

7  
PROPOSED  
CONSTITUTIONAL PROVISIONS  
CONCERNING THE JUDICIARY

---

### **Rationale**

At the end of the book are the constitutional provisions that form the constitutional basis of the judicial bodies and their elements and guarantee their functioning for the implementation of our proposals.

The essence of the proposals summarized above is turned into constitutional provisions in the final chapter of the book.

Along with the provisions regarding the Permanent Council of Justice, the Supreme Authority of Justice, independent judicial professional associations, the Supreme Court of Justice and the Constitutional Court, there are provisions regarding the regulations for the courts and legal professions.

The basic principles of the supervision of the judiciary and the legal professions through the processes of judges, prosecutors and lawyers and the legal judicial process are regulated comprehensively in the Constitution, and this has constitutional guarantee.

## **PERMANENT COUNCIL OF JUSTICE**

### **ARTICLE X**

The Permanent Council of Justice comprises the presidents of the Constitutional Court, Supreme Court of Justice, Court of Cassation, Council of State, Court of Accounts, Chamber of Judges, Chamber of Prosecutors, Union of Turkish Bar Associations and Turkish Association of Notaries.

Under the chairmanship/presidency of the most senior member, the Permanent Council of Justice meets at least twice a year. The Permanent Council of Justice delivers advisory opinions for the development of cooperation between judicial organizations and the professions, and determination of problems on issues of the rule of law, strengthening confidence in justice and judicial independence, and issues relating to unification of the case law. The Permanent Council of Justice can issue a decision on the unification of judgments to resolve the differences between different judgments delivered in different jurisdictions on the same issue.

The first meeting of the Permanent Council of Justice takes place in the first three months of the year, and all parts of society, especially non-governmental organizations' representatives are allowed and encouraged to attend the meeting in a prepared manner. The second meeting is held after six months of the first meeting, when the developments regarding the decisions taken in the first meeting are evaluated.

Meetings of the Permanent Council of Justice are held as conferences with a moderator and are designed and con-

ducted in such a way that participants can freely share their opinions, thoughts and suggestions with regard to any items listed in the agenda.

The President/Chairman informs the members by declaring a meeting date at least 7 days before the actual meeting after preparing an agenda by categorizing the discussion topics notified by the members and any other relevant issues.

## SUPREME AUTHORITY OF JUSTICE

### ARTICLE XXX:

The Supreme Authority of Justice is a fully independent regulatory authority, that ensures the judiciary creates added value by providing high-quality judicial services to society, protects the rule of law, protects and further develops fundamental rights and freedoms in order to strengthen the confidence in justice, and represents the judiciary at the highest level, together with independent judicial professional associations.

Within this framework, the Supreme Authority of Justice determines the needs and priorities of society with respect to judicial services, establishes policies that are in accordance with the determined principles and priorities, constructs courts and judicial service units, distributes the workload among judicial members in a balanced manner, develops and guides the judicial professions to deliver high-quality judicial service, and ensures and improves the harmonious and efficient work, transparency and accountability of all judicial organizations, professions and service units.

The Supreme Authority of Justice performs its duties impartially and independently in accordance with the principles of judicial independence and democratic management. The Supreme Authority of Justice is the highest rank in the hierarchy, therefore no authority or person can give orders or instructions to the Supreme Authority of Justice.

The Supreme Authority of Justice comprises the Gener-

al Assembly; the Department for Policies, Preferences and Principles, which comprises 38 members, including the Chairman and the Deputy Chairman; the Department for Legal Services, which comprises 12 permanent and six substitute members; the Department for Objections and Re-examinations, which comprises nine permanent and four substitute members; and the Department for Personnel, Career, Performance and Inspection, which comprises 16 permanent and five substitute members. The Supreme Authority of Justice performs its duties through the departments listed herein. The Chairmanship and the General Secretariat ensures the functioning of the Supreme Authority of Justice and the Office of Legal Counsellors independently ensures legal compliance of the Supreme Authority of Justice's actions through issuing opinions.

The Supreme Authority of Justice comprises 90 members, who reflect the preferences of all segments of the society, with different qualifications and disciplines, as necessitated by the Supreme Authority of Justice's functions. The election of the members is held in accordance with democratic principles:

(i) Members of judicial professions and officers elect 30 qualified members of the Supreme Authority of Justice. The members of the judicial professions and officers select these members through the Supreme Authority of Justice through an election held among the candidates nominated by the board of directors or from individual applicants who are found to meet the eligibility requirements. There will be a maximum of three times the number of candidates for each available membership. Candidates are listed according

to merit and order of application. Lawyers elect eight lawyer members, judges elect eight judge members, prosecutors elect eight prosecutor members, notaries elect one notary member and one constitutional law professor member, and courthouse staff elect four courthouse staff members.

(ii) The Turkish Grand National Assembly elects 12 qualified members of the Supreme Authority of Justice. Political parties with more than 20% of votes determine six members with three members for each majority party. The remaining six members are determined by the political parties with 7.5% to 20% of votes, distributed equally among the minority parties. If the six members are not divisible to the number of parties, the remaining members are determined by the political parties with the most votes. Political parties nominate at least two candidates for each position. Sufficient candidates must be nominated, otherwise, no candidate is deemed to have been nominated. The General Assembly of the Turkish Grand National Assembly elects the members, starting with the candidates of the party that has the minimum votes. Meeting and decision quorums are not required for this election. Among the 12 members elected by the Turkish Grand National Assembly, there must be one judge, one prosecutor, one lawyer, one notary, one courthouse staff member, one constitutional law professor, one administrative law professor, one administrative and political science professor, one public administration specialist, one statistics or economics expert, one public finance and budget specialist, and one educator or communication faculty lecturer.

(iii) The legislative branch elects eight qualified mem-

bers of the Supreme Authority of Justice. The Capital Market Bonds of Turkey, Radio and Television Supreme Council, Banking Regulation and Supervision Agency, Information Technology and Communication Authority, Energy Market Regulatory Authority, Public Procurement Authority, Personal Data Protection Authority, and Public Oversight, Accounting and Auditing Standards Authority, which are supervisory and regulatory authorities, nominate eight candidates comprise one constitutional law professor, one administrative law professor, one administrative and political science professor, one public administration specialist, one statistics or economics expert, one public finance and budget specialist, and one educator or communication faculty lecturer. The President of Turkey elects one member for each qualification according to the recommendation by the Minister of Justice.

(iv) The Public Professional Associations elect eight qualified members of the Supreme Authority of Justice. Among eight members, two members must be either a psychologist or psychiatrist, one judge, one prosecutor, one lawyer, one notary, one public administration specialist, and public finance and budget specialist. The professional associations in the fields of human/animal health other than Union of Chambers of Turkish Engineers and Architects will elect the two psychologist-psychiatrist members and one judge member. The election will be held among the candidates nominated by the board of directors of the Turkish Medical Association, Turkish Veterinary Medical Association, Turkish Dental Association and Turkish Pharmacists'

Association, and all members of these professions can vote in the election. The Union of Chambers of Turkish Engineers and Architects elects the remaining five members, nominating two candidates. Among these five members, there must be one judge, one prosecutor, one lawyer, one notary, one public administration specialist and one public finance and budget specialist.

(v) The Turkish Appraisers Association, Insurance Association of Turkey, Turkish Capital Markets Association, Union of Turkish Agricultural Chambers, Confederation of Turkish Tradesmen and Craftsmen, the Union of Chambers of Certified Public Accountants and Sworn-in Certified Public Accountants of Turkey, which are economical/agricultural organizations, elect eight qualified members of the Supreme Authority of Justice. Among eight members, one judge, one prosecutor, one lawyer, one notary, one from the courthouse staff, one administrative and political science professor, one public administration specialist, and one statistics or economics expert. The board of directors of the herein-mentioned economical/agricultural organizations nominate two candidates for each position and the board of directors of the Union of Chambers and Commodity Exchanges of Turkey elects the members from among the final list of candidates.

(vi) University students elect eight qualified members of the Supreme Authority of Justice: One notary, two constitutional law professors, two administrative law professors, one administrative and political science professor, one sociologist, and one educator or communication faculty lecturer.

Elections are held among the candidates nominated by the universities or a pool of five people comprising of qualified candidates who made an individual application.

(viii) Universities, non-governmental organizations, foundations and associations elect eight qualified members of the Supreme Authority of Justice, consisting of one judge, one prosecutor, one lawyer, one constitutional law professor, one administrative and political science professor, one public finance and budget specialist, one sociologist or anthropologist and one psychologist or psychiatrist. Public benefit associations and public benefit foundations each elect three members, and other sectoral associations that do not have public-benefit status elect two members. The herein-mentioned foundations and associations nominate at most twice the number candidates. A general assembly of presidents of each aforementioned sections elect the members from among the candidates nominated by the associations and foundations. If there are individual applications, three candidates are determined for each position.

(ix) Labor unions elect eight qualified members of the Supreme Authority of Justice. Federations nominate the equivalent number of members as they will elect. It is also possible for individuals to apply as independent candidates. For each position, three candidates will be nominated. Public-employee trade union confederations elect three members: One judge, one constitutional law professor and one public administration specialist. Private-employee trade union confederations elect three members: One prosecutor, one administrative law professor, and one administrative

and political sciences professor. Employer union confederations elect two members: One lawyer and one educator or communications faculty member. A general assembly of confederation presidents in each group elects members for their group from among the approved candidates.

During the selection and election of candidates for the Supreme Authority of Justice's membership, all the information about the process and candidates shall be shared with the public. The entire process shall be transparent, subject to judicial principles and governed by the democratic principles.

The Department for Personnel, Career, Performance and Inspection of the Supreme Authority of Justice reviews the individual applications and determines which meet the eligibility criteria. It declares and draws up a list of the eligible candidates within 15 days from the application date. This list is used to determine the candidates for election. In the first Supreme Authority of Justice membership election, the duties and obligations of the Supreme Authority of Justice shall be performed by the general assembly of Council of Judges and Prosecutors. It is forbidden to a hold closed list or marked-ballot list election.

Except for the recommendations of the Policies and Preferences Department, all decisions and actions of the Supreme Authority of Justice are open to judicial review. All interested persons are entitled to bring annulment actions against all decisions and actions of the Supreme Authority of Justice.

The Supreme Authority of Justice prepares a draft budget that will enable the judiciary to fulfill its functions and duties, and exercise its powers effectively, impartially and independently in a manner that will provide a quality service. The draft budget is then sent to the parliament. The budget allocated to the judiciary cannot be less than ...% of the general state budget and 0.30% of the gross domestic product of the previous year, excluding infrastructure investments such as building, information processing, facilities management, education, conference and recreation facilities. The budget of the judiciary has a priority in the allocation of the general budget. The Supreme Authority of Justice manages the budget. Other matters shall be regulated by law.

## **THE SUPREME COURT OF JUSTICE**

### **ARTICLE X**

The Supreme Court of Justice comprises 52 members.

26 of the 52 qualified members are directly elected by the Supreme Authority of Justice from the candidate pool comprising judges, and the remaining 26 are elected by the Supreme Authority of Justice from the candidate pool of individuals nominated by judges, prosecutors, lawyers and notaries.

The Supreme Court of Justice comprises five chambers: Administrative Chamber, Criminal Chamber, Ethics and Discipline Chamber, Compensation Chamber and the Supreme Chamber of Prior Consent acting as specialized courts, and a General Assembly. The chambers comprise 10 members: seven sitting judges and three substitute judges. Judges must have the necessary experience and qualifications to serve in a chamber that acts as a specialized court. The General Assembly comprises all the sitting and substitute judges of the Supreme Court of Justice.

The principal duty of the Supreme Court of Justice is to review the legality of all transactions and decisions made regarding the judicial organs and elements of other institutions and persons.

The Supreme Court of Justice's jurisdiction covers the following, reviewing the legality of all decisions made by the Supreme Authority of Justice; all decisions made in relation to judicial appointments such as elections, nominations and

candidacy; disciplinary decisions and sentences imposed on members of the legal profession; reviewing; all decisions of a lower criminal court on the prosecution of public servants as an appellate court. In addition, the Supreme Court of Justice is the deciding authority on matters regarding legislative immunity in relation to the approval of indictments and the investigation of senior public servants.

The Supreme Court of Justice follows a specialized expedited procedure and must deliver a judgement within 90 days.

All decisions except those delivered by the Supreme Court of Justice that are deemed final can be challenged before the Constitutional Court.



## **INDEPENDENT JUDICIAL PROFESSIONAL ASSOCIATIONS**

### **Article 159**

Members of the judgeship, prosecutorship and attorneyship, who constitute the founding pillars of an independent judicial power of the state, separately establish their own professional associations. These judicial professional associations operate independently in accordance with judicial independence and with the principles of democratic management. Judicial professional associations are legal entities and have the status of a public institution.

Judicial professional associations, in parallel with judicial structures, establish regional judicial professional associations within the jurisdiction of regional courts of appeal. The headquarters of each judicial professional organization is located in the capital of Turkey. A Provincial Bar Association is established in each city center of a province where there are more than 800 practicing attorneys.

The main objectives of judicial professional associations include defending, protecting and improving the rule of law, and fundamental rights and freedoms, and advancing the members of the relevant judicial professional organization to realize this purpose.

All decisions and actions of the judicial professional associations are open to judicial review. All interested persons are entitled to bring annulment actions before the Supreme Court of Justice within 30 days of the date of notification or

announcement.

The Discipline and Audit Committees of judges, prosecutors and notaries are located in the capital of Turkey, and the Discipline and Audit Committees of attorneys within the jurisdiction of the Unions of Regional Bar Association. For other professional associations, Discipline and Audit Committees operate independently and are established at their headquarters, located in the capital.

The disciplinary decisions of the judicial professional associations can be objected before the Department for Objections and Re-examinations. The decision of the Department for Objections and Re-examinations can be appealed before the Supreme Court of Justice, the decisions of which are final.

Disciplinary offenses requiring dismissal are prosecuted by the Supreme Authority of Justice. An appeal can be lodged against the first decision before the Department for Objections and Re-examinations. The decisions of the Department for Objections and Re-examinations can be appealed before the Supreme Court of Justice. The decisions of the Supreme Court of Justice can be challenged before the Constitutional Court.

## COURTS, JUDICIAL PROFESSIONS, LEGAL GUARANTEE FOR JUDGES AND PROSECUTORS

### *Establishment and Independence of Courts; Open Trials and Reasoned Decisions*

#### **Article xxx-**

The formation, duties and powers, functioning and trial procedures of the courts shall be regulated by law. Tribunals and specialized courts are established in the center of development zones; court of inquiries and single-judge courts are established in the centers of civil administrations whose population and added value created for society justify such establishment.

No military courts shall be established other than military disciplinary courts. However, in a state of war, military courts with the jurisdiction to try offenses committed by military personnel in relation to their duties may be established.

Trials in courts are conducted with the participation of judges, lawyers, and prosecutors. Judges and public prosecutors shall serve as civil and administrative judiciary, and perform their duties and advance in their careers accordingly. Lawyers can improve their skills and practice in the herein-mentioned areas of law.

Judges and prosecutors who are admitted to the profession and also undertake other administrative duties in public institutions cannot not use their judicial titles while performing their administrative duties. When they wish to

return judges and prosecutors who undertake administrative duties in public institutions wish to return to their judicial profession, they can continue their careers at the level they first left to undertake administrative duties. In other words, the time spent performing administrative duties is disregarded in the calculation of judges' and prosecutors' tenure.

Judges and prosecutors shall be independent in the discharge of their duties and issue judgement in accordance with the Constitution, laws, and their personal conviction, conforming to the law.

No organ, authority, office or individual may give orders or instructions to courts, judges and prosecutors relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions. Courts, judges and prosecutors cannot exercise behaviors that could influence lawyers.

Lawyers shall be independent in the discharge of their duties and perform their duties in accordance with the Constitution, laws, and their personal conviction conforming to the law. In fulfilling their duties, lawyers act as founding pillars of the judiciary and as court officers. Public and private organizations, institutions and persons shall assist lawyers to perform their duties, answer lawyers' questions, and deliver all kinds of documents and records as asked by lawyers. Measures and methods to prevent lawyers from abusing their herein-mentioned authority are regulated by law.

During parliamentary meetings, no questions can be

asked, and no discussion can be held with regard to exercise of judicial powers. Members of parliament shall not issue statements or act in a way that might influence those who will deliver the judgement in an ongoing case. However, persons and institutions can criticize judges', prosecutors' and lawyers' negligence, misconduct and attitudes during judicial processes via legitimate means.

With regard to disputes referred to the courts, the parties and anyone who is in some way connected to the dispute, such as witnesses, experts, arbitrators or attorneys must demonstrate honest behavior, submit all the necessary evidence, share all the necessary information, honestly answer all the questions asked by the court, and if for some reason they cannot answer, must justify their behavior and provide the necessary assistance to resolve the dispute in the most effective and accurate manner. Violations of these obligations, in the form of abusing the judicial process, not disclosing information and not submitting the required evidence are considered as contempt of court and sanctioned by preventive detention.

Except for exceptional circumstances that necessitate the postponement of the proceedings, the adjudication is completed with only one hearing. At the end of this hearing, the court must deliver an oral judgement. The court has 15 days to issue a reasoned judgement following the date of the final hearing. All courts shall follow this method of adjudication when delivering a judgement.

Court hearings are open to the public. It may be decided

to conduct all or part of a hearing in a closed session, but only in cases where absolutely necessitated by public morals or public security. Special provisions regarding the trial of minors shall be laid down in the law.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution. Acts contrary to the previous sentence are considered violations of the Constitution. In case of violations, the Republic's Chief Public Prosecutor's Office has the power to initiate an investigation and prosecute. Those who give decisions and instructions regarding such a matter are punished as the main perpetrator of the crime, and those who follow these decisions and instructions are punished as the persons who assist another to commit an offense. For the commission of this crime, the exercise of force is not required to have been an element of this crime. It is accepted that the element of force and violence is present when the criminal act includes the exercise of legal and public powers legally vested to a public office or the non-exercise of the said powers which should have been exercised. The two-thirds of the penalty determined in the criminal regulation is imposed. The provisions of a reduction or suspension of sentence, and the suspension of pronouncement of judgement and parole are not applicable.

### *Judicial Professions*

**ARTICLE 140** – Judgeship, prosecutorship, attorneyship and notaryship are judicial professions.

The procedure of admission to the judicial professions includes an objective written and an oral exam aimed at revealing the most competent candidates. The Supreme Authority of Justice performs and supervises the procedure of admission to the judicial professions and delivers the final decision on admission.

In order to be admitted to the judicial profession, candidates must have passed the entrance exam, and completed the relevant judicial profession's internship, traineeship and assistantship.

Each judicial profession has three levels and, in each level, there are a number of sub-levels. This coordination allows easy transition between the judicial professions.

Judges and prosecutors cannot be assigned to different duties outside of their current duties and civil, criminal, or administrative law jurisdictions, except at their own request.

The retirement age of judges and prosecutors is 70. However, if a medical certificate is issued attesting that a judge or a prosecutor is medically fit to perform his/her duties, then he/she can continue to serve as a judge or a prosecutor.

Judges, prosecutors, and judicial officers cannot undertake any official and private duties other than those specified by law. Judges and prosecutors are answerable to the Supreme Court of Justice with regard to their administrative duties.

Judicial professionals appointed to administrative positions by the Supreme Authority of Justice are graded, evaluated and promoted according to the career levels of their

profession and benefit from all kinds of rights granted to their degree.

Other issues regarding the judicial professions are regulated by law.

***Security of tenure of judges, prosecutors and lawyers;  
Principle of natural judge***

**ARTICLE 139** – The Supreme Authority of Justice appoints judges and prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of the tenure of judges. Judges cannot be relieved of their duty or forced to retire before the age of 70 except at their own request, but can retire after the age of 65 at their own request.

The Supreme Authority of Justice appoints sufficient number of judges and prosecutors in accordance with the needs of the judiciary using competency-based selection in a manner that encourages competition among candidates. The length of term of office is specified for each appointment.

During working hours, judges and prosecutors shall perform the duties of the court they are assigned to. Judges and public prosecutors shall not assume any official or private occupation other than those assigned to them.

Judges and prosecutors shall not be relieved of their duty and transferred to another court in another jurisdiction except at their own request; shall not be forced to retire before the age prescribed by the Constitution; nor shall they be de-

prived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post. If a judge or prosecutor is promoted to a higher level or sub-level, the status of appointment to a higher level or sub-level this appointment constitute an exception due to the routine rotation announced by the Higher Authority of Justice two years prior. Unless judges and prosecutions poorly perform while fulfilling their duties or are subject to a disciplinary action, they cannot be appointed to another place before the end of their term of office.

The tenure of a judge or a prosecutor is automatically terminated when they commit a crime that is serious enough to result in the loss of required eligibility criteria. Judges and prosecutors shall step down when they are unable to perform their duties due to health reasons if it is certain that they cannot be treated. When the Supreme Court of Justice decides that the professionals concerned are unsuitable to remain in the profession due to indiscipline, poor performance or other accountability failures, they are dismissed from the profession.

In the event that judges and prosecutors are investigated or prosecuted for a crime that prevents their admission to the profession, the Supreme Authority of Justice may decide to suspend the accused from their judicial duties for the duration of the investigation and prosecution if the confidence of justice will be damaged if the accused continues to perform their judicial duties. The Supreme Authority of Justice will make a decision on the subject of suspension by taking into account the nature of the accusation, investigation and

evidence.

The qualifications, appointment, rights and duties, salaries and allowances of judges and prosecutors; their promotion, temporary or permanent a change in their post or jurisdiction, the initiation of disciplinary proceedings and the imposition of disciplinary penalties, the conduct of an investigation and the subsequent decision to prosecute them on account of offenses committed in connection with, or in the course of, their duties, a conviction for offenses or instances of incompetence requiring their dismissal from the profession, their in-service training, and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.

No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established. Once the hearing of a trial has started, as a rule, the judge cannot be changed. A judge is obliged to conduct the hearing until the end and give his/her reasoned opinion.

#### ***Supervision of the Judiciary and the Services of the Judicial Professions***

**ARTICLE 144** – The Supreme Authority of Justice supervises the judiciary and the services of the judicial professions. This supervision is performed through judicial inspectors, who are elected from judges, prosecutors, and lawyers.

The audits or investigations are performed to improve the judicial profession and ensure that services it provides both individually and as a whole, meet the standards determined by the Supreme Authority of Justice, so that the judicial professions can develop in a way to achieve this goal. Audits/ investigations cannot be against the objective of protecting the independence of the judicial professions and defending the rule of law.

During the investigations, judicial inspectors notify the Republic's Chief Public Prosecutor's Office regarding the matters that may constitute a crime so that the Republic's Chief Public Prosecutor's Office can conduct the necessary investigations.

Other matters regarding this subject shall be regulated by law.

## **APPOINTMENT OF SELECTION OF JUDGES RESIDING IN HIGHER COURTS**

***Nominations to the Constitutional Court, Court of Cassation, Council of State, Court of Accounts, Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor***

### **ARTICLE XXX:**

Anyone who wishes to be nominated for the Constitutional Court, Court of Cassation, Council of State, Court of Accounts, Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor and who meet the eligibility criteria, satisfy the merit criteria and do not have any obstacles that might prevent them from becoming a candidate can apply to the Supreme Authority of Justice.

The Department for Personnel, Career, Performance, and Inspection of the Supreme Authority of Justice draws up a merit-based list and declares the names of the candidates after conducting an evaluation to determine which applications meet the eligibility criteria. All types of professional and private information, excluding personal data, regarding the candidates are disclosed.

Candidates' qualities in terms of merit and their fitness to perform the tasks they are seeking to take on are freely debated before the public. In the meantime, the nominees must honestly answer all the questions directed to them, and if they cannot, must explain why. Any nominee who cannot answer the questions and present a justifiable reason is eliminated.

The Department for Personnel, Career, Performance, and Inspection of the Supreme Authority of Justice determines the names of the candidates after evaluating all the information disclosed to and all the answers shared by the public. For every position, a list comprising 5 to 10 people is drawn up and declared.

Every candidate whose name is on the final candidate short list participates in a session of the Grand National Assembly of Turkey, where they answer questions directed at them. Additionally, candidates participate in a session prepared by the Turkish Radio and Television Corporation during which they are also subject to questioning. Both sessions are broadcast live and recorded by the Grand National Assembly of Turkey and the Turkish Radio and Television Corporation so that anyone who is interested can watch them at a convenient time.

The most qualified person is appointed. When more than one candidate is to be elected, an election is held for each available person. At every election, the most qualified member in terms of merit is elected. The candidate who was elected in the previous election cannot participate in ensuing elections. Sessions organized by the Grand National Assembly of Turkey and the Turkish Radio and Television Corporation are considered.

Elections are held on the basis of open and justified votes. The name and surname of the candidates are stated on the ballot papers. Voters must explain the reasoning behind their votes on the ballot. Ballots that do not include reasoning are invalid.

Voters must justify their vote and explain why their choice of candidate is the most qualified candidate on the basis of merit and among the other candidates having different degrees of merit.

## NOMINATION AND APPOINTMENT PROCEDURE AND JUDICIAL REVIEW

### ARTICLE XXX:

Nomination and appointment procedure to the Constitutional Court, Court of Cassation, Council of State, Court of Accounts membership as well as the Republic's Chief Public Prosecutor and Deputy Republic's Chief Public Prosecutor are open to judicial review. The Supreme Court of Justice has the jurisdiction to hear any cases related to the herein-mentioned nomination and appointment procedures.

Anyone who claims that the nomination and appointment procedure violated the law and therefore wishes to annul a decision regarding the herein-mentioned nomination and appointment procedures can bring a suit before the Supreme Court of Justice. However, cases filed for the annulment of the membership appointment decision of the Grand National Assembly of Turkey due to incompatibility with the Rules of Procedure of the Grand National Assembly of Turkey or the Constitution shall be resolved before the Constitutional Court.

Within this framework, actions against any decision of the Department for Personnel, Career, Performance and Inspection of the Supreme Authority of Justice taken for the determination of the candidates shall be filed to the Department for Objections and Re-examinations. The decisions delivered by the Department for Objections and Re-examinations of the Supreme Authority of Justice can be appealed before the Supreme Court of Justice. Once the candidates have been determined,

any decision taken after this time period can be appealed before the Supreme Court of Justice even though an objection has not been filed to the Department for Objections and Re-examinations prior this date.

Failure to comply with the voting conditions or providing insufficient justification for the vote is grounds for the annulment of the decision.

If the herein-mentioned failure affects a candidate or more than one candidate, it can be decided to annul the entire election. Another election will be held.

The case files are merged when there is more than one cases filed with the same cause of action. The issues raised in separate case are evaluated separately within the same case file and a single decision is delivered.

The Supreme Court of Justice will review the cases as a priority and deliver a ruling within 30 days.

### ***The President's Obligation to Choose the Most Qualified Candidate:***

#### CLAUSE XXX:

In cases where the President is authorized to elect according to the relevant laws- for example the election of the members of the Constitutional Court, Court of Cassation, Council of State, Court of Account and other relevant courts the President is obliged to elect the most qualified candidate from a list prepared by the Supreme Council of Justice. With regard to the herein-mentioned elections, the President does



not have discretion and must elect the most qualified candidate for the position shall justify the reasons why the elected candidate was the most qualified giving reasons for his/her choice. The President has to justify that he/she made an accurate evaluation of the candidates among different degrees of merit.

## **CONSTITUTIONAL COURT**

### ***Constitutional Court Membership and Appointment Procedure***

#### **ARTICLE 146 -**

The Constitutional Court comprises 30 members and operate in three chambers.

The members elect a president and two vice presidents. The term of office of the president and vice president of the Constitutional Court is three years.

The Constitutional Court has three chambers, and each chamber comprises 10 members. The first 20 members appointed to the Constitutional Court operates as two chambers comprising 10 members. The president of the Constitutional Court presides over the first chamber and the first vice president of the Constitutional Court presides over the second chamber. The appointed members, except for the president and the vice presidents, shall be listed according to their date of appointment. Those in uneven numbers of rows appointed to the first chamber and those ranked even numbers appointed to the second chamber. The members of the first and second chambers partially rotate every six months. The rotation starts with the earliest-appointed members for a duration of one year with three members serving in their own chamber are appointed to other chambers. At the end of this one-year period, they return to their own chambers. The last nine members appointed to the Constitutional Court shall form the Individual Application Chamber under the presidency of

the vice president of the Constitutional Court. The chambers of the Constitutional Court start adjudication with the participation of the chamber president and six of its members.

The Grand Chamber of the Constitutional Court comprises all the members of the Constitutional Court. The president of the Constitutional Court presides over the Grand Chamber. The Grand Chamber evaluates the case law of the chambers and issues decisions on the unification of judgements to resolve differences pertaining to case law. The claims lodged against the ministers and the president are resolved before the Grand Chamber. The Grand Chamber's decisions are final. Every year, the Grand Chamber evaluates the performance of the members serving in the different chambers of the Constitutional Court. With the vote of two-thirds of its members, the Grand Chamber may decide to terminate the membership of those who arbitrarily do not participate in deliberations and fulfill their duties as a judge without any apparent reason.

The Supreme Authority of Justice determines the candidacy eligibility and merit criteria according to article XXX. of the Constitution. The Supreme Authority of Justice declares the name of the candidates in a list that is ranked on the basis of merit. Institutions can nominate a maximum of three candidates for each membership position.

The General Assembly of Court of Accounts nominates two candidates: an economics professor and a public finance professor. The Union of Turkish Bar Associations nominates four candidates who have been practicing law for more than

15 years and who are constitutional law professors. The Grand National Assembly of Turkey holds a different vote for each position. Elections consist of two rounds. In the first round, for each appointment a vote of two-thirds of the total number of members is required. If no candidate receives enough of the votes, then a second round of voting is held 14 days later with the top-two candidates. In the second round, the one who receives three-fifths of the votes of those who were present during the vote shall be appointed.

The President appoints the remaining 12 members, nominated by the relevant institution, based on merit from among the qualified candidates who meet the below listed eligibility criteria:

Four members are appointed from among judges who have served for at least five years as a senior member or a president in a criminal chamber of the Court of Cassation. Two members are appointed from among judges who have served for at least five years as a senior member or a president in a civil chamber of the Court of Cassation. The General Assembly of the Court of Cassation appoints the candidates on the basis of merit, and open and justified votes.

Three members are appointed from among judges who have served for at least five years as a senior member or a president before the Council of State. The General Assembly of the Council of State appoints the candidates on the basis of merit, and open and justified votes.

Two members are appointed from among constitutional law professors, two members from among political sciences

professors, two members from among international relations professors, and two members from among professors who have conducted their studies on senior public officials. The Council of Higher Education appoints the candidates on the basis of merit, and open and justified votes.

Three members are appointed from among lawyers, two members are appointed from among judges who serve as the presidents of the Criminal Chambers of the Regional Courts of Appeal, one from among judges who serve as the presidents of the Civil Chambers of the Regional Courts of Appeal, and one from among prosecutors who serve as Regional Courts of Appeal's prosecutors. The Supreme Authority of Justice appoints the candidates on merit and on the basis of open and justified votes. The nominees must have completed a bachelor's degree as well as a master's degree or doctorate in their specialist subject, and have published articles.

Appointments made by the President are subjected to judicial review before the Supreme Court of Justice in accordance with Article XXXX of the Constitution.

## **DUTIES AND POWERS OF THE CONSTITUTIONAL COURT**

### **ARTICLE 148**

The duties and powers of the Constitutional Court include the following: Evaluating the constitutionality of legal rules; reviewing individual applications; adjudicating political party dissolution requests; auditing political parties; reviewing appeals in its capacity as the Supreme Criminal Tribunal, reviewing appeals against the decisions of the Supreme Court of Justice; applying the constitutional provisions; and delivering judgements that comply with the constitution.

The following provisions apply to annulment actions filed as a part of constitutionality analysis:

(a) The Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, presidential decrees and the rules of procedure of the Grand National Assembly of Turkey; presidential decrees issued during a state of emergency or in time of war, and Supreme Authority of Justice membership appointments and decide on individual applications. Constitutional amendments shall be examined and verified only with regard to their form.

(b) Any natural person, or private or public person/entity, can bring an action within the period of filing a lawsuit before the Constitutional Court. Claims regarding violations of the substance of laws and the suspension of execution are resolved a priority. The Constitutional Court immediately

starts adjudicating the cases filed by the President, political parties, political party groups, parliamentarians, the Supreme Authority of Justice, judicial professional associations and institutions regulated in the Constitution. Lawsuits filed by other natural and legal persons within the filing period are combined and the Constitutional Court delivers a ruling including all the claims raised.

(c) Claims regarding presidential decrees issued during a state of emergency or in time of war are subjected to preliminary evaluation and a summary judgement is issued based on the preliminary findings. Any presidential decrees issued during a state of emergency or in time of war violating the law shall be immediately annulled and their execution shall be immediately suspended. In cases where the plaintiff claims form and substance violation, it is not possible to issue a suspension-of-execution decision. However, after the declaration of annulment, the application of the order might be suspended or postponed until the end of the state of emergency or war.

(d) Claims of unconstitutionality raised before the courts of administrative, tax, criminal and civil law shall be resolved the Constitutional Court. When a party raises an unconstitutionality allegation regarding a subject that has already been resolved, the case can be referred to the Constitutional Court if the court hearing it is convinced of the seriousness of the claim of unconstitutionality submitted by one of the parties according to Article 152 of the Constitution.

(e) The verification of laws as to form shall be restrict-

ed to consideration of whether the requisite majority was obtained in the last ballot; the verification of constitutional amendments shall be restricted to consideration of whether the requisite majorities were obtained for the proposal and in the ballot, and whether the prohibition on debates under expedited procedure was observed. Verification as to form may be requested by the President of the Republic or by one-fifth of the members of the Grand National Assembly of Turkey. Applications for annulment on the grounds of defect in form shall not be made until after 10 days have elapsed from the date of promulgation of the law; and it shall not be appealed by other courts to the Constitutional Court on the grounds of defect in form.

Everyone may apply to the Constitutional Court on the grounds that one of the fundamental rights and freedoms within the scope of the European Convention on Human Rights, which are guaranteed by the Constitution, has been violated by public authorities. In order to make an application, ordinary legal remedies must be exhausted. In the individual application, judicial review shall not be made on matters required to be taken into account during the process of legal remedies. Procedures and principles concerning the individual application shall be regulated by law.

The Constitutional Court reviews the appeal requests filed against the decisions of the Supreme Court of Justice. The Constitutional Court can uphold, partially uphold or overrule the Supreme Court of Justice's decision. If the Constitutional Court overrules the appealed decision, it will send the case file back to the Supreme Court of Justice speci-

ifying the reason for the overrule. The Supreme Court of Justice reviews the case files following the overrule as a priority and promptly delivers a new judgement. The Constitutional Court, on its own, corrects the minor mistake made by the Supreme Court of Justice.

The Constitutional Court utilizes the below-mentioned authority when reviewing political party dissolution requests:

(a) Following an application filed by the Republic's Chief Public Prosecutor reviewing the conformity of the bylaws with the Constitution and democratic management principles, and if non-conformity is found, annulling the political party bylaws.

(b) Auditing the legality of the acquisitions, revenue, and expenditure of political parties. Political parties are obliged to present a report prepared by private auditing institutions that have the characteristics determined by the Constitutional Court or whose competence has been formerly disclosed. The Constitutional Court may review the all transactions and reports, or if it wishes, it can conduct an inspection limited to certain areas or topics.

(c) Ensuring the disclosure of activities, income and expenditure of the political party presidents, those who serve in the central administration and supervisory bodies, the President, President's deputies, ministers, deputy ministers, and senior public officials in a regular and transparent manner. Reviewing the herein-mentioned financial statement at the Republic's Chief Public Prosecutor's Request.

(d) Deciding on the issues of political party membership of those who engage in activities in regard to the abolition of the Constitution and constitutional order, and attempt to change permanent and unalterable provisions of the Constitution, and prohibiting those people from engaging in political activities of a similar nature.

(e) Resolving the following disputes: political party dissolution, withdrawal of public subsidies disputes, injunctions and determining whether a political party should be wound up.

(f) Reviewing the dismissal of any parliamentarians' decision made by the Grand National Assembly of Turkey.

The Constitutional Court in its capacity as the Supreme Criminal Tribunal shall try, for offenses relating to their functions, the President of the Republic; the Speaker of the Grand National Assembly of Turkey; the deputies of the President of the Republic; the ministers; the presidents and members of the Constitutional Court; High Court of Appeals and Council of State, the chief public prosecutors of High Court of Appeals and Council of State, the Deputy Chief Public Prosecutor; and the president and members of Chambers of Judges, Chambers of Prosecutors and Court of Accounts.

The Republic's Chief Public Prosecutor or Deputy Republic's Chief Public Prosecutor shall act as a prosecutor before the Supreme Criminal Tribunal. The decisions of the Supreme Criminal Tribunal can be appealed before the Constitutional Court's General Assembly. The decisions of the

Constitutional Court's General Assembly are final.

The Supreme Court of Justice evaluates the indictments prepared by the Republic's Chief Public Prosecutor against the President, ministers and members of parliament for the offenses relating to their professional functions, and to prepare and submit a report to the General Assembly of the Supreme Court of Justice, where a decision to approve or reject the indictments is delivered. Authority to prosecute lies with the Supreme Tribunal Court.

The Constitutional Court shall also perform the other duties given to it by the Constitution. Within this context, the Constitutional Court elects its president, first and second vice presidents, and the president and vice president of the court of disputes/conflicts.