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PHD THESIS SUMMARY

The impact of European integration on Turkish judiciary

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CONTENT:

1. DETERMINATION AND PURPOSE OF THE RESEARCH TOPIC

Today, Turkey's situation position is accompanied by outstanding international attention as it plays a central role in addressing the European immigration problem and is also a key player in the Middle East conflict as a NATO member state with significant armed force. Turkey's relationship with the EU is constantly on the agenda, as Turkey has a key role in the future of Europe. Since Turkey's accession to the EU is a very complex issue, this dissertation, although my researches extended to broader topic, does not examine all controversial aspects (dispute on concept of Europe, problems related to religion and identity, situation of minorities, women's rights, human rights issues, asylum policy etc.) as it would clearly go beyond the scope of a PhD-dissertation.

As the EU, after the attempted coup in 2016, raised the most serious concerns about the independence of the Turkish judiciary, so in this dissertation I discussed the situation of the judiciary in detail. The main purpose of this research is to answer the question of whether Turkey's judiciary system complies with the EU standards for accession. Furthermore, the search for these standards was also an important goal, as the presentation of specific EU requirements against Turkey is generally absent. I also sought to answer that question whether failure to comply with EU standards by Turkish judiciary was the reason why Turkey, despite its overriding importance for Europe, neither could to join the European Union, nor its application for membership has been rejected so far.

The basic hypothesis of my research was that, since the beginning of the accession negotiations with the EU, Turkey has implemented comprehensive changes and approximations in order to comply with the EU standards in its judicial system, as a result, apart from some of the exceptions I have described in detail in this paper, the organization and functioning of the Turkish judiciary is now basically in line with the EU standards, so if the remaining disputed issues were to be settled, Turkey would be suitable for accession in a judicial point of view.

The purpose of this dissertation is therefore to clarify the relationship between the legal value system and the factual jurisprudence of the European Union and of Turkey, with particular reference to the question of justice, as this is precisely why concerns about the membership of Turkey in the European Union are currently being raised. At the same time, in Turkey it has also raised the question of whether Turkey still wants to join the European Union. It has been also the purpose of this paper to present the system and history of the Turkish judiciary, which so far has not been done so detailed in the absence of Hungarian-

language sources. Under the so-called Copenhagen criteria, the proper functioning of the judiciary is also a precondition for accession. That is why, during the research, the question of the fulfillment of the Copenhagen criteria by Turkey, in particular in the area of justice, should be examined.

2. Applied research method

During the research, I emphasized that these issues should be examined not only from the point of view of the European Union but also from Turkey's position. I think it is important that, in connection with accession, in addition to the information that reflects mostly the point of view of the European Union, Turkey's insights should also be examined. In my view, today, when examining EU-Turkish relations, there is little emphasis on getting to know Turkish positions.

The European Union is not just a free trade zone, it is also a legal community. The legal system consists not only of rules, but of principles, which depend directly on the world view of a society. It is therefore important to take account of the identity determining the legal system of the European Union as an intergovernmental organization with Christian roots and Turkey as a country with Muslim roots and of the impact of these identity on society. From this point of view, it is a fundamental question whether countries of different cultures and historical traditions could form a legal community at all, so it is important to examine the history and culture of Turkey, which has developed more different paths compared to core Europe than any other former candidate country during the last half a millennium, with particular regard to the organization of the judiciary.

Taking account of Turkey's history cannot be ignored in this regard either. The remnants of Islamic law in force under the Ottoman Empire can still be observed in Turkey even today, despite the fact that the country has been a secular Republic for almost a century because of the work of Mustafa Kemal Atatürk. At the same time, Mustafa Kemal Atatürk launched the country in the 1920’s approaching Europe, the logical continuation of which is the claim for EU membership of the country. These two circumstances, however, are not sufficiently addressed in Hungarian science, in the absence of appropriate, targeted research, and therefore the aim of this research is to explore the roots of the European integration thinking in Turkey, as well as to examine the perceptible presence of Islamic roots and traditions.

As a research method, I chose the dogmatic analysis of the key concepts and the comparative examination of the Turkish and Hungarian judiciary. Research involving approach of both sides was made more difficult by the fact that the resources of the topic were not fully available in Hungarian, but even in English. It is typical that the regular country reports on Turkey on the EurLex database cannot be found in full English, but I found the missing material on the website of the Turkish Ministry of Foreign Affairs; two of the European Parliament's resolutions on regular reports were not available neither in the EurLex database, nor on the Parliament's website, nor in any other database. The exploration of the positions of the EU bodies also made it necessary to study thousands of pages, mostly English, and a smaller part Hungarian source material.

During the preparation I learned Turkish, so I was able to include a large number of Turkish-language sources, Turkish studies and books in order to get to know the subject more accurately. In addition to the use of English resources, the translation and examination of Turkish-language sources (including the official website of Turkish authorities, Turkish-language studies and publications) resulted in a composite material that was previously unavailable in Hungarian in this form.

In terms of the nature of the resources, I also sought diversity: during the research I used studies, monographs, but also press releases. I have also tried to incorporate the most significant resources in the domestic jurisprudence into my dissertation. It should be noted here that, according to the catalogue of the Parliamentary Library, no Hungarian study or monograph on the Turkish judicial system has been published in the past decades; the most recent, contemporary, studies on Turkish judiciary reflect the status before the Atatürk reform. As a result, the dissertation relies heavily on the available resources on the Internet in this area.

3. RESULTS OF THE RESEARCH

I. The formation of the legal and judicial system in Turkey

In Part I, Turkey's historical and cultural roots are presented as the role of the historical past is decisive in the organization and identity of society, and in the actual enforcement of the rules. In this context, I outline the history of the Turkish judicial system, starting with the organization in the Ottoman Empire to the organization of the Turkish Republic in the Ataturk Era. Ataturk's main achievements will be also detailed in this chapter. Given that the remnants

of Islamic law can still be observed in the Turkish legal and judicial system to date, it was also necessary to provide basic knowledge of the basic principles of Islam.

I would like to emphasize my assertion that without knowing the historical antecedents, it is impossible to understand that, why Turkey, despite the repeated rejections during almost 70 years passed since 1959, still insists on joining the European Union.

In this connection, I pointed out that among the sources of Turkish law, besides Islamic law, played an important role not only the Inner-Asian Turkic roots, but also the Byzantine tradition, which binds Turkish law to European legal systems.

In connection with the modernization of Ataturk, on the one hand, I have drawn attention to the fact, that some of the remnants of Islamic law have survived to Turkish law to this day. On the other hand, I emphasized the fact that Atatürk's goal was to integrate Turkish people into the great family of European peoples, so the European integration aspirations can be traced back to Ataturk.

In the same section, using Turkish, international and domestic resources, I have presented the development of the Turkish judiciary from the very beginning until starting of the accession process of the European Union.

II. The process of Turkish-EU accession

In Part II, the past progress to Turkey's accession to the European Union is presented, from the beginning to the recognition of eligibility for candidacy, then the pre-accession period, and finally the accession negotiations between Turkey and the EU. I present a detailed description of the development of the Turkish court system with a view to EU accession, including the Judicial Reform Package of Turkish Ministry of Justice in 2015. The views expressed by the European Commission and the European Parliament on judicial reforms also be presented in this Part, which includes a thematic overview of all the relevant parts of the Commission’s Annual Reports from 1998 to 2016 and Parliament's resolution adopted on these Reports.

In this section, I pointed out that Turkey's intention to join the European Union is entitled called "Kemal's Dream", which has been published after the Second World War, as Turkey has already submitted a request Association on 30 July 1959 the European Economic Community. In this connectio, I have described the Association Agreement with Turkey concluded on 12 September 1963 (the Ankaran Agreement) by the terms of the "accession partnership" applied by Dr. Kertészné Dr. Váradi Szilvia, since its objective declared in the Preamble was to facilitate Turkey's accession to the Communities.

Given that this type of association can only be conceptually related to European countries, since the criterion of European statehood is one of the basic prerequisites for membership, I have briefly examined the notion of Europeanism. Despite the fact that only 3% of the territory of the Turkish state lies on the European continent while the remainder is entirely in Asia, it did not seem to be an obstacle to the prospect of later membership at the conclusion of the Association Agreement and considered that Turkey this fulfils the geographical criterion of Europeanism by this 3%.

The definition of the concept of Europeanism is, therefore, an important issue in my view, which has not yet become a unified Western standpoint. During the development of the European Union, there is a constant debate about both the notion of Europeanism and the ultimate goal of the European integration project. This was well demonstrated by the discontinued case of the European Constitutional Treaty, in which there were fierce debates about whether in the Preamble had to appear at least a mention of Christian roots. I agree with Miklós Király that the failure to refer to Christian traditions means a negotiation of an obvious historical fact, which is an attempt to re-evaluate Europe's past.

Robert Schuman also suggested that compliance with the criterion of 'Europeanism' should not only be examined geographically. Accordingly, only a state can become a member of the community who has the spirit of European traditions and according to these has an arrangement based on the principle of freedom and respect for human rights. In my view, the content of the notion of Europeanisms is defined by what we consider as the reason, the ultimate goal and the final boundary of European integration. This is, on the one hand, a value-order choice and, second, as the case of Turkey shows, it is undeniable that, in the case of the admission of third States, the EU will take into account other aspects than legal ones.

On the basis of an overview of the process of accession so far, it can be concluded that the accession of Turkey to the Union is undoubtedly more complicated than the previous accession processes and is therefore an individual case. Not only cultural differences mean a difficult situation for the Union, but proper management of economic and political impacts will also be a great challenge for the Union at any eventual accession. The EU budget would suffer from accession, and fears rise from the accession of a country bordering Iraq and Iraq, but it is also not negligible that if the Union want to play a more prominent role on a global level, then it is worth considering integrating NATO's second strongest force. Accession could be also a milestone for Europe from an economic point of view.

On the basis of an overview of the development of the Turkish judiciary with regard to European integration and the regular annual reports of the Commission and the Parliament's

resolutions adopted on these issues, it can be concluded that the intensity of the reforms necessary for accession has some periodic fluctuations. In the first four years, reforms started slowly; the adoption of the National Reform Program of March 2001 brought change. In the next four years, between 2002 and 2005, the reforms followed fastly each other, but between 2006 and 2009, after the opening of the accession negotiations, the reform process slowed down temporarily and only gained momentum in 2010 when the implementation of the first Judicial Strategy (2010-2014) has begun. The last three-year period has begun encouragingly, with the adoption of the second Strategy (2015-2019), but after the coup attempt in July 2016, serious tensions emerged between the European Union and Turkey.

It can also be stated that, until the outbreak of the corruption scandal at the end of 2013, the rule and practice of Turkey's judicial system showed clear, although not always steady progress in meeting EU requirements, but after that, the pace of reform has been broken and, in the Commission and Parliament's view, there have been many steps backwards.

III. Turkey's judicial system today

In Part III, I outlined in detail the general characteristics, organization of the Turkish judiciary and the regulations on judicial staff, and briefly the regulation of arbitration in Turkey. I have also used at Turkish sources, since some details are not available even in English, so I also learned Turkish in order to use Turkish sources. By using studies of Turkish judges on this topic, I got a credible picture on Turkish judiciary in the research.

The Turkish judicial system differs greatly from continental jurisdictions, including the Hungarian. Previously, the Turkish regime was particularly unique, with four judicial sectors (civil ordinary courts, civil administrative courts, military courts, military administrative courts), however, through the recent constitutional reform of 2017, significantly simplified by eliminating the military court system it is much more similar to the French system of its model than it used to be.

Prior to the reform, the main division within the judicial system was the separation of civilian and military justice. The powers and administrative responsibilities of the military courts, the buildings in which they worked, the qualifications of judges, prosecutors and auxiliaries working in court, as well as the procedures for their recruitment and appointment were completely separate from those in the civil courts. Both areas were divided into two sub-branches: the ordinary and administrative court organizations. The structure of each sub-branch was significantly different. In addition to supreme courts, there were courts of first instance and appeals courts in the civil sub-branches, courts of first instance in the (ordinary)

military branch, while the military administrative court branch consisted of a single court of first instance and final court. Each of the sub-branches had its own public prosecutor's office and its own chief prosecutor. A forum for dealing with cases that were not clearly attributable to the competence of one of the sub-branches was established by the Court of Jurisdictional Disputes. As a special court, the Constitutional Court operated outside of this organization, before which the Chief Prosecutor's duties were carried out by the Chief Prosecutor of the Court of Cassation. Consequently, this complex system consists of a total of six Supreme Courts (Court of Cassation in the civil ordinary jurisdiction, the Council of State in civil administrative jurisdiction, Military Court of Cassation in the military (ordinary) jurisdiction, High Military Administrative Court in the military administrative jurisdiction, and the Court of Jurisdictional Disputes and the Constitutional Court) and four Chief Prosecutors.

The system was further complicated by the differentiated organization of the first instance courts. At this level, the civil ordinary courts has been divided into civil and criminal courts, within which courts of general jurisdiction (civil courts of peace and civil courts of first instance, criminal courts of peace, criminal courts of first instance and severe criminal courts) and courts with special jurisdiction (eight different civil courts, five different penal courts); but two types of courts was set up in the civil administrative court sub-branch (administrative court, tax court) and the military (ordinary) court sub-branch (military court, disciplinary court). In addition, special courts were not established at the headquarters of all appropriate levels of administrative units; in the absence of a local special court, cases falling within their jurisdiction have been judged by a court of general jurisdiction or by a different court set up at the seat of another district of the same type of court, in accordance with the rules applicable to that court type.

This extremely complicated system was a result of long historical development. The civil and military judicial branch distinction was a result of the role of the military in the Republic of Turkey, often criticized by the organs of the European Union, while a significant part of the first degree courts were set up in the EU accession process as a result of the encouragement by organs of the European Union.

At the same time, it must be noted that, as is clear from the sources, the separation of the various courts has always been relative since they operated in the same courthouses as the courts with general jurisdiction; their auxiliary staff were subject to the same administrative committee established at the headquarters of the heavy criminal court; judges of courts with general jurisdiction or of other special courts could be assigned to a special court for substitution. Thus, the special court can be compared in practice with the institution of a judge

assigned to proceedings in certain special cases (administrative affairs, juvenile affairs, criminal cases, etc.) within the Hungarian court organization, with the substantial difference that the judicial body in the Turkish organization is actually an independent judicial body, somewhat reminding to the Ottoman judiciary where the basic unit of the judicial system was judicial status. I note that this is more of an archaic feature than of a particular Islamic or Turkish character, since in the Middle Ages the Hungarian courts consisted of a single judge or a single panel of judges, and even the district court established after the Compromise was actually a single judge (*járásbíró*) sent to the seat of the district court .

The post-2017 reform system consists of two judicial branches (ordinary courts and administrative courts) and two supreme courts of special jurisdiction (Court of Jurisdictional Disputes, Constitutional Court). The organizational structure of the two judicial branches continues to differ significantly. Although the judicial organization is three-tier, the procedure is actually two-tier, only the appellate jurisdiction is divided between appeals courts and supreme courts, however, in the two sectors there is a different logic of division of powers and other appellate remedies. While there is a large number of specialized courts at the level of the courts of first instance (8 in the civil sector, 4 in the criminal sector), there is only one special court (tax court) in the administrative court. The conditions for the qualifications of the judges in the two judicial branches are partly different.

In order to understand the structure of the present judicial body it is necessary to address some of the features of the structure of the Turkish state organization. One of the cornerstones of the constitutional system of the Republic of Turkey is the one and indivisible nation-state sovereignty, the subject of which is the indivisible Turkish nation (therefore the population and the state territory are one and indivisible). It is not difficult to recognize in this thought the amalgamation of the French nation-state idea (which identifies the nation and the totality of citizens), the state concept of Jellinek (i. e. that three constituent elements of statehood are the territory, population and suzerainty) and the principle-based exclusion of further territorial losses. It is well shown from that the 1921 Constitution stated that the Turkish nation exercises all the state powers of its sovereignty through the Turkish Grand National Assembly (*Türkiye Büyük Millet Meclisi*). In the administrative sense, the Republic of Turkey has a unitarian structure, and this aspect is one of the most important factors in the establishment of public administration. There are no units called state in Turkey, the provinces and cities are directly subordinated to central administration.

At the same time, judiciary has been largely separated from this system. The Republic of Turkey accepts the principle of separation of powers. Judges and prosecutors are appointed

on the basis of the relevant Act No. 2802 on Judges and Prosecutors and they administer the judiciary in accordance with the principle of judicial independence. Personnel, budgetary and disciplinary aspects of court administration are conducted by the Council of Judges and Prosecutors (*Hâkimler ve Savcilar Kurulu*) and judicial committees organized at territorial level. However, in the central administration of the judiciary, the influence of the other two branches of power is still significant, since the Minister of Justice and the Deputy State Secretary of Justice are members of the 13-member Council, and 4 members are appointed by the President of the Republic, 7 members elected by the Grand National Assembly, which is subjected to constant criticism of EU bodies. The training of judges and judge candidates is done by the Turkish Judicial Academy (*Türkiye Adalet Akademisi*), which was founded in 2004 as a result of previous EU criticisms, but it is still organizationally tied to the government.

In the Turkish court system, the concept of a judge is used to describe an occupational group. Nonetheless, not everyone works as a judge in practice who belongs to this group. The Turkish Constitution adopts the principle of "professional judges"; the Turkish judicial system does not allow non-professional judges to make judicial decisions or participate in decision-making. In addition to Judges sitting in the Chamber, in Turkey, the following officials are considered to be "judges": all prosecutors, almost all middle and senior officials who work in the central organization of the Ministry of Justice, the Council of Judges and Prosecutors, or the judicial inspectors, presidents and members of the high courts, as well as the prosecutors assigned to them, most of judges appointed to supreme courts as rapporteurs. The attorney's role in the judiciary is of French origin and is very similar to the post-compromise Hungarian system, but is in sharp contrast to the Anglo-Saxon conception where the prosecutor is actually an attorney charged with prosecution.

Judges and prosecutors have different examinations and have their internships elsewhere, but they also have to meet the same criteria. Recruitment, training, personality rights and other issues of judges and prosecutors are in complete parallel with each other. Although not too often, it is possible to pass between the two professions. The status of a prosecutor other than his country can be very confusing.

Since the beginning of their profession, judges have been divided into two groups, such as ordinary judges and administrative judges, in accordance with separation within the judiciary. The candidates for the ordinary court are chosen from graduates of the faculties of law and for the administrative courts are the faculty of law and the graduates of political science, public administration, economics or finance who provide sufficient legal training.

The groups of judges is divided into four groups, such as third class, second class, candidates to first class, and first class, taking into account their service time and results. These levels are taken into account when appointing them to certain positions and places. For example, members of the Supreme Courts may be appointed only from first class judges.

IV. Current challenges of the Turkish judiciary

In Part IV, following the description of the Copenhagen criteria, which are unavoidable in the accession process and the European Union, I have examined how these criteria, according to organs of the European Union, are considered to be fulfilled or not yet fulfilled by Turkey. I presented the latest developments following the coup attempt in the summer of 2016, and their expected impact on the process of accession. In particular, I examined the implications of the Turkish judicial reform and the anti-Gülen measures, the expected impacts of the amendments of the Constitution and the introduction of the presidential system. EU requirements and standards of justice are also formulated here, and I have shortly evaluated their fulfilment or non-fulfilment by Turkey. Finally, I examined the implementation of the fundamental principles of justice in Turkish judiciary.

The dissertation essentially examined the segment of justice, but in order to ensure the transparency of the complex process, it should be remembered Turkey's strategic importance. The Union also wants to develop a common foreign and security policy and it is therefore of great importance to develop an appropriate economic and political strategy for the situation in the Middle East and in the Mediterranean, and to pursue further objectives. From this point of view, Turkey is a key player, as it is a bridge between Europe and Asia as well as its economic, political and geographic position. Turkey has become a perfect diplomatic representative of Western interests in the Arab world. Turkey also has a geopolitical importance for the Union, as direct access to Persian Gulf and Iraqi oil as well as natural gas, oil reserves and finished products in the region are a high priority. The development of Turkey has already reached a level that is regarded as an example of democracy in the Arab world.

From the perspective of EU accession, it is important to point out that the Turkish military is an extraordinary phenomenon, according to statistics, the world's 10th strongest army. Since 1952, Turkey has been a full member of NATO, which means that the country provides all possible assistance to Europe on war and peace both in Europe and Asia. For the EU, it would be an extraordinary opportunity the Turkish accession because of its stable and strong army.

For the United States, the geopolitical position of Turkey is an important aspect, and its exploitation, for example, in the Middle East is of major importance. In my opinion, the EU should also look into Turkey's accession in that light, as US aid can be a long-term advantage for the European Union as well.

Turkey's dynamic economy is a mix of modern industry and trade as well as traditional agriculture. The private sector is growing strong and fast, but the state has a major role in industry, finance, transport and telecommunications. The success of the European Union depends economically on ensuring the proper functioning and sustainability of a competitive single internal market. The dynamics of the acceding countries will help to realize the economic reforms of the poorer performing states. If a country's overall economic growth rate is higher, it will increase the Union's growth rate over the long term. With increasing productivity, the level of economic growth is sustainable, and since Turkish productivity indicators are far behind the EU average but show a sustained growth, this growth could be expected after accession.

In addition, Turkey has become a key player in managing the refugee-wave from Asia. The latter gave a serious trump card to Ankara, which they could not dream of. Turkey has a positive advantage that people illegally occupying Europe can be detained at even lower costs. The refugee convention seemed a good solution, however - and this is a peculiar feature of international conventions - the Turkish party can terminate it at any time, pushing millions of illegal immigrants back to Europe. Turkey thus entered a key position.

The EU institutions have repeatedly condemned the July 2016 military coup attempt but, in order to continue accession negotiations and to strengthen and continue the relationship between Turkey and the European Union, it is necessary for Turkey to thoroughly investigate and reassure measures against the judiciary. It is also necessary that the judicial reform package currently in force in Turkey for the period 2015-2019 should be properly implemented in practice as soon as the reform package and the measures taken after the coup attempt appear to be mutually incompatible.

Recent developments have a negative impact on Turkey's EU accession and partnership, although it has key importance to both sides, in particular to implement the 2016 refugee agreement. It should be noted that measures following the coup attempt were also examined by the Venice Commission, which has essentially challenged only the definitive nature of the measures, the specific legislation and the possible "chilling effect" of the measures; neither the justification for cleansing nor the definition of the forums before which action was taken has been disputed, but referred to the fact that the ordinary court rules are to be strictly

enforced as regards criminal liability. There is no doubt that the immediate suspension of the Turkish judges and the initiation of criminal proceedings against them were not confidential, as required by Point 17 of the Principles and there were concerns about the speedy and fair conduct of the proceedings. Obviously, these two requirements can be judged after the final completion of the proceedings, depending on their substantive results, but the assessment of the situation has been complicated by emerging concerns about the constitutional amendment regarding the independence of the court.

On 21 January 2017, Act No. 6771 amended the Constitution of the Republic of Turkey. The referendum on the constitutional amendment adopted on 16 April 2017. The Act entered into force on April 27, 2017. The Venice Commission overall considered that the constitutional amendments "introduce new provisions which run contrary to European standards and curtail the independence of the judiciary vis-à-vis the president".

In relation to the EU acquis on justice, I have stressed that although it may be strange that the relevant EU acquis is not a product of EU secondary legislation in the area covered by the title of judicial body, this is due to the nature of the law under examination. Article 4 (2) TEU, as amended by the Treaty of Lisbon, states that 'The Union shall respect … their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government". Article 6 (3) TEU, as amended by the Treaty of Lisbon, states that 'Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law'. The European Union therefore does not have the power to adopt legislation on the establishment of a state organization, such as a court, but international documents in this area, which have become part of the constitutional traditions common to the Member States, form part of EU law.

As detailed in my dissertation, the situation of Turkey shows a mixed pictures regarding the enforcement of judicial principles. Judicial independence is properly ensured at the constitutional level and at the level of the relevant laws. In practice, however, there are a number of phenomena suggesting that these constitutional and statutory rules are not being implemented. It is a serious problem that representatives of executive power publicly refuse to accept or enforce certain decisions of the judiciary and strongly criticize the judiciary and judicial decisions as politically biased against the Government. Such action undermines the credibility of the judiciary in such a way as to jeopardize the independent exercise of judicial power as a political conspiracy against the Government. These comments undermine the

principle of separation of powers and the independence of the judiciary and are contrary to international standards and to Turkey's international obligations. Given that the Council of Judges and Prosecutors decides on the appointment, assignment and promotion of judges, the concerns arising from the personal composition of the Council of Judges and Prosecutors also raise concerns about judicial independence. Even before the recent constitutional amendment, it was a concern that politics had an overwhelming influence on the selection and promotion of judges.

At the beginning of the accession negotiations, the Turks' views on the accession were even more unified, they received the idea of accession with extraordinary enthusiasm, but refusals gradually reduced their enthusiasm. Today, however, there is a growing number of Turks who do not want to join the EU and are tired of fulfilling the expectations they have. However, recent events and recent events show that Turkey is still aiming for accession despite the reduced enthusiasm.

Turkey's new EU strategy (*Türkiye'nin yeni Avrupa Birliği stratejisi*), published by Turkey's Ministry of European Affairs (*Avrupa Birliği Bakanlığı*), sets out important goals, positions and attitude on Turkey's side. This Strategy was last updated on 26 October 2016. However, in my opinion, it is important to see that this Strategy was born after the coup attempt when Turkey received a number of Western reviews due to the cleansing policy following a coup attempt of 15 July 2016. In the Strategy, Turkey states that EU membership is a strategic goal. Since the proclamation of the Republic, this is the greatest goal for modernization. Not only Turkey is affected by the refugee crisis but also across Europe. The Strategy seeks to work out a solution that is both beneficial to Turkey and the European Union.

V. Concluding remarks

In Part V, I evaluated the compliance with EU standards and requirements in the field of justice. I have summarized the conclusions of the Commission's reports from 1998 to 2016 and the conclusions of the European Parliament on the judicial area. Lastly, I answered the questions asked at the beginning of the research, the most important of which are whether Turkey is eligible for EU accession, and which further steps are needed to comply the EU standards. Finally, I have outlined several alternatives for the future relationship between Turkey and the European Union.

In short, in comparison with the Turkish judicial system, I tried to formulate the question of what the subject of criticism really was and how many solutions of Turkish

judiciary corresponded to EU standards, given that in principle the same requirements were enforced vis-à-vis Hungary against Turkey and Hungary could become a member of the EU.

The Turkish judicial system is basically based on a French model, as is apparent from the institutional duality of the Court of Cassation / Council of State, the inclusion of prosecutors in the vocational order of judges and the competition system for the selection of judges. By itself, therefore, the buildings commonly used by judges and prosecutors, the uniform vocational order – no matter how criticized by the Commission and Parliament – cannot be contradicted by the principle of impartiality; it is true, however, that the spatial arrangement in the courtroom, the limited access of the defence to the criminal case files, already raises the semblance of harm to the equality of arms and requires appropriate counterbalancing measures.

At first sight, the Turkish recruitment and training system seems even more advanced than the Hungarian; the problem lies in the decisive role of the ministry in the oral recruitment committees, as well as the influence of the Minister of Justice, as chairman of the Council of Judges and Prosecutors, on the selection process and his influence on the Justice Academy.

Due to the historical background, the Turkish system of justice, until recently, reflected the paramount role of the military within the Republic of Turkey. However, with the recent constitutional amendment, Turkey has eliminated the separate military judiciary, which is not only relevant for the European integration process, but also for the aspiration of the AKP to suppress the Kemalist army from political power. The July 2016 coup attempt has obviously further strengthened this trend, so there is no prospect of going back in this area either; by this one of the most criticism of the EU was remedied.

The general problem of the Turkish justice system, like the Hungarian court system, is the excessive workload that leads to the delay of cases, which also takes place in Strasbourg condemnations against Turkey. It should be noted, however, that the violation of the requirement of a fair trial in a reasonable time due to the delay in cases is a general problem in the Member States of the Council of Europe, as evidenced by the Strasbourg case-law; in this area, therefore, Turkey cannot be expected to make a perfect solution, but it is a purely solid endeavour to improve the situation, which I believe to have.

In the European Commission's reports and in the European Parliament's resolutions, from the outset, they has expressed continuing doubts about the independence and impartiality of the Turkish judiciary. The recent constitutional amendment, on the one hand, is a step forward in incorporation of the requirement of impartiality into the Constitution, even though the Venice Commission has expressed concerns that this could have the effect of limiting the

independence of the judiciary by reference to the principle of impartiality. On the other hand, the constitutional amendment in the framework of the introduction of the presidential system has increased the influence of the President of the Republic, and the executive in general, and the legislation on the composition of the Council of Judges and Prosecutor, which, having regard to the powers of the Council on the selection, appointment and promotion of judges, questions the independence of the judiciary according to the Venice Commission. This development has an impact on the European Union's position on meeting the Copenhagen criteria, so it would be expedient for Turkey to consider the Venice Commission's recommendations for the integration process.

In this connection, it should be noted that the participation of the Turkish Minister of Justice in the Council of Judges and Prosecutors cannot be criticised in itself. In the case of Turkey, the problem cannot be caused by the presence of politicians, but by the proportion and role of the people appointed by political leaders. It is also problematic that while the Minister of Justice cannot attend either the work of the Council's chambers or the full sessions on disciplinary matters, the Deputy State Secretary is *ex officio* a member of the First Chamber dealing with the disciplinary cases of judges, although he cannot be its chairman. For my part, I do not see much of the Minister's exclusion from the chambers' work and disciplinary affairs if the secretary of State subject to him, so instructed by him, is ex officio involved in these matters where he can explain the expectations of executive power, can defend his interests in the debate. A solution would be the exclusion of Deputy State Secretary from such proceedings as well as the transfer of staff and disciplinary matters to other bodies of the judiciary, and the drastic reduction or even the abolition of the possibility of relocation without consent.

The biggest problem with the judiciary is the situation of judges and prosecutors who have been dismissed after the coup attempt, and it is typical that the European Parliament has proposed that the accession negotiations be suspended. On the one hand, the large number of prosecutors and judges concerned, and the central role of the principle of judicial independence, on the other hand, make this situation very serious for the judiciary and the rule of law in general. It would be extremely important that proceedings against judges and prosecutors should be fairly completed in full compliance with the rule of law and in accordance with the practice of the European Court of Human Rights, as soon as possible and that the innocent judges and prosecutors should be rehabilitated and reinstated as soon as possible. In view of the fact that these proceedings are still pending and certain cases have been waived, despite a large number of Strasbourg complaints, because some complaints due

to the non-exhaustion of domestic remedies have been declared inadmissible, but no substantive decision (whether positive or negative) has taken, there can be no well-founded opinion on the extent to which these layoffs and detentions were reasonable and justified in accordance with the European standards or arbitrary and politically motivated.

It is also important to enforce human rights in the functioning of the judiciary. The Strategic Plan of the Ministry of Justice for 2015 and 2019 envisages a series of measures to ensure human rights, in particular the right to effective remedies. By implementing these measures, Turkey could make significant progress in ensuring the rights of human rights, minorities and women, which would be a key development in meeting the Copenhagen political criteria. Of course, if the appearance of the independence of Turkish judiciary, which the European Court of Human Rights regards as an element of judicial independence, cannot be restored, especially if proceedings against suspended judges and prosecutors do not end in a timely and fair manner, then it would be disadvantageous for Turkey's chance for the EU accession.

The Turkish judiciary has certainly made a great stride in the EU accession process. Turkey's judicial system has been largely harmonized with judicial systems of EU countries, with the reform of the appeal system substantial progress has been made in ensuring the right to an effective remedy and changes of criminal law rules, procedural laws, court rules, and through the development of financial and human resources, as well as judicial infrastructure, especially IT systems, has made significant efforts to ensure a fair process, particularly in terms of equality of arms and the timely assessment.

However, we must see that the frequent changes in legislation and the problems that remain in the question of independence and impartiality are constantly undermining the success of these efforts. The close link between the judges and prosecutors, symbolically expressed (the use of the same door in the courtroom and the arrangement of parties in the courtroom) questions the equality of arms; the extremely broad powers of the Council of Judges and Prosecutors, the role of executive and legislative power in defining the composition of the Council and the involvement of the representatives of the executive branch in the work of the Council raise serious concerns as to the independence of the judicial organization and the acting judge, while it is an essential element of the fairness of the proceedings independence and impartiality of the judicial forum.

However, if the current problems of independence and impartiality (the role of executive and legislative power in the determination of the composition of the Council of Judges and Prosecutors, the role of the representatives of executive power in the work of the

Council and in this context the competence of the Council with regard to the staffing of judges and prosecutors, and the situation of detained judges and prosecutors, too close a relationship between judges and prosecutors), I do not see any serious impediment to Turkey's EU membership in the field of justice.