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# **THE LEGAL SYSTEM OF TURKEY**

By

**DR. IUR. M. AYDOĞAN ÖZMAN**

Associate Professor of International Law  
of  
Ankara University Law Faculty

and

**DR. IUR. LÂLE SİRMEN**

Associate Professor of Civil Law  
of  
Ankara University Law Faculty

## CHAPTER TWELVE

## THE LEGAL SYSTEM OF TURKEY

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Assembly may not discuss or make statements relating to the exercise of judicial power concerning a case under trial.

The principal body charged with the responsibility of ensuring judicial integrity is the High Council of Judges and Public Prosecutors. The President of this Council is the Minister of Justice. The under-secretary of this Ministry is an ex-officio member of the Council. The President of the Republic appoints three regular and three substitute members from a list of candidates nominated by the General Assembly of the Court of Cassation; and two regular and two substitute members from a list of candidates nominated by the General Assembly of the Council of State for a term of four years. The High Council elects a deputy-president from among its members.

The High Council of Judges and Public Prosecutors deals with the admission of judges and public prosecutors of courts of justice and of administrative courts into the profession, appointments, transfers to other posts, the delegation of temporary powers, promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable, the imposition of disciplinary penalties and removal from office; it takes final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court. It also exercises the other functions given to it by the Constitution and pertinent laws.

The Minister of Justice or the relevant committee may apply for a revision of any decision within ten days of the Council's decision. Relevant committees can file another appeal for a second revision by the Objections Examination Committee within ten days. This Committee convenes under the President with at least six elected members. Its decisions are final.

The procedures of the High Council of Judges and Public Prosecutors and the Objections Examination Committee are carried out by the Ministry of Justice.

#### § 1.3(D) (2). Judicial Structure.



#### § 1.3(D) (2) (a). Lower Courts.

**Civil Court:** Civil Courts are composed of the Courts of First Instance; Peace Courts; and Commercial Courts. On the other hand, execution officers, bankruptcy officers and investigation authorities also act as judges in certain cases with the capacity to settle monetary disputes by means of summary procedures.<sup>35</sup>

A Court of First Instance is the basic trial court with general and residual jurisdiction covering cases not assigned to the other tribunals.

Peace courts deal with disputes where the amount in controversy does not exceed 25,000 Turkish liras, eviction cases, claims of support and requests for permission of the minors to marry. Commercial Courts deal with civil matters involving commercial transactions.

**Criminal Courts:** Criminal Courts are composed of Justice of Peace Courts; Courts of General Criminal Jurisdiction and Aggravated Felony Courts. Each deals with the cases assigned to them by Law. Justice of Peace Courts and Courts of General Criminal Jurisdiction have one judge; Aggravated Felony Courts are composed of three judges.

#### **Other special Courts:**

1. **Foreign Exchange Courts:** These courts, which were established by Law on "The

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regarding the "Procedures of Collections of Public Claims."

**State Security Courts:** These courts are charged with dealing with offences against the indivisible integrity of the State with its territory and people, the free democratic order, or against the Republic as defined in the Constitution and offences directly involving the internal and external security of the State.<sup>37</sup>

§ 1.3(D) (2) (b). **High Courts.**

**The Constitutional Court:** The major functions of the Constitutional Court as an independent judicial organ are to examine the following: the constitutionality, in respect to both form and substance, of laws, decrees having power of law and of the Standing Order of the Turkish Grand National Assembly; to examine Constitutional Amendments only in regard to their form; to carry on trials in its capacity as the Supreme Court, against the president of the Republic, members of the Council of Ministers, presidents and members of the Constitutional Court, of the Court of Cassation, of the Council of State, of the Military High Court of Appeals, of the High Military Administrative Court of Appeals, their chief public prosecutors, deputy-public prosecutors of the Republic and the presidents and the members of the High Council of Judges and Public Prosecutors and the Audit Court for offences related to their functions. The chief public prosecutor of the Republic or deputy-chief public prosecutor of the Republic act as public prosecutor at the Constitutional Court.<sup>38</sup>

The financial supervision of political parties is undertaken by the Constitutional Court. The Court may also decide on closing down a political party.

If the Grand National Assembly decides to waive the parliamentary immunity of a member or disqualifies him from membership, the member concerned or any member of the Grand National Assembly may appeal to the Constitutional Court for the decision to be annulled and the Constitutional Court decides on the appeal.<sup>39</sup>

The President of the Republic, parliamentary groups of the party in power and of the main opposition party, and a minimum of the total number of members of the Grand National Assembly have the right to apply for annulment action to the Constitutional Court, based on an assertion of the unconstitutionality of enacted laws in form or in substance. If more than one political party is in power, the right to apply for annulment action is exercised by the party having the greatest number of seats.

If a court which is trying a case finds that the law or the decree having the power of law to be applied is unconstitutional or if it is convinced of the seriousness of the claim of unconstitutionality submitted by one of the parties, it postpones the deliberation of the case until the Constitutional Court decides on the issue.

The Constitutional Court comprises eleven principal members and four reserve members. The President elects two principal and two reserve members from the Court of Cassation, one reserve and two principal members from the Council of State, one principal member each from the Military Court of Appeals, Administrative Court, and the Audit Court, one principal member from the candidates selected by the Council of Higher Education, and one reserve and three principal members from top level officials and lawyers.<sup>40</sup>

**The Court of Cassation (High Court of Appeals):** The Court of Cassation is the last instance for reviewing decisions and judgments given by courts of justice which are not referred by law to other judicial authority.<sup>41</sup> The High Court is also empowered: to deal