and examinations and thus produce graduates, including bachelors of law, with very different knowledge levels. During my visit to YÖK, I was told that they were currently introducing an accreditation system with regard to new law schools.

The expansion of the university system has increased the number of law faculties that are producing future judges and public prosecutors. Currently, there are more than 13,000 active judges and prosecutors; the Ministry of Justice has set a target of 20,000 which translates into job opportunities for a considerable number of law school graduates. At the same time, there currently is an outright "run" by high-school graduates on the law schools in Turkey.

²⁶ See below para. 7.

²⁷ Durman (footnote 3), p. 6.

²⁸ The same policy goals have led to a considerable increase in the number of students assigned to existing universities.

If the high quality of the legal education of future judges and prosecutors is not guaranteed, that will necessarily have a negative effect on the quality of the Turkish judiciary.²⁹ My interlocutors also rightly indicated that great numbers of poorly educated bachelors of law could become lawyers in private practice without having to pass any further examination. This would not only lower the general quality of the legal services available in Turkey. It would also have a negative effect on the quality of the output of the judiciary because the lawyers in private practice make an important contribution to that output.

I recommend that an accreditation system be introduced which particularly ensures that new law faculties can only be opened, if they are capable of providing the high-quality legal education without which a modern legal system cannot function.

One suitable mechanism to assure that all law school graduates fulfil the same high standards of legal expertise before they enter the legal profession is the introduction of a centralized state examination.³⁰

4. Brief Description of the Visited Universities

4.1. Bilkent University³¹

Bilkent University was founded in 1984 as the first privately-funded, non-profit foundation university in Turkey with the specific goal of offering high-quality education and fostering high-quality research. Its founder, İhsan Doğramacı, was himself an accomplished academic who had held important positions in the Turkish higher education system, including that of rector of Ankara University. Bilkent University ranks 39th in the 2013 Times Higher Education World's Best 100 Universities Under the Age of 50 Years; in 2012 it ranked 32nd.

Bilkent University currently has nine faculties (including a law faculty) and three graduate schools as well as several other schools. In all, there are more than 13,000 students, including international students from 58 different countries. Bilkent University has student exchange programme agreements with over 240 universities worldwide. The tuition fees for the 2012-2013 academic year was 20,800 Turkish Lira for Turkish citizens (ca. € 9,000) and 13,950 US\$ (ca. € 11,000) for international students. Both amounts include VAT. Approximately 40% of the students receive some kind of scholarship. Of Bilkent University's approximately 1,000 faculty members, roughly a quarter are international faculty members from 36 different countries.

The basic philosophy of Bilkent University has been summed up in the mission statement as follows: "Education at Bilkent is not simply a means to obtain a vocation, a career. Instead, it endeavors to nurture students in the way of thinking and of learning to learn. ... Bilkent University aims to help students/individuals develop themselves as critical, analytical and independent thinkers and life-long learners, so that they may become the competent, creative, broad-minded, ethical and socially responsible leaders of tomorrow, who will contribute to the advancement of humanity. The educational philosophy rests on the premise that those who produce new knowledge also have the best potential to impart it."³² The Law Faculty's basic philosophy "is not to be a 'school of profession' but to have a character of a forum where the

²⁹ See below para. 7 on the entrance examination for candidate judges and prosecutors.

³⁰ See below para. 6.2.2.

³¹ Apart from the information I gathered during my visit to Bilkent University, I am relying on the following book provided to me by the university: Bilkent University – Undergraduate and Graduate Programs 2012-2013 (General Catalog, Volume XV, 2012-2013) as well as the information published on the University's official website (www.bilkent.edu.tr).

³² Bilkent University – Undergraduate and Graduate Programs 2012-2013 (footnote 31), p. 2. See footnote 71.

students could gain, in addition to basic professional knowledge, a scientific legal approach to follow and participate in the permanent development of the world facing the challenge of globalisation.”³³ Bilkent University considers itself to be the most liberal (*i.e.* least hierarchical) university in Turkey, where professors pursue an open-door policy *vis-à-vis* the students).

The Law Faculty currently comprises 28 full-time academic staff, including adjunct professors and instructors, and 27 part-time academic staff. 19 staff members have foreign degrees. The total number of students is 843 (undergraduates and postgraduates). 160 new students are admitted every year, 20 of them with a full scholarship and another 20 with a partial scholarship. The spectrum of courses offered is broad, ranging from all the areas of Turkish positive law (those courses are taught in Turkish) to legal philosophy, international human rights law, international business law and EU law (those courses are taught in English). In all, approximately 40% of the law courses are taught in English. Because of the prominent role of English as language of instruction, Bilkent University requires proof of proficiency in English from all applicants. As a matter of fact, the Bilkent faculty members and students were the only ones during my visit with whom I could easily communicate without the help of my interpreter.

At Bilkent University, the access of academic staff and students to law books and other materials such as periodicals in printed or electronic form, including foreign materials, is excellent. Bilkent University Library houses a European Union Information Centre and also receives United States Government publications as well as World Bank regional publications. In general terms, the library has been described as follows: “The collection contains around 1,777,600 items. The book collection, of over 440,000 volumes, increases by approximately 20,000 volumes annually. The library subscribes to 1,570 print journals from the USA and Europe and provides electronic access to over 226,000. Over \$3 million is spent each year on databases, books, journals and other resources ...”³⁴ The available online databases include Beck Online, Cambridge Journals Online, Hein Online, Kluwer Law Online, LexisNexis, Oxford University Press Journals Online and Swisslex.

4.2. Ankara University³⁵

Ankara University – the oldest university in Turkey – was founded in 1946, but the Law School dates back as far as 1925. There are currently 14 faculties (several of them having been established before 1946), 13 graduate schools and institutes and various other schools. The student population amounts to ca. 60,000 (ca. 2,800 of them are international students),³⁶ the number of academic staff stands at ca. 3,500, the number of research assistants is above 1,100. Most of the Turkish students come from the Ankara region.

The University has 460 ERASMUS agreements with 285 universities from 25 European countries and 96 international cooperation protocols with various foreign universities. It “encourages students to study and do internships abroad as part of their education, and academic staff and administrative staff to visit partner universities.”³⁷ Scholarships paid out of EU funds are available for students who go abroad as part of the ERASMUS exchange

³³ *Id.*, p. 336.

³⁴ *Id.*, p. 11. See also the library’s website at www.library.bilkent.edu.tr.

³⁵ Apart from the information I gathered during my visit to Ankara University, I am relying on the following booklet provided to me by the university: Ankara University – The First University of The Republic of Turkey, as well as an additional fact-sheet. See also the university’s official website at <http://en.ankara.edu.tr/>.

³⁶ The University wants to increase the number of foreign students to 5,000.

³⁷ Ankara University booklet (footnote 35), p. 37.

programme. From the Law Faculty, every year approximately 15 students go to EU universities, while approximately 5 students from EU universities come to Ankara Law School.³⁸

As a state university, Ankara University does not require Turkish students to pay tuition fees. But it charges foreign undergraduate and graduate students relatively modest tuition fees that vary from faculty to faculty. In the Law Faculty, those fees amount to 1,627 Turkish Lira per academic year (ca. € 700).

According to a statement by the Rector, Ankara University has always been “a leading university in disseminating scientific knowledge and skills in Turkey”. It offers “an innovative and productive academic environment where human rights are deeply respected.” It provides “a modern infrastructure with well-equipped and contemporary working environment where research, education and training activities can be performed efficiently and comfortably. ... As a highly respected university, Ankara University gives priority to research activities and to relations with the industrial world as well as partnerships with universities abroad.”³⁹ In a booklet published by the Ankara University, the mission and vision of that institution is explained as follows: “The university’s long-term commitment to the revolutionary ideas and principles of the Great Turkish Leader Atatürk reaffirms the mission and vision of Ankara University to enhance society in meaningful and sustainable ways. ... The mission of Ankara University is ... to serve students by teaching them problem solving, leadership and teamwork skills as well as the wider world beyond the school gates ...”.⁴⁰ “Our goal is to train competent graduates who are internationally qualified, confident and who can think creatively, independently and objectively.”⁴¹

The Law Faculty, which was specifically established to help the Government of the newly-founded Republic of Turkey in implementing their ambitious law reform programme, still produces a considerable percentage of the new recruits of the Turkish judiciary.⁴² It has two departments, the Department of Private Law and the Department of Public Law (which includes criminal law). While EU law is allocated to the Department of Private Law, international law (with the exception of private international law) is allocated to the Department of Public Law. The academic staff of the Law Faculty exceeds 100, with 29 professors, 16 associate professors and 27 assistant professors as well as 6 research assistants with a doctoral degree and 36 junior research assistants. The number of law students is around 4,800; over 100 of them are foreign students.

The Law Faculty publishes the Ankara Law Review, an academic-refereed journal which comes out semi-annually with articles in English on all areas of the law, including foreign, international and EU law. The editor-in-chief is the current Vice Dean of the Law Faculty of Ankara University, but the Board of Editors and the Board of Advisors include several foreign members.

The access of academic staff and students to law books and other materials such as periodicals in printed or electronic form, including foreign materials, is excellent. The collection of Ankara University Library and Documentation Centre holds 800,000 books and 17,000 manuscripts and subscribes to almost 80 online journal and e-book databases, including Beck Online, Hein Online, Kluwer Law Online, LexisNexis, Oxford Journals, Swisslex and

³⁸ On ways to increase the number of outgoing students, see below para. 5.4.

³⁹ Ankara University booklet (footnote 35), p. 1.

⁴⁰ Ankara University booklet (footnote 35), p. 4.

⁴¹ Ankara University booklet (footnote 35), p. 9.

⁴² Ca. 40% of the Ankara Law School graduates usually participate in the entrance examination for the judiciary because they want to become judges or prosecutors.

Westlaw International.⁴³ There is a separate law library in the Law Faculty with ca. 100,000 books and 86 foreign and 70 Turkish periodicals as well as 12 foreign law data bases⁴⁴ and 2 Turkish law data bases.

Besides the Law Faculty, Ankara University also has a Vocational School of Justice for training non-academic judicial staff.

4.3. Selçuk University in Konya⁴⁵

Selçuk University was founded in 1975 and now has 21 faculties, 6 graduate schools and several other schools with almost 68,000 students and an academic staff of around 2,500. The University has a Human Rights Implementation Centre affiliated with the Rectorate which cooperates with the Raoul Wallenberg Institute of Lund University in Sweden. According to the Rector's message, the university's main goal is to be among the top 500 universities in the world and Turkey's top five universities.⁴⁶ In the academic year 2011-2012, 721 foreign students from 47 different countries studied at Selçuk University. There are ERASMUS agreements for the exchange of students and academic staff with several universities in the EU. An Erasmus House was opened in 2010 which provides accommodation for up to 96 foreign students.

The Law Faculty was established in 1983.⁴⁷ It has two departments, the Private Law Department and the Public Law Department. Currently, there are more than 2,600 law students, 20% of whom come from the Konya region. Ca. 250 ordinary students are newly admitted every year.⁴⁸ The Faculty has 30 members,⁴⁹ eight of whom are women. The Faculty defines its mission as educating new generations of legal professionals on the basis of the rule of law and respect for human rights and with social awareness and modern values. In the brochure published by Selçuk University,⁵⁰ the Law Faculty's mission is defined as follows: "... the institution aims, within the framework of legal regulation, to educate generations that are loyal to the fundamental values of the Republic of Turkey, which is a social law state,⁵¹ have a strong belief in justice and will contribute to our country's law culture. ... The faculty ... is committed to educating legal professionals who aspire to respect law and rule of law ..."⁵² The Faculty prides itself with the considerable success rate of its graduates in the entrance examinations for the judiciary. More than 1,000 of the current ca. 13,000 active Turkish judges and prosecutors are graduates from the Konya Law Faculty.

Since 1988, the Faculty has published a law journal semi-annually in Turkish (SELÇUK ÜNİVERSİTESİ HUKUK FAKÜLTESİ DERGİSİ) which has been peer-reviewed since 2000.⁵³ Volume 20 was published in 2012 in two issues. In view of the language of publication, there is no foreign academic on the editorial board that consists of Faculty

⁴³ See the official website at <http://library.en.ankara.edu.tr/>.

⁴⁴ See the preceding sentence for important examples.

⁴⁵ See the information brochure available at http://www.selcuk.edu.tr/tanitim/eng/catalog_eng.pdf.

⁴⁶ See the brochure (footnote 45), p. 6. Currently, the university is among the top 8 universities in Turkey.

⁴⁷ See the Faculty's official website in English at <http://www.selcuk.edu.tr/sayfa.aspx?birim=004&dt=2> (unfortunately, the English is only partly comprehensible).

⁴⁸ Another ca. 250 enroll in secondary-education law courses which are given in the evenings and on week-ends.

⁴⁹ 10 full professors, 2 associate professors and 18 assistant professors.

⁵⁰ Footnote 45, p. 13.

⁵¹ This probably means a social state based on the rule of law.

⁵² Footnote 45, p. 13.

⁵³ See the journal's website at <http://www.selcuk.edu.tr/Sayfa.aspx?birim=004&sayfa=8227&dt=2> (where the published issues of the journal can be downloaded freely).

members or the advisory board that consists of professors from other Turkish universities. Occasionally, however, articles in English are published in the journal.

The library facilities are somewhat less opulent than at Ankara and Bilkent Universities. In the Selçuk University Main Library,⁵⁴ there are around 150,000 books and 342 periodicals. 70 electronic databases provide full-text access to more than 32,000 electronic journals and more than 2 million e-books.⁵⁵ There is a separate law library in the faculty building which houses a collection of about 15,000 law books and 42 legal periodicals.⁵⁶ However, student access to the most recent editions of law books is apparently difficult because those are either not purchased or checked out by professors.

I recommend that at least one copy (preferably more copies) of the most recent editions of the standard law textbooks is put on library reserve so as to ensure that every student has access to them and can photocopy the relevant chapters.

Besides the Law Faculty, Selçuk University also runs a Vocational School of Justice which is training “qualified intermediate staff needed at various departments of the Ministry of Justice and to meet the need for well-trained and qualified intermediate staff at the bodies of judicial justice and administrative jurisdiction.”⁵⁷

5. The Organization of Legal Education in Turkey

5.1. Legal Bases

The ordinary undergraduate legal education is a four-year programme. It leads to the law diploma (bachelor of laws) required for the position of judge and public prosecutor in the civil and criminal departments of the judiciary, whereas the members of the administrative judiciary are recruited not only from the law faculties, but also from the faculties of social sciences, finance and economics, provided that they have successfully completed a sufficient number of law courses as part of their curriculum.⁵⁸

Legal education, like the other areas of higher education, is regulated by Art. 130 – 131 of the Constitution of the Republic of Turkey of 1982 (as amended), and the Law No. 2547 on Higher Education of 1981 (as amended) which cover both public and foundation universities. There is a complementary By-Law on the Academic Organization of Universities of 1982 and a By-Law on the Disciplinary Matters of Students of Higher Education Institutions of 2012, both issued by the Council of Higher Education (YÖK).⁵⁹

⁵⁴ See the library’s website (in Turkish) at <http://www.kutuphane.selcuk.edu.tr/>.

⁵⁵ Footnote 45, p. 46.

⁵⁶ Footnote 45, p. 13.

⁵⁷ Footnote 45, p. 28. Graduates of that vocational school can e.g. work as bailiffs or court clerks in civil, criminal or administrative courts or prison clerks.

⁵⁸ See Art. 8 lit. c of Law No. 2802 on Judges and Prosecutors of 1983 (as amended). That provision also permits the recruitment of graduates from foreign universities on condition that they have successfully completed complementary studies at Turkish law faculties.

⁵⁹ On the YÖK, see para. 2.2.

5.2. Law School Admission for Undergraduates

The centralized admission of Turkish students with a high-school diploma or equivalent⁶⁰ to all the undergraduate degree programmes is “based on a nation-wide two-stage examination administered by the Student Selection and Placement Centre (ÖSYM).”⁶¹ The first stage of those Centralized University Entrance Examinations, the Higher Education Entrance Exam (YGS), is the same for all undergraduate programmes; it is a multiple-choice exam given each April. According to a dossier prepared for me by the Ministry of Justice, in 2012 the number of students taking that exam was almost 1.9 million. It consisted of 160 questions covering the whole range of high-school science and humanities classes which had to be answered in 160 minutes.

Those students who reach a score of at least 180 in the YGS (more than 68% reached that level in 2012), are admitted to the second stage, the Undergraduate Placement exams (LYS), which are more subject-specific multiple-choice exams. They are offered in five different areas. For law school admission, three of those areas, namely mathematics, social sciences and Turkish language, must be covered and the pertinent parts of LYS need to be passed. I wonder whether the LYS is sufficiently adjusted to the demands of legal studies. It should be transformed into a veritable Law School Admission Test whose results are more meaningful with regard to the examinees’ talents to study law successfully. The law school admission tests which have for a long time been used in the U.S.A. and Canada could serve as a model.

I recommend that the undergraduate placement exams (LYS) be better adjusted to the demands of legal studies. It should be transformed into a veritable Law School Admission Test whose results would be more meaningful with regard to the examinees’ talents to study law successfully.

After the LYS results are announced in July of each year, the successful candidates can list up to 24 preferences with regard to the universities and programmes they want to attend. This must be done by the first week of August. The ultimate placement decision is automatically made by ÖSYM at the end of August on the basis of each candidate’s final score which is the sum of the high school average grade point and the scores obtained in the two parts of the university entrance exam. In 2012, the Faculty of Law of Bilkent University required the second highest score for their fully-paid scholarship programme (20 places); it was at no. 12 in that preference list for their 50%-scholarship programme (20 places) and at no. 93 for their ordinary programme (120 places). Ankara University Faculty of Law was at number 18 (820 places)⁶² and Selçuk University Faculty of Law in Konya at number 39 (257 places).

5.3. Postgraduate Legal Studies and Continuing Academic Education of Judges and Prosecutors

The access to postgraduate legal studies (LL.M. and PhD-programmes) is subject to the centralized Postgraduate Study Entrance Exam (ALES) which is also administered by

⁶⁰ For foreign students, there is a separate examination, the Foreign Student Exam (YÖS) that is also administered by ÖSYM. See the information sheet „An Overview on the Organisation of Undergraduate Legal Study in Ankara University“ (p. 2), given to me during my visit to Ankara University Law School in answer to a number of questions I had asked beforehand.

⁶¹ Durman (footnote 3), p. 14. That same ÖSYM also administers the written part of the entrance examination for admission to the candidacy position for judgeships and prosecutorships (Art. 9/A of Law No. 2802 on Judges and Prosecutors).

⁶² According to a fact sheet prepared for me by the Law Faculty of Ankara University, they accept only candidates from among the top 5% of those who passed the University Entrance Examination.

ÖSYM.⁶³ But those programmes, which take at least two years, are not normally attended by future judges and public prosecutors. They are interesting for future academics who already work as research assistants while pursuing their master studies.

Numerous younger-generation judges and prosecutors, however, do participate in special non-thesis master programmes which take 18 months, with lectures on week-ends.⁶⁴ If they succeed, they can expect an earlier promotion. The establishment of such programmes is subject to the approval by YÖK that also enacts the necessary framework regulations. Some of my interlocutors suggested that the successful completion of postgraduate legal studies should be turned into a requirement for becoming judges and prosecutors. This would enhance their qualification, experience and maturity. In my view, the continuing academic education of judges and prosecutors should at least be promoted and encouraged. Apart from those master programmes, the Justice Academy could cooperate with various universities and offer shorter in-service training courses which should inspire judges and prosecutors to think outside the box of their daily routine.

I recommend that the continuing academic education of judges and prosecutors be promoted and encouraged. Apart from specific master programmes for members of the judiciary, the Justice Academy could cooperate with various universities and offer shorter in-service courses which should inspire judges and prosecutors to think outside the box of their daily routine.

5.4. Participation in Foreign Exchange Programmes (ERASMUS)

It is generally recognized that the number of Turkish law students who spend some time at a foreign law school is much too small. One reason is language problems: Too few Turkish law students are fluent enough in a foreign language to be able to study abroad. Foreign language education in the Turkish schools needs to be improved and intensified considerably, starting as early as possible and including the chance of attending language courses in foreign countries before high school graduation. Foreign language education should be continued at law school level in the form of mandatory courses on foreign (English or other) legal terminology. This is all the more important since language problems also prevent many students from understanding foreign legal materials, such as the judgments of the European Court of Human Rights, the Court of Justice of the EU and other international courts and institutions.

I recommend that the foreign language education in Turkey be improved and intensified at all levels so that more students are practically able to study abroad and to understand and use foreign and international legal materials.

Moreover, for the outgoing students, studying abroad extends their study time in Turkey more than necessary. The main reason is that in Turkish law schools many courses extend over an entire academic year. If a student spends one semester abroad, he or she will lose an entire year in Turkey. This is indeed discouraging. Apparently, the transfer of credits is also difficult.

⁶³ See Overview (footnote 60), p. 2.

⁶⁴ The Law Faculty of Selçuk University offers such a programme for a tuition fee of 4,500 Turkish Lira (less than € 2,000).

I recommend that the participation in foreign exchange programmes be made easier and more attractive for the law students. Systemic obstacles like annual courses should be eliminated. The transfer of credits should be made as easy as possible.

6. Law School Curricula and Examinations

6.1. Curricula

6.1.1. Current Situation

The undergraduate legal studies are organized as a four-year programme. Students who successfully complete that programme obtain the degree of bachelor of laws. The range of mandatory courses is similar in the law schools throughout Turkey. This is primarily due to the fact that until 1980, there were only two law faculties in Turkey (in Ankara and İstanbul) that devised the model curriculum which was later adopted by the new law schools.

There are no government or YÖK directives with regard to the law school curriculum. Rather, the faculty board⁶⁵ of each law faculty determines the curriculum, subject to the approval by the senate of the university.⁶⁶ Accordingly, they have the possibility of putting a greater emphasis on international and comparative law as well as EU law and decide on the significance of foreign language instruction.

Art. 5/i of Law No. 2547 on Higher Education, however, requires universities to offer and first-year students to take a number of general knowledge courses for instance on Turkish language, the Principles of Atatürk and the history of the Turkish revolution. I was explained that these courses were imposed on the universities after the military coup of 1980. To my mind, those subjects may be important but they should be taught at high-school level and not distract students from concentrating on their specific studies. To the extent that the Principles of Atatürk or the history of the Turkish revolution are important, *e.g.*, to understand the Turkish constitutional and legal system, they should be included in the specific courses introducing students to the Turkish constitutional and legal system.

I recommend that first-year (law) students should no longer be required to attend general knowledge courses with no specific connection to their subject of study (such as the history of the Turkish revolution). If elements of such courses are important to understand the Turkish constitutional or legal system, they should be included in the pertinent law courses.

There are indeed considerable differences in the course programme of the three law faculties I visited. Thus, Bilkent University Faculty of Law offers mandatory courses on public international law (second year, autumn semester, 5 ECTS), EU law (second year, autumn semester, 3 ECTS), introduction to Anglo-American law (second year, spring semester, 4 ECTS), private international law (third year, spring semester, 4 ECTS), international human rights law (fourth year, spring semester, 4 ECTS) and international business law⁶⁷ (fourth

⁶⁵ The faculty board is chaired by the dean and consists of the heads of departments under the faculty, and, if any, the directors of institutes and higher schools under the faculty, three professors, two associate professors and one assistant professor elected by their respective peer group (see Art. 17 of Law No. 2547 on Higher Education).

⁶⁶ The senate is chaired by the president and consists of the deputy presidents, deans, one academic member elected from each faculty for three years and the directors of institutes and higher schools attached to the university president (see Art. 14 of Law No. 2547 on Higher Education).

⁶⁷ This course includes the freedoms of the EU internal market.

year, spring semester, 4 ECTS). In their third and fourth years, students have to attend elective courses besides their mandatory courses. They can choose from a wide array of elective courses including international organizations, American law of contracts, fundamental concepts of Anglo-American law, comparative private law, comparative constitutional law, contemporary governmental systems, international commercial arbitration, foreign investment law, EU substantive law, legal aspects of EU-Turkey relations and politics of European integration. Courses having an international character are taught in English. It is obvious that the Bilkent student body is primarily interested in courses which are useful for later practice in large international law firms, but also broad-minded with regard to international, comparative and human rights aspects of the law in general. Moot courts play an important role. Unsurprisingly, there is no specific course dealing with judicial independence and impartiality, but I was told that these issues are addressed in the courses on constitutional and procedural law.

At Ankara University Law School, courses are normally taught in Turkish, but all students are required to take a foreign language course (English, German or French) in their first and second year. There are mandatory courses in public international law (second year, 4 ECTS), general public law – human rights (fourth year, 4 ECTS) and private international law (fourth year, 4 ECTS). There is a wide array of elective courses with international and EU connotations such as law of international organizations, international law of the sea, EU institutional law, EU substantive law, comparative law, human rights law clinic, law of international arbitration, international carriage of goods, legal aspects of Turkey-EU relations and European private law (all one-semester courses, 4 ECTS). Unsurprisingly, there is no specific course dealing with judicial independence and impartiality, but I was told that these issues were major topics in the courses on procedural law, all the more since the faculty was firmly committed to European constitutional values. Also, there is an elective course on the organization of the judiciary and another one on law, ethics and occupational ethics.

At Selçuk University Faculty of Law, the offer of courses with an emphasis on international law, EU law and comparative law is more limited. There are mandatory courses on public international law (second year, 3 ECTS) and private international law (fourth year, 4 ECTS). There also is an elective course “Introduction to EU Law” (second year, 1 ECTS). Moreover, students are required to take an English language class in their first year (2 ECTS). Finally, the faculty offers a fourth-year mandatory course on legal profession law (1 ECTS), but nothing specific on judicial independence and impartiality. I trust, however, that those issues are discussed in the various mandatory constitutional and procedural law courses.

6.1.2. Reform Proposals

6.1.2.1. The Goal of Law School Education and the Duration of Undergraduate Studies

Several of my interlocutors firmly believed that the legal education in Turkey should be extended to five years, all the more since high school education did not adequately prepare students for legal studies. In their view, the additional year of studies was necessary to increase the level of knowledge and maturity of the bachelors of law before they entered the profession. It would provide the time to include courses on legal methodology, legal reasoning and legal writing in the curriculum. Such an extension would also make it possible to go beyond the teaching of legal techniques and put more emphasis on the foundations of law such as legal theory, ethics, history and sociology. This was also important for promoting the independence and impartiality of the judiciary, because the future judges and prosecutors needed to internalize values and not just legal techniques. Some of my interlocutors also remarked that the high-school education in Turkey was geared towards producing uncritical

believers in (governmental) authority and not independent and critical minds. The state was of primary importance and the individuals only of secondary importance. According to their impression, that mentality was still prevalent in the judiciary.

My interlocutors agreed that interactive instruction was much better than the traditional professorial monologue but emphasized that the high number of students made dialogues in the class-room often difficult. Regrettably, moot courts were not a regular feature of the curriculum at most law faculties.⁶⁸ There were some differences of opinion between professors and students on how the instruction should be conducted. While the students preferred a more “entertaining” kind of instruction, the professors feared that the increasing use of modern media such as power-point presentations made the instruction more superficial. The professors would put greater emphasis on the teaching of the foundations of the law and less on imparting knowledge of legal techniques. The students, on the other hand, think that they should also be offered personal development classes, in which they would learn to improve their rhetorical skills, learn argumentation techniques and quite generally be instructed on how to raise the level of their self-confidence.

There was another and more profound dissent between the approach of many professors and the expectations of many students. The latter wanted to be given the one clear and easy answer which usually does not exist, at least not with regard to difficult legal questions. The professors instead preferred to explain to the students that several conflicting answers could be given to those kinds of questions. That again tended to alienate especially the weaker students.⁶⁹

In my view, the goal of university-level legal education should not be to produce legal technicians who “automatically” deliver indictments, judgments or legal briefs, if they are fed with facts and the text of the statute book. Rather, the law schools too should endeavour to “help students/individuals develop themselves as critical, analytical and independent thinkers and life-long learners, so that they may become the competent, creative, broad-minded, ethical and socially responsible leaders of tomorrow, who will contribute to the advancement of humanity.”⁷⁰ This educational goal should be the standard for assessing the necessity and/or desirability of reform.

Creativity needs to be fostered by active student participation. Thus, moot courts should become a standard feature of the law school curriculum. Another important feature would be the establishment of legal clinics where students work on practical cases under the guidance of experienced professors and legal professionals.

I recommend that the goal of university-level legal education should be graduates who go beyond the routine application of statutory texts. It should be graduates who think critically, analytically and independently and who are thus capable of becoming the competent, creative, broad-minded, ethical and socially responsible leaders of tomorrow. On this basis, I further recommend that all the stakeholders (the law faculties, the students, YÖK, the Ministries of Education and of Justice, the High

⁶⁸ Moot courts are competitions among teams of law students centering on a hypothetical legal dispute between hypothetical parties. Each team represents one of the parties, submitting briefs and presenting oral argument. The “bench” consists of professors who determine the winning team. Moot court competitions were originally developed in common law systems, but are now well established also in many civil law systems. There are numerous national and international moot court competitions covering many different areas of law.

⁶⁹ That basic dissent is familiar to law professors in practically any system.

⁷⁰ The quotation is taken from Bilkent University – Undergraduate and Graduate Programs 2012-2013 (footnote 31), p. 2. See above para. 4.1.

Council of Judges and Prosecutors and the Bar Associations) concertedlly examine whether the period of undergraduate legal studies should be extended to five years. It should also be examined how the problem of overcrowding of the law schools can be defused so as to enable more interactive types of instruction. Moot courts and legal clinics should become standard features of the law school curriculum.⁷¹

6.1.2.2. Bridging the Gap between Theory and Practice

Both the professors and the students with whom I spoke complained about the enormous gap between the theoretical teaching of the law at the law faculties and the practical operation of the law in the courts. These complaints combined several aspects. The first one was severe criticism of the jurisprudence of the extremely overburdened high courts: Allegedly, their decisions were often poorly reasoned, lacking any dogmatic basis, and also incoherent so that it was impossible to predict any future jurisprudential trend. In other words, there was too little theory on the side of the courts. The second aspect was that the students had no chance to familiarize themselves with the practical operation of the courts, prosecutors' offices or law firms because there were no internships. In other words, there was too little practice on the academic side.

The obvious remedy for this unsatisfactory situation is to bring theory and practice into closer connection by increasing the exchange between academia, the courts and the lawyers in private practice. A certain number of law professors could be recruited for the (high) courts on a part-time basis. The (high) courts would benefit from their specific expertise as well as their dogmatic rigour and theoretical understanding while the professors would gain insights into court practice and pass that on to their students. Conversely, experienced judges, prosecutors and lawyers in private practice should be recruited as part-time university instructors so that the students would get first-hand information on legal practice.⁷²

Moreover, an internship programme of one to two months duration during the semester breaks should be devised which all law students would have to complete before graduation. During that internship, the students would spend time looking over the shoulders of judges of different jurisdictions, prosecutors, lawyers in private practice, administrative authorities, prisons etc., so as to get an idea of the different kinds of legal work and the practical problems involved. Since the students need to have basic knowledge of the law, if they are to profit from the internship, it should be fitted in after the completion of the second year in law school.

I recommend that the gap between the theoretical instruction in the law schools and the practical operation of the law in the courts etc. should be narrowed: Law professors should be permitted and encouraged to sit as part-time (high court) judges; judges, prosecutors and lawyers in private practice should be permitted and encouraged to act as part-time instructors at the law schools; all the law students should be required to complete an internship programme at the courts etc. before graduation. To prepare students for that programme, there should be a mandatory introductory course at every law school in Turkey. That course should underline the importance of an independent, impartial, effective, efficient and socially responsible judiciary, referring to the relevant case-law of the European Court of Human Rights as well as the recommendations of the Committee of Ministers of the Council of Europe.

⁷¹ See also my recommendations below in para. 6.1.2.3. on the internationalization and Europeanization of legal studies.

⁷² The Law No. 2802 on Judges and Prosecutors would have to be changed to enable judges and prosecutors to teach at universities.

One other possibility to familiarize law school graduates with the judicial and prosecutorial practice would be the introduction of a voluntary apprenticeship programme.⁷³ Immediately after graduation, the participating bachelors of law⁷⁴ would be assigned to assist judges and prosecutors for a certain period time not exceeding two years. They should consecutively be assigned to both a judge and a prosecutor (or vice versa) so that they could see the differences of the two branches. The assistants would receive a small salary and their performance would be assessed by that judge or prosecutor. Those assistantships would both increase the productivity of the judiciary and permit the graduates to gain valuable experience of the practical work of judges and prosecutors. Apprentices with a good performance record who decide to pursue a judicial career could be granted preferential access to the judiciary. One could imagine a similar apprenticeship programme for those who wanted to become lawyers in private practice: They would start as assistants to an experienced lawyer.

I recommend that a voluntary apprenticeship programme for superior law school graduates be tested in which they would be assigned to assist judges and prosecutors for a certain period of time. Those assistantships would both increase the productivity of the judiciary and permit the graduates to gain valuable experience concerning the practical work of judges and prosecutors. One could imagine a similar apprenticeship programme for those who wanted to become lawyers in private practice.

6.1.2.3. Internationalization and Europeanization of Legal Studies

Legal education in general and the legal education in Turkey in particular, have traditionally been too narrowly focused on the transfer of knowledge concerning the particular national legal system. In the age of Europeanization and globalization, however, law school graduates – including those who intend to work for a national judiciary – need to widen their legal horizons considerably and develop the necessary foreign language proficiency. They must be able to cope with cases which include elements of international law, EU law and comparative law, because such cases are coming up ever more frequently.

There should be an incentive to foster the law students' readiness to look beyond their own national legal system. I was told that even if appropriate courses were part of the ordinary law school curriculum, many students were uninterested because they believed that the international and comparative aspects of the law were unimportant for their future career. One possibility to change that attitude would be the inclusion of pertinent questions in the judicial entrance examination. Another possibility would be a programme of intensive summer courses on those topics in attractive regions which would be offered by renowned law faculties and include foreign teachers. The students who pass the examinations at the end of those courses would obtain a highly-esteemed certificate giving them a competitive advantage in the job market, including preferential access to the judiciary. An accreditation system would ensure the high quality of the summer courses offered. Participants would have to pay a reasonable tuition fee, but a sufficient number of scholarships would be made available.

I recommend that there should be an incentive to foster the law students' readiness to look into public international law, EU law and comparative law. One possibility would be a programme of accredited intensive summer courses on those topics offered by renowned law faculties. Participants who pass the final examination would obtain

⁷³ Judge Luca Perilli told me that such a programme was introduced in Italy some time ago and considered as very successful.

⁷⁴ Only graduates whose law school grades are above average should be admitted.

highly-esteemed certificates giving their holders a competitive advantage in the job market, including preferential access to the judiciary.

6.2. Examinations

6.2.1. Current Situation

Normally, there are written mid-term and final examinations in each law school course. Depending on the subject, they usually comprise both abstract questions as well as case problems.⁷⁵ Professors are free to require further active student input such as take-home questions or oral presentations in class. A minimum amount of credits is required to obtain the bachelor degree.

Several of my interlocutors complained about the fact that some years ago, an “amnesty” law was enacted by the Grand National Assembly “to please the electorate”. This law ensures that no student can be dismissed from any state and foundation university for failing to obtain his or her degree within the ordinary four year study period or a reasonable extension. Rather, they can continue their studies until they either ultimately obtain the degree or give up voluntarily. This of course leads to a steady increase in the number of so-called extended study students – a problem which affects state universities more than the expensive foundation universities and contributes to overcrowding.

I recommend that the “amnesty law” be revoked which contributes to the overcrowding of the law schools because it allows students to extend their study periods as long as they like.

6.2.2. Reform Proposals

Since the examination standards are set by each law faculty, it is possible that they differ considerably. I was told by my interlocutors who all came from well-established and renowned law faculties that the many recently founded law faculties tended to let their students pass examinations too easily. Several of my interlocutors suggested that the most appropriate instrument for assuring the adequate and equal quality of law school graduates was to require them all to pass a demanding state examination before being permitted to enter any legal profession. That would simultaneously guarantee that those admitted to pre-service training as candidate judges or prosecutors or permitted to practice law as attorneys were adequately qualified. As a matter of fact, during my visit to YÖK I was informed that a commission in the Ministry of Justice had been established to work on the introduction of such a general examination. That commission would soon present their results to the Minister of Justice.

I recommend that an appropriate and neutral mechanism be put in place to assure that the increasing number of bachelors of law produced by the universities in Turkey, and in particular by the newly founded universities, have an adequate and equal level of knowledge of the law before being permitted to enter any legal profession. One suitable mechanism would be a demanding centralized general examination which every law school graduate would have to pass before being permitted to take up any legal profession or enter the pre-service training of the Justice Academy.

⁷⁵ At the Konya law school, the mid-term examinations are given in the form of multiple choice tests.

7. From the Law School to a Career in the Judiciary

Every candidate judge and prosecutor must pass a written and oral entrance examination before his or her admission to the pre-service training at the Justice Academy. However, my interlocutors were not convinced that this provided an adequate filter to prevent poorly educated or personally unsuitable bachelors of law from getting access to the judiciary. They pointed out that the written part of the examination was given in the form of a multiple choice test which was easily passed and quite inadequate to assess the legal qualifications of the examinees. They suggested that the written part should be complemented by essay questions which were much more suitable to test the legal knowledge of the examinees, including their familiarity with national and international human rights law.

In their view, too much emphasis was put on the oral examination by boards of examiners that mostly came from the Ministry of Justice. There were no objective standards to guarantee the even-handed treatment of examinees in those oral examinations. Some people even believed that the examination boards favoured candidates from certain law schools considered to be friendlier towards the government and that undue influence might be exercised on members of those boards. That kind of gossip is of course hard to squelch. The best way to counteract it is to make the selection process of candidates for the judiciary as objective and transparent as possible. The current system should be reformed in order to improve its objectivity and transparency.

I understand that there still is a shortage of judges and prosecutors which the Ministry of Justice is eager to eliminate quickly. On the other hand, it would be short-sighted if the recruitment standards were lowered or the training period at the Justice Academy shortened for that purpose. The reform of that judicial entrance examination is all the more important since after having passed it almost all the candidates successfully complete the pre-service training in the Justice Academy and are thereupon quasi-automatically appointed as judges or prosecutors. That makes the entrance examination the only filter to prevent unsuitable candidates from getting access to the judiciary.⁷⁶

I recommend that the entrance examination for the judiciary be speedily reformed. It must be ensured that only those law school graduates can become candidate judges and prosecutors who have both the legal expertise and the personal qualities to develop into not only efficient and effective, but also truly independent and impartial judges and prosecutors. That examination should be reorganized so as to demonstrably guarantee that the selection of candidate judges and prosecutors is conducted objectively and based on merit, having regard only to qualifications, integrity, ability and efficiency. The anonymous written part should be upgraded into a serious examination of the candidates' legal expertise and be given more importance in relation to the oral part because it is more objective.⁷⁷

⁷⁶ Even if a centralized general legal knowledge examination is introduced for law school graduates (see above 6.2.2.), the judicial entrance examination would remain important for testing the specific professional and personal requirements which members of the judiciary have to meet.

⁷⁷ See my previous recommendation in para. 2.3.5.1. of my Report of 4 February 2013 on The Turkish High Council of Judges and Public Prosecutors (available at http://www.uni-saarland.de/fileadmin/user_upload/Professoren/fr11_ProfGiegerich/forschung/Report_Turkey_04.02.2013.pdf): "I recommend transferring part of the responsibility for recruiting the candidates for the position of judges and public prosecutors to the High Council. The number of representatives of the Ministry in the board of interview should be reduced to one, the Justice Academy should delegate two members and a fourth one should be an experienced member of the Bar. The remaining three members should be selected by the High Council from the judges and public prosecutors. The new board should operate under the auspices of the High Council but make its decisions independently, using specific and objective criteria laid down by law which ensure that the selection of candidate judges is based on merit, having regard to qualifications, integrity, ability and efficiency."

From my conversations with law students I learnt that many of them do not consider the judicial career as attractive.⁷⁸ This holds true not only for the best and the brightest (and most ambitious) who prefer a career in international law firms. I was told that although judges and prosecutors received a decent salary, their workload was too heavy. The most dissuasive aspect of the judicial career, however, was the regular transfer of judges and prosecutors to other locations which involved considerable hardship for the transferee and his or her family. In certain less-developed areas of the country, life was difficult and judicial work could be downright dangerous.

As I wrote in my previous report: “In Turkey, every judge and public prosecutor is assigned to one of the 701 judicial locations in the country which are grouped into five geographical regions, the fifth region being the most provincial and thus least attractive and the first region (which includes Ankara, İstanbul and İzmir) being the most attractive. While the first appointment is made by lot (computerized drawing), later transfer decisions are made by an order of preference based on criteria which are laid down in a regulation⁷⁹ made by the High Council of Judges and Prosecutors. The First Chamber of the High Council decides on those transfers. “Transfers to more attractive judicial regions are made after two years at the earliest, upon the application of the individual judge or public prosecutor, provided that there are vacancies. In 2011, there were ca. 4,000 applications of which ca. 2,500 were granted. When a judge or public prosecutor is ultimately assigned to a first region judicial location after at least ten years of experience, provided he or she has a good record, he or she attains security of location. Any further transfer to another location will only be made for disciplinary reasons as a penalty imposed by the Second Chamber of the High Council.”⁸⁰

For my interlocutors, however, the outcome of the High Council’s decision-making on transfer of locations was so unpredictable that they would not want to entrust their and their family’s fate to it.⁸¹

I recommend that the career in the judiciary should be made more attractive for the best law school graduates (male and female) in Turkey. This will ultimately require steps toward reforming the geographical redistribution (transfer of locations) system.⁸²

⁷⁸ The students of Bilkent University Law School were especially disinclined to enter the judiciary.

⁷⁹ See my Report of 4 February 2013 (footnote 77), para. 2.5.1.

⁸⁰ See footnote 77.

⁸¹ Due to the recent reform of the High Council, the situation has improved considerably (see my Report of 4 February 2013 [footnote 77]). It is not yet perfect, however. It also seems that those recent improvements are not yet well-known in the general public.

⁸² See also above para. 2.4. (last recommendation).