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SPECIALIZED COURT FOR TRANSPARENCY AND JUDICIAL REVIEW

- Supreme Court Of Justice
 - Constitutional Court Revision
 - Law On Republic's Chief Public Procesoator's Office - Draft
-

Atty. Mehmet Gün
Atty. Hande Hançar
Atty. A. Dilara Kaçar
Atty. Zübeyde Çapar

Rationale

For the Specialized Court

All decisions of the SAoJ will be easily accessible by the public to ensure full transparency, including in relation to the candidacy, nomination and appointment to serve in the bodies of judicial professional associations or judicial service units (courts); admission, career advancement, discipline, and dismissal of judicial professionals; the establishment and closure of courts; and the auditing of the performance of the legal professions related to the judiciary.¹

Through enhanced transparency, the conformity of decisions with the law will be increased and merit will be strengthened. More importantly, by ensuring the accountability and judicial control of all processes and decisions in the system, we aim to strengthen the judiciary and increase the confidence of society in justice.

In order to strengthen the confidence of society, not only those directly concerned but every individual will be able to request a judicial review of all kinds of processes and decisions within the judicial system.

When the judiciary produces a high-quality service that is truly transparent and fully accountable and gains society's trust, then it can acquire and maintain its full independence and the possibility of self-governance.

¹ While transparency will serve to increase the conformity of decisions with the law, it will also strengthen merit and, more importantly, the SAoJ by providing judicial control and accountability, and society's confidence in justice will thus increase.

This is why particular attention has been given to ensuring that all judicial bodies and elements are transparent and accountable from top to bottom. For this reason, every type of decision and procedure will be subjected to judicial review, in administrative terms, including candidacy, nomination and election to organs; admission into professions; judicial professionals' promotion; and disciplinary sentences and dismissal.

We envisage establishing a specialized court for this purpose, and this court will use different trial procedural rules to ensure that it can review all the case files rapidly.

One of the three pillars of our design is the establishment of judicial review and a specialized court capable of conducting this review. We have designed an expert Supreme Court of Justice ("SCoJ") that will operate according to a special procedure in order to perform judicial review effectively. This court, which will be a new addition to the Turkish judicial system, will be fully independent from the SAoJ and will have the characteristics of a high court conducting trials as a court of first instance. Since the issues falling within the jurisdiction of the SCoJ are directly related to the constitutional system, with a few exceptions, the decisions of the SCoJ will be open to appeal before the Constitutional Court.²

² This specialized court will also reveal new opportunities in other areas that currently contain problems. For example, by repealing the investigation pre-authorization requirement in relation to senior public officials and judicial elements, which renders them virtually immune from criminal liability in connection with their professional functions and personal conduct. Investigation of such allegations, considering the sensitivity of the duties of the individuals concerned, could be assigned to this specialized court. Likewise, both legislative immunity and the rule of law can be strengthened by assigning the investigation

For Constitutional Court Revision:

The Constitutional Court is currently in need of a critical revision. The number of members of the court, the qualifications of its members, and the processes of nomination, selection and appointment, are not enough to build confidence in the country's top judicial institution. The way the court discharges its function is not adequate to ensure full compliance with the Constitution. There are a limited number of people who are authorized to file an action against the Constitution in the legislative activities of the General Assembly. This situation is also the fundamental reason for the formation of gaps and contradictions in the rulings of the court and in the compliance of these rulings with the Constitution. Rules annulled due to unconstitutionality can at the same time continue to exist in laws that have not been filed for annulment.

It is not possible to say that the Constitutional Court is able to completely prevent the restriction of the institutional, individual and functional independence of the judiciary through legislative activities. The Constitutional Court may annul those provisions that it finds violate the independence

and prosecution of those benefiting from legislative immunity to the jurisdiction of this court. And by abolishing immunities, this system may prevent the removal of immunities by a political decision.

The proposed specialized court offers a good opportunity to effectively protect legislative immunity and, at the same time, prevent compromises to the rule of law. Abolishing immunities will help prevent the granting of legal protection for political reasons, and also this specialized court can supervise trials. This way, the effective protection of immunities by the judicial authorities can be ensured, the scope of immunities can be clarified through judicial opinions, and at the same time judicial procedures can be prevented from harming the essence of immunity.

of the judiciary. However, it cannot eliminate the situation that arises as a result of the implementation of the law it has annulled.

It is a cold fact that the political views effective in the appointment of its members have an effect on the decisions of the Constitutional Court. The desire of politicians to determine the formation of the court by appointing people who are loyal to them and share their political views causes short-term political considerations to take precedence over the long-term interests of the country in the determination of candidates and the appointment of members. This status seriously hinders the principles of merit, transparency and accountability in the process of determining, nominating and selecting candidates for court membership. Having come to the fore in their subjects and gained prestige in society are not the basic criteria required in order to be appointed to the court. The importance of being loyal and close to a certain political view has prevented the highest merit being the determining factor in membership.

Although members are appointed to such an important duty, the fact that their merits are not guaranteed and the methods and processes of nomination and appointment depend on personal preferences causes a loss of trust in the court and a decrease in respect for its decisions. These are among the most important frailties of the Constitutional Court. This situation is also the principal cause of the politicization of the court and its members.

On the other hand, the court lacks sufficient human re-

sources and structures to effectively fulfill the duties assigned to it. The transfer to the Constitutional Court of the applications piled up in the European Court of Human Rights within Turkey has exceeded the capacity of the court and restricted its ability to perform its normal functions.³

In the solution proposals herein, it is stipulated that the place of appeal for the decisions of the Supreme Court of Justice will be the Constitutional Court. Although its size cannot be predicted, this duty will bring an important workload to the Constitutional Court. It is foreseen that the Supreme Court of Justice will have a special proceeding and will make quick and effective decisions. Therefore, it is imperative to ensure that the appeal process in the Constitutional Court runs equally effectively and quickly.

For these reasons, it is stipulated that the Constitutional Court will have three separate departments. One of the departments must be assigned solely to examining individual applications. The other two departments should fulfill judicial and legislative duties.

Performing a full assessment of the Constitutional Court is beyond the purpose and scope of this study. However, the fact that this court has been designated as the authority of

appeal for decisions of the Supreme Court of Justice, which was established to ensure the effective accountability of the judicial power, makes it necessary to identify any factors that may have negative effects on this purpose and to make suggestions to remedy them.

The lack of capacity in the Constitutional Court, merit disruptions, the effects of short-term political considerations, some contradictions in court decisions and politicization problems are the main issues to be taken into account. In order to eliminate these disruptions, revision proposals limited to these issues have been developed. Our purpose is to effectively protect the independence of the judiciary, to prevent the problems from spreading through appeal decisions in the Constitutional Court to the decisions of the Supreme Court of Justice and from there to the entire judicial organization. Non-compliance with the law and partizan-ship are viruses that spread insidiously within state institutions. As in the fight against the Covid-19 pandemic, it is imperative to take the necessary precautions and to apply them with sensitivity, even in the case of the slightest possibility that these viruses may pass to jurisdiction.

In summary, our proposals for the revision of the Constitutional Court are as follows: (i) increasing the number of members of the court from 15 to 30; (ii) structuring the court into three departments of 10 members each; (iii) tasking one of the departments with examining individual applications; (iv) Requiring that newly elected members work in the individual application department until the positions of any of the previously elected members become vacant; (v)

³ As a matter of fact, individual applications that fall within the scope of the Court's duty and could not be finalized in a reasonable time, were transferred to an administrative unit within the Ministry of Justice and the judicial function of the court was transferred to an administrative body. The transfer of the function of the judiciary to the executive power is in blatant contradiction to the principles of democracy, separation of powers and the rule of law of the state – something which is so obvious as to need no further explanation. The exercise of judicial power by an element of the executive in democratic state administration is never acceptable.

continuously updating the composition of the membership of the first and second departments through annual rotation between the members of these departments tasked with the court's ordinary functioning; (vi) ensuring merit and increasing the professional competence and qualifications of members by providing transparency and accountability in the processes for becoming a candidate and the nomination and selection for court membership.

The court having three departments will triple its work capacity. Each department, consisting of 10 members including the president, will ensure the homogeneity of the different approaches to decision-making. The newly elected members working initially in the individual applications department will increase their familiarity with the functioning of the court and constitutional issues, and more importantly, will largely eliminate political interests and considerations in the election of members. This is because those who are successful in the elections will have withdrawn from the political scene and lost their influence by the time their selected member can be effective. Rotation between the members of the other two departments will prevent schisms in circles as well as the ossification of differences in jurisprudence.

For the Role of the Chief Public Prosecutor's Office in relation to the Supreme Court of Justice:

In our proposal, we wanted to establish a new status for the Republic's Chief Public Prosecutor's Office separate from the Republic's Chief Public Prosecutor's Office of the Courts of Cassation, which will be responsible for investigating and pros-

ecuting cases before the SCoJ.

Instead of creating a new office for the Chief Public Prosecutor specific to the SCoJ, we prefer to transform the Republic's Chief Public Prosecutor's Office of the Courts of Cassation into an office that focuses mainly on protecting the Constitution. Duties including representing the public and protecting the Constitution are parallel to and sometimes overlap with the current duties of the Republic's Chief Public Prosecutor's Office of the Courts of Cassation. Indeed, the duties to be fulfilled by the SCoJ – which will be a specialized court specific to the judiciary representing one of the three pillars of the democratic system based on the separation of powers, on behalf of the public – are closely related to the protection of the constitutional system.

We envisage using the terms Republic's Chief Public Prosecutor and “Republic's Chief Public Prosecutor's Office” in relation to the prosecutors who will be serving before the Constitutional Court and the SCoJ. The prosecutors who will be serving before the Courts of Cassation will use the terms “Chief Public Prosecutor's of the Cassation Courts”⁴ and

⁴ It is said that Mahmut Esat Bozkurt, who was the minister of justice at the time, proposed to Mustafa Kemal Atatürk that prosecutors should be referred to as “prosecutors of the Republic” to separate them from judges and attorneys, because of the prosecutors' role as the protectors of the Republic. This term causes the prosecutors' position to be perceived as a special position, even though prosecutors have equal power, responsibility and importance in the proceedings to that of judges and prosecutors. Can it be said that the reason behind this terminology change is that prosecutors who have “special” status are granted the authority to govern the courts instead of justice commissions? The rationale of Mahmut Esat Bozkurt is not wrong: prosecutors should be the guardians of the Republic. However, in the Turkish system aimed at protecting the Republic, only those prosecutors whose main duty is to protect the Republic should bear the

“Chief Public Prosecutor's Office of the Cassation Courts.” This difference in terminology will clarify the constitutional duties and functions of the Republic's Chief Public Prosecutor's Office of the Courts of Cassation and help simplify the institution.⁵

title of “prosecutor of the Republic”, and other prosecutors should be called only “prosecutor.”

⁵ It can be said that under the current system, the separation of the responsibilities of prosecutors according to the stages of “investigation”, “trial” and “appeal” is an enormous waste of resources. Having different prosecutors undertaking different tasks at different stages is not conducive to high-quality service production. The ability of a prosecutor, who is not responsible for the investigation, to contribute and create value at a hearing is considerably limited. It should not be expected that the “appellate” prosecutors, who will not have participated in the investigation and trial stages at the courts of first instance and thus will not have observed the developments in the case, will understand the legal issues before the appeal through reading the paperwork or will be able to contribute to the appellate review. As a matter of fact, what prosecution offices mostly do consists of writing “opinions” on the documents pertaining to appealed cases to, so to speak, fulfill the formality. Prosecutors, like attorneys, should follow the dispute from the investigation stage until the final judgement is delivered; and their performance should be evaluated according to their success at these stages.

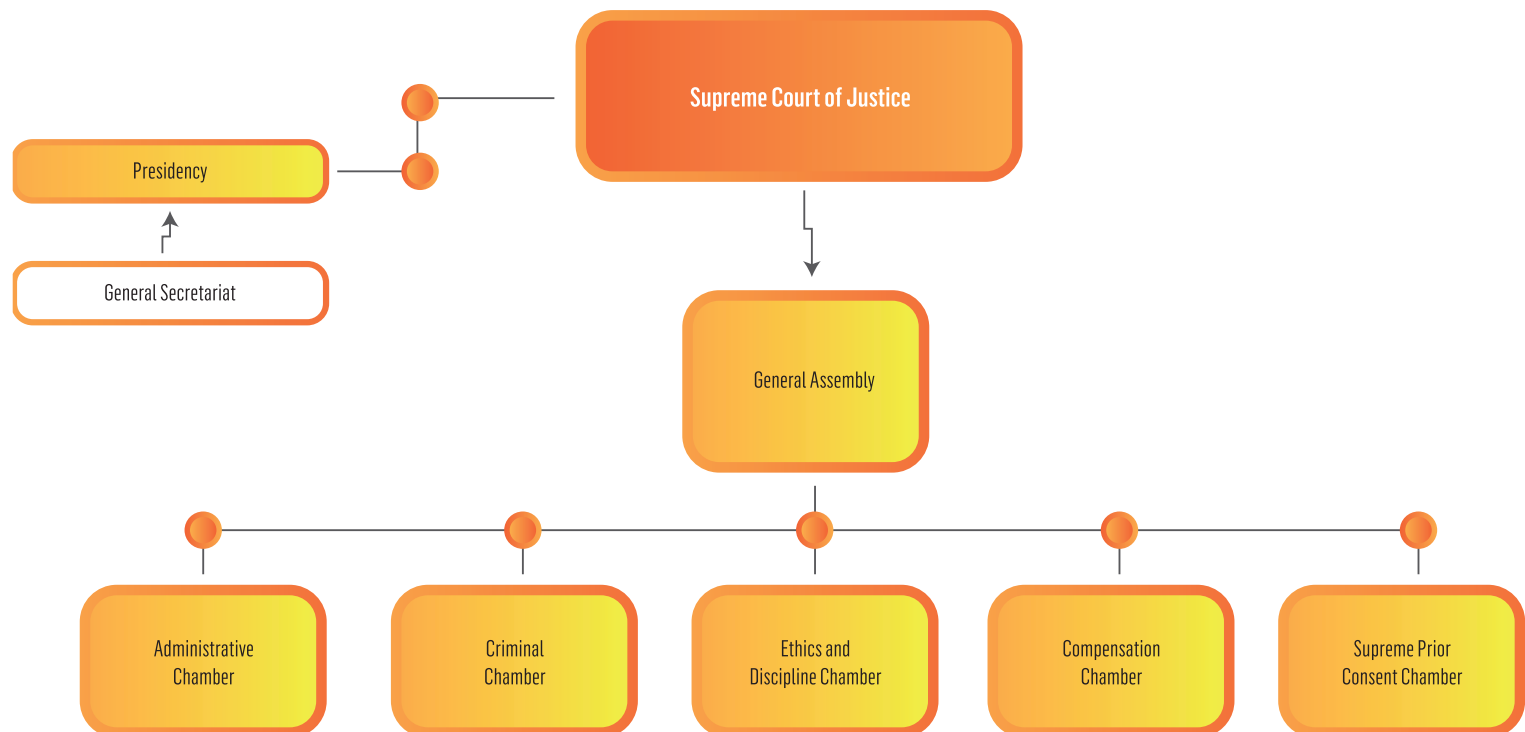
SUPREME COURT OF JUSTICE

NOTES

The Supreme Court of Justice

- 1- The Supreme Court of Justice (“SCoJ”) reviews the legality of all types of transactions and decisions made regarding the judicial structure, organs and functioning.
- 2- 26 of 52 qualified members are directly elected by the Supreme Authority of Justice (“SAoJ”), and the remaining 26 are elected by the SAoJ from the candidate pool of individuals nominated by judges, prosecutors, lawyers and notaries.
- 3- All elections and appointments of members based on merits are subject to judicial review in a transparent manner.
- 4- A judge’s tenure is eight years, and it is renewable for a consecutive term of four years. As a result, a judge’s tenure shall not exceed 12 years. The retirement age will be 70.
- 5- The SCoJ comprises five chambers: Administrative, Criminal, Ethics & Discipline, Compensation and Supreme Chamber of Prior Consent.
- 6- Each chamber acts as a specialized court conducting expedited judicial review, and comprises seven residing and three alternate judges.
- 7- Anyone can bring an action before the SCoJ and a decision will be delivered within 90 days. Legal fees cannot be imposed on the defendant.

Organization Chart of the Supreme Court of Justice



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The Composition and Responsibilities of the Supreme Court of Justice (“SCoJ”)

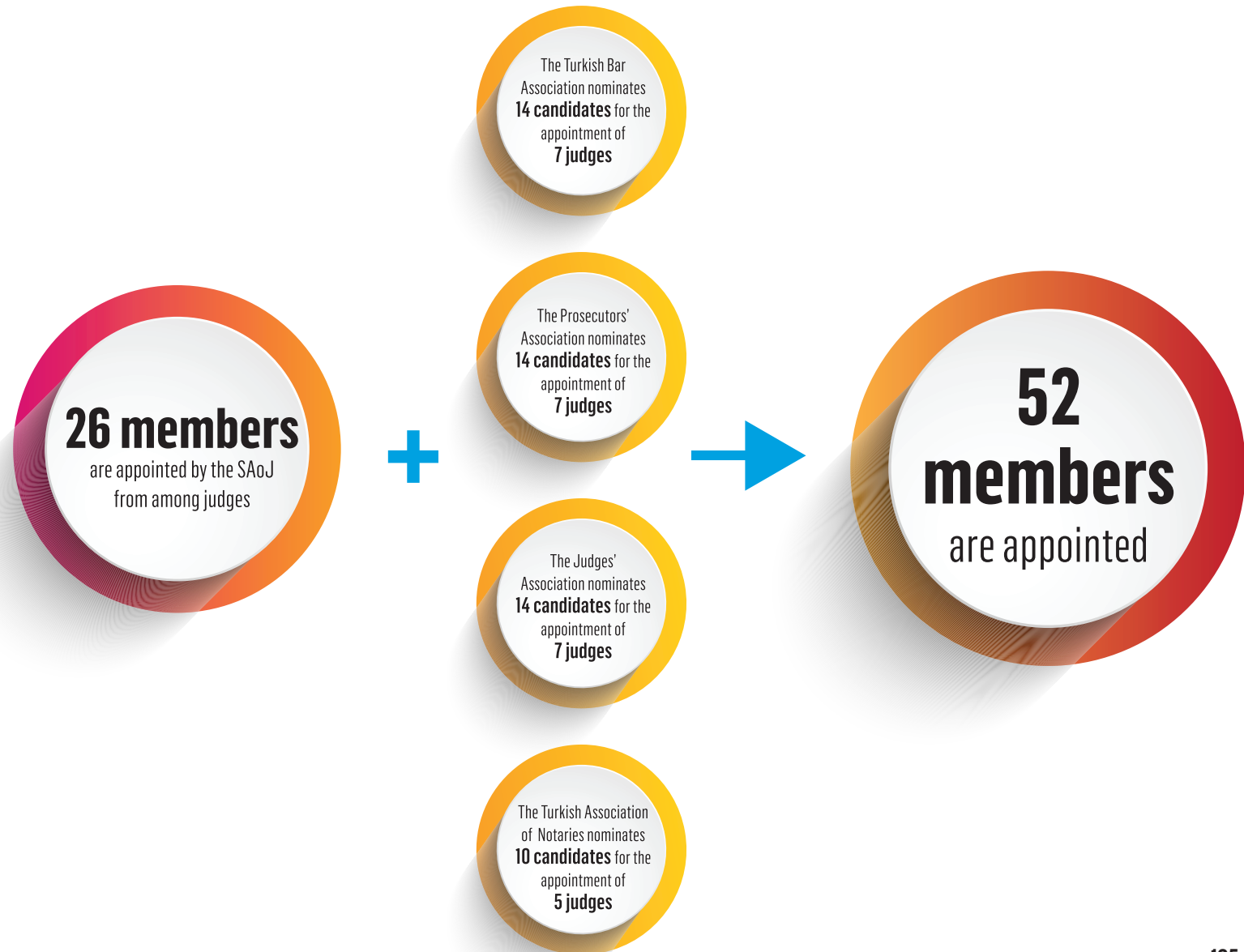
The SCoJ comprises 52 members, of which 26 are directly elected by the SAoJ and the remaining 26 are elected from a candidate pool comprising 42 individuals nominated in equal number by judges, prosecutors and lawyers. An additional 10 candidates are nominated by the Turkish Notary Association. The SCoJ comprises five chambers acting as specialized courts and a General Assembly.

The principal duty of the SCoJ is to review the legality of all transactions and decisions made regarding the judicial organs and elements of other institutions and persons. Additionally, the SCoJ is the deciding authority on matters regarding legislative immunity in relation to the approval of indictments and the investigation of senior public servants.

The SCoJ’s jurisdiction covers the following:

- Reviewing the legality of all decisions made by the SAoJ;
- Reviewing the legality of all decisions made in relation to judicial appointments such as elections, nominations and candidacy;
- Reviewing the legality of disciplinary decisions and sentences imposed on members of the legal profession; and
- Reviewing the decision of a lower criminal court on the prosecution of public servants as an appellate court.

The Nomination, Election and Appointment of the Members



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The SCoJ Membership and Appointment Procedure

- Those who wish to be appointed as a judge must declare their intentions to the SAoJ.
- The SAoJ releases a list of the names of candidates who meet the eligibility criteria.
- The names of the nominees are selected from this list.
- First, the candidates who are nominated by the legal profession are evaluated based on merit and appointed by the SAoJ.
- Then, the SAoJ directly appoints 26 members from among its judges.
- The SAoJ appoints a sufficient number of qualified judges to meet the needs of each chamber.
- A judge's tenure is eight years, and it is renewable for a consecutive term of four years. As a result, a judge's tenure shall not exceed 12 years.
- Judges cannot be relieved of their duty or forced to retire before the age of 70 except at their own request.
- Judgeship is automatically terminated if a disciplinary sentence is imposed on a judge that requires his/her removal from office, or if a judge commits a crime that is serious enough to result in the loss of required eligibility criteria.

The Composition of the Chambers

A chamber is composed of 10 judges. Those judges must have the necessary experience and qualifications to serve in a chamber that acts a specialized court. In order to realise this objective, it is contemplated that each chamber will comprise lawyers and academicians from various legal disciplines in accordance with the requirements of that chamber.

The table below shows the envisaged qualifications and indented distribution of the SCoJ judges.

	Constitutional Law Professor	Administrative Law Professor	Criminal Law Professor	Lawyers specializing in Administrative Law	Lawyers specializing in Criminal Law	Administrative Court Judge	Criminal Court Judge	TOTAL
Administrative Chamber	2	1		2		2	3	10
Criminal Chamber		1	2		2	1	4	10
Compensation Chamber		2	1	1	1	2	3	10
Ethics and Discipline Chamber	1	1	1	1	1	2	3	10
Supreme Chamber of Prior Consent	2		1	1	1	1	4	10
	5	5	5	5	5	8	17	50
	15			10		25		50

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The Administrative Chamber

The Administrative Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two constitutional law professors, one administrative law professor, two lawyers specializing in administrative law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of this chamber is to review the legality of every decision made by the SAoJ. Additionally, this chamber reviews every decision made during the election and appointment process of the Republic's Chief Public Prosecutor. This chamber also decides on the termination or suspension of SAoJ membership on request.

Occupation	Number
Constitutional Law Professor	2
Administrative Law Professor	1
Criminal Law Professor	0
Lawyer specializing in Administrative Law	2
Lawyer specializing in Criminal Law	0
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	10

The Criminal Chamber

The Criminal Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of one administrative law professor, two criminal law professors, two lawyers specializing in criminal law, one administrative court judge and four criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Criminal Chamber is to try SAoJ members and senior public officials for offences relating to their professional functions and personal conduct. This chamber has the authority to approve or reject the indictments prepared by the Republic's Chief Public Prosecutor.

Occupation	Number
Constitutional Law Professor	0
Administrative Law Professor	1
Criminal Law Professor	2
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	2
Administrative Court Judge	1
Criminal Court Judge	4
TOTAL	10

NOTES

The Ethics & Discipline Chamber

The Ethics & Discipline Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of one constitutional law professor, one administrative law professor, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Ethics & Discipline Chamber is to review the legality of the disciplinary sentences delivered to the members of the legal profession either directly by the SAoJ or the relevant legal professional association.

All decisions delivered by this chamber are final and not subject to appeal except for dismissal decisions, which can be challenged before the Constitutional Court.

Final decisions are delivered, in written form, to the relevant legal professional association of which the plaintiff is a member.

Occupation	Number
Constitutional Law Professor	1
Administrative Law Professor	1
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	10

The Compensation Chamber

The Compensation Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two administrative law professors, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, two administrative court judges and three criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The Compensation Chamber exercises jurisdiction over malpractice compensation cases brought against the state with regards to judges and prosecutors, malpractice compensation cases brought against lawyers and notaries, and other compensation cases brought against the state regarding the administrative actions taken by judicial bodies.

Compensation actions may be filed against the state for any type of mistake or fault committed by judges and prosecutors that results in the loss of rights or damages.

The Constitutional Court exercises jurisdiction over malpractice claims against the judges of the SCoJ.

Occupation	Number
Constitutional Law Professor	0
Administrative Law Professor	2
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	2
Criminal Court Judge	3
TOTAL	10

NOTES

The Supreme Chamber of Prior Consent

The Compensation Chamber comprises 10 members: seven sitting judges and three substitute judges.

This chamber consists of two constitutional law professors, one criminal law professor, one lawyer specializing in administrative law, one lawyer specializing in criminal law, one administrative court judge and four criminal court judges.

This chamber starts adjudication with the participation of seven of its members and issues majority opinions when four judges concur.

The principal duty of the Supreme Chamber of Prior Consent is to evaluate the indictments prepared by the Republic's Chief Public Prosecutor against the President, Ministers and Members of Parliament for the offences relating to their professional functions and to prepare and submit a report to the General Assembly of the SCoJ.

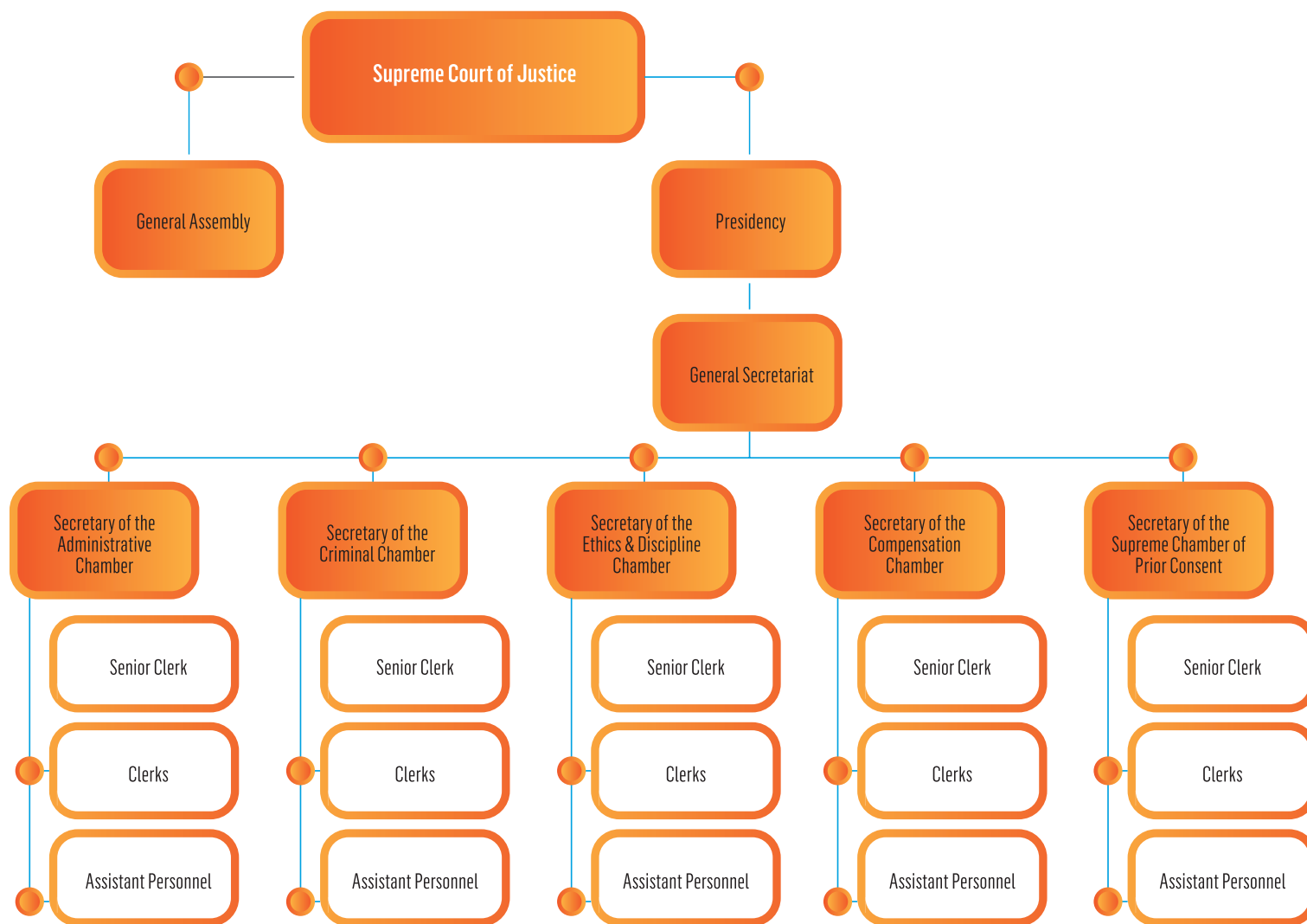
The General Assembly of the SCoJ has the authority to approve or reject the indictments.

Occupation	Number
Constitutional Law Professor	2
Administrative Law Professor	0
Criminal Law Professor	1
Lawyer specializing in Administrative Law	1
Lawyer specializing in Criminal Law	1
Administrative Court Judge	1
Criminal Court Judge	4
TOTAL	10

General Overview of the Supreme Chamber of Prior Consent

	Investigating Authority	Evaluation of the Indictment	Approval of the Indictment	Prosecution	Appeal
Members of SAoJ	Attorney General		Approval of the indictment is not required	General Assembly of the SCoJ	Constitutional Court
President, Ministers and Members of Parliament	Attorney General No need to obtain prior consent	The SCoJ's Supreme Chamber of Prior Consent	General Assembly Quorums Meeting: 1/3 Decision: 2/3	Constitutional Court In its capacity as the Supreme Criminal Tribunal	
Senior Public Servants	Attorney General No need to obtain prior consent		Approval of the indictment is not required	Criminal Chamber of the SCoJ	Constitutional Court
Low-Level Public Servants	Attorney General No need to obtain prior consent		Court of Inquiry	Specialized Criminal Courts	Criminal Chamber of the SCoJ

Administrative Organization Chart of the Supreme Court of Justice



The General Assembly (as a Court)

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The General Assembly comprises all the sitting and substitute judges of the SCoJ. The General Assembly holds meetings only when necessary. The General Assembly meetings can be held with the presence of a third of its members. If the meeting quorum is not met in the first meeting, no meeting quorum will be required for the second meeting. The decisions can be adopted with two-thirds of the voters that are represented during the meeting.

The principal duty of the General Assembly is to appoint sitting and substitute judges for the chambers, to act as a court of first instance for the dismissal/removal of cases brought against SAoJ members, and to approve or reject indictments prepared against public officials who benefit from legal immunity or who must be tried before the Supreme Criminal Tribunal.

The duties and responsibilities of the General Assembly include the following:

- Permitting investigation orders and approving indictments prepared by the Republic's Chief Public Prosecutor with regard to the alleged crimes committed by the President, Ministers or Members of the Parliament;
- Trying cases with regard to the removal of SAoJ members from office;
- Adopting and amending internal regulations, bylaws and other guidelines;
- Appointing the President and Deputy President of the SCoJ; and
- Resolving jurisdictional disputes between the chambers, balancing out their workload, and forming new courts or additional judicial units within the same chamber when necessary.

NOTES

The Authorities and Responsibilities of the Presidency

The General Assembly of the SCoJ elects the President of the SCoJ. The presidency election consists of four rounds. In the first two rounds, the one who receives two-thirds of the votes will be named the President. However, if no candidate receives enough votes in the first two rounds, then a third round of voting is held. In the third round, the one who receives a simple majority of the votes will become the President. If no candidate receives enough votes in the third round, then a fourth round of voting is held with the top-two candidates. In the fourth round, the one who receives the majority of the votes will be named the President and the runner-up the Deputy President of the SCoJ. Elections are held every two years.

The principal duty of the President is to oversee the administration of the SCoJ and represent the SCoJ in public and before governmental authorities. Additionally, the President's duties include the following:

- Transferring powers to the Deputy President of the SCoJ when necessary;
- Presiding over the General Assembly and ensure its functioning;
- Overseeing the operation of the chambers, informing the General Assembly, and making sure the chambers continue to operate efficiently and properly by intervening when necessary;
- Ensuring the courts and chambers are operating efficiently and properly, and taking measures to realise that objective;
- Appointing and employing the General Secretary, the Deputy Secretaries who are the head secretaries of the chambers, and other court personnel;
- Approving and publishing the bylaws, internal regulations and other guidelines adopted by the General Assembly; and
- Auditing whether court costs correspond with the SCoJ's budget.

Assistants and Reporting Judges of the SCoJ

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Taken into consideration their workload, sufficient numbers of assistant judges and trainee judges are employed. For every sitting and substitute judge, an assistant judge must be employed.

To be appointed as an assistant judge: Those who wish to be appointed as an assistant judge must meet the eligibility criteria for appellate court judges and have either a masters or a doctorate in law, economics or political sciences.

The principal duties of an assistant judge include completing tasks assigned by judges; drafting the reasoning and preparing the draft version of judgments; analyzing reports given by the presiding judge, supplementing if necessary; and supervising and guiding trainee judges. Additionally, assistant judges are expected to participate in and work with the commissions decided by the presiding judge. They may also give lectures at universities or deliver speeches at conferences.

In order to be appointed as a trainee judge: Those who wish to be appointed as a trainee judge must successfully complete the judgeship internship and be authorized by the SAoJ to work as a trainee judge.

The principal duties of a trainee judge include examining case files, summarizing the submissions of the parties and expert reports; assisting the court following a hearing or discovery; and researching doctrine and case law according to the instructions given by the sitting or assistant judge.

NOTES

General Principles for Proceedings Before the SCoJ

Actions must be filed within 30 days. For the subject of the decision this period starts following the notification; for others it starts following the publication of the decision.

- Anyone who wishes to have a decision annulled can file action against the deciding authority.
- SCoJ has to deliver judgement within 30 calendar days.
- The SCoJ follows a special expedited procedure and cases are adjudicated in one hearing.
- Hearing is conducted by hearing the arguments, assessing the evidence. Only one time adjournment is permitted and no later than two weeks.
- Hearing date is set in consultation with parties and take place even parties are absent and the court delivers ruling at the hearing.
- Court records and the hearing are open to the public and always reachable online.
- SCoJ may decide to stay enforcement of decisions until it delivers its ruling.
- Claimants losing the action cannot be ordered to pay legal fees and the cost while the losing institution reimburses the claimant for reasonable costs.
- It is compulsory to enforce SCoJ's decisions immediately.

General Principles for Proceedings Before the SCoJ

Pre-Trial	1st Stage Parties' Submission: Complaint and Reply	2nd Stage Parties' Submission: Reapplication and Rejoinder	3rd Stage Final Hearing
<p>Claims must be filed within 30 days. For the people who are the subject of the decision, this limitation period starts from the day following the date of notification. For other people who are not the subject of the decision, it starts from the day following the date of the publication of the decision on the relevant website.</p> <p>Anyone can bring a suit to challenge the legality of any type of transaction or decision made</p> <p>All decisions are published on the SAoJ's website.</p>	<p>A defendant has 10 days to file a response, starting from the day following the date of service.</p> <p>A limitation period cannot be extended.</p> <p>The parties shall submit the evidence they wish to rely on during the first submission phase. The court authorizes the parties to collect the necessary evidence.</p> <p>An authorized party or parties must complete the evidence collection before the second submissions phase.</p>	<p>A plaintiff has 10 days to file a reapplication starting from the day following the date of notification of the response.</p> <p>A defendant has 15 days to file a rejoinder starting from the day following the notification of the reapplication.</p> <p>At this stage, the court may convene a hearing. During this hearing, the parties present their arguments and explain their evidence.</p>	<p>The court must convene a hearing date within 15 days of the completion of the second submission phase.</p> <p>This hearing is completed in one session.</p> <p>During this hearing, legal arguments and evidence are discussed. At the end of this hearing, the court must deliver an oral judgment.</p> <p>The court has 15 days to issue a reasoned judgement following the date of the final hearing.</p>

CONSTITUTIONAL COURT REVISION

The Court's Duties

Organizational Structure

Number and Qualifications of Its Members

Constitutional Court Revision in Outline

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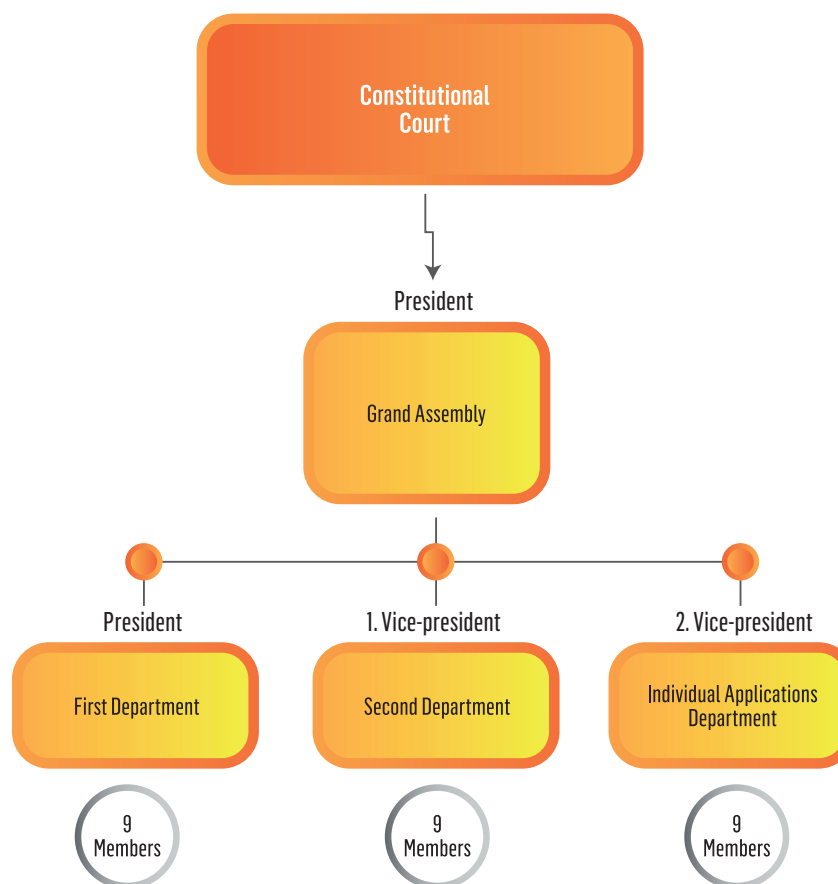
- The court consists of 30 members. The majority of members are department of law faculty members and members of the judiciary.
- The court works in three departments. Two departments are responsible for the court's normal functions; the third is responsible for individual applications.
- The president of the Court is the president of the Grand Council and the first department, the second department is chaired by the first vice-president and the Individual Applications Department is chaired by the second vice-president.
- Newly elected members start working in the Individual Applications Department. If there is a vacancy in the first or second departments, members proceed from the third department to serve there according to the date of their election.
- Members are ranked according to their election dates, and their place in the first or second department is determined by whether they are in an odd-numbered or even-numbered row.
- One-third of first and second department members alternate departments every year.

Organization Chart of the Constitutional Court

The president of the court is the president of the Grand Council and the first department; the second department is chaired by the first vice-president; and the Individual Applications Department is chaired by the second vice-president.

Newly elected members start work in the Individual Applications Department first; if there is a vacancy in the membership of the first or second department, they move on to this department.

Every year, one-third of the members of the first and second departments rotate to the other department.



Duties and Powers of the Constitutional Court

The Constitutional Court's duties are in 4 categories:

1- to review the constitutionality of the laws enacted by the TGNA and the presidential decrees

2- to audit the activities of the political parties

3- to act as a supreme criminal court having jurisdiction over the offences of immune people i.e., MPs, president, ministers.

4- to review individuals' complaints on basic human rights violations under the ECHR and the Constitution – i.e., individual applications since 23 September 2012

Constitutional review actions can be filed by either the president, any of the 2 groups of political parties having the highest seats in the TGNA i.e., ruling and main opposition parties) and MPs of 1/5th of the TGNA i.e., 120 MPs out of 600.

Judicial courts may bring objections on the constitutionality of the provisions that they are to apply.

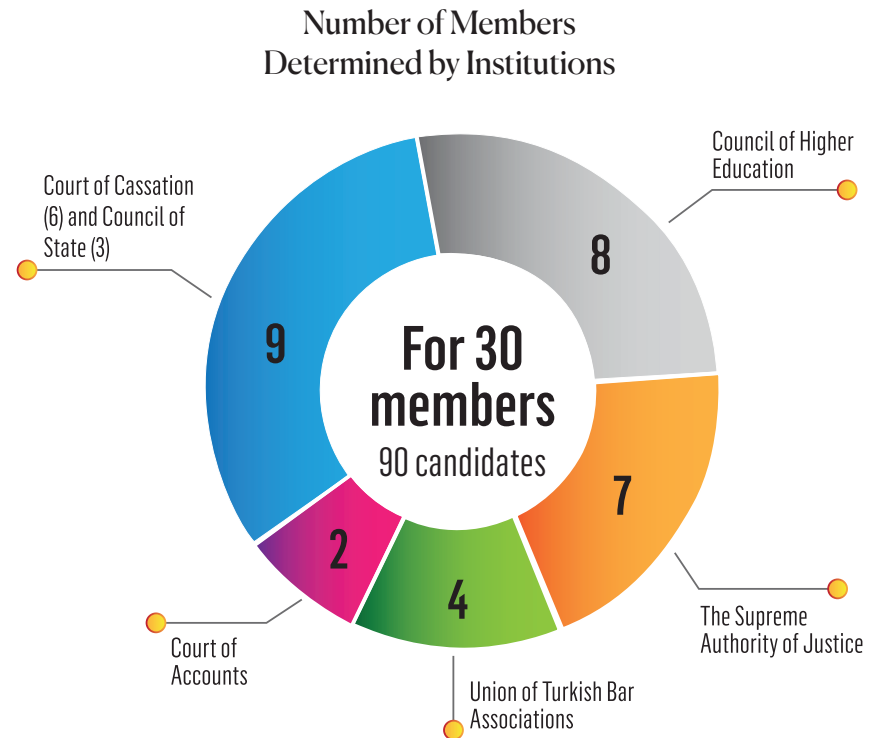
The State Council and the Administrative Courts have jurisdiction to adjudicate on Constitutionality of the secondary rules i.e., implementation regulations.

BJA proposes that all matters involving and requiring conformity to Constitution are reviewed and adjudicated by the constitutional court. Also BJA proposes that not only a few and limited group but the whole society and any member of the public should be allowed to apply to the Constitutional Court. Actions can be too many, but subject matters are always a few and the court can deal with all applications at the same time, in a manner similar to class actions in the USA.

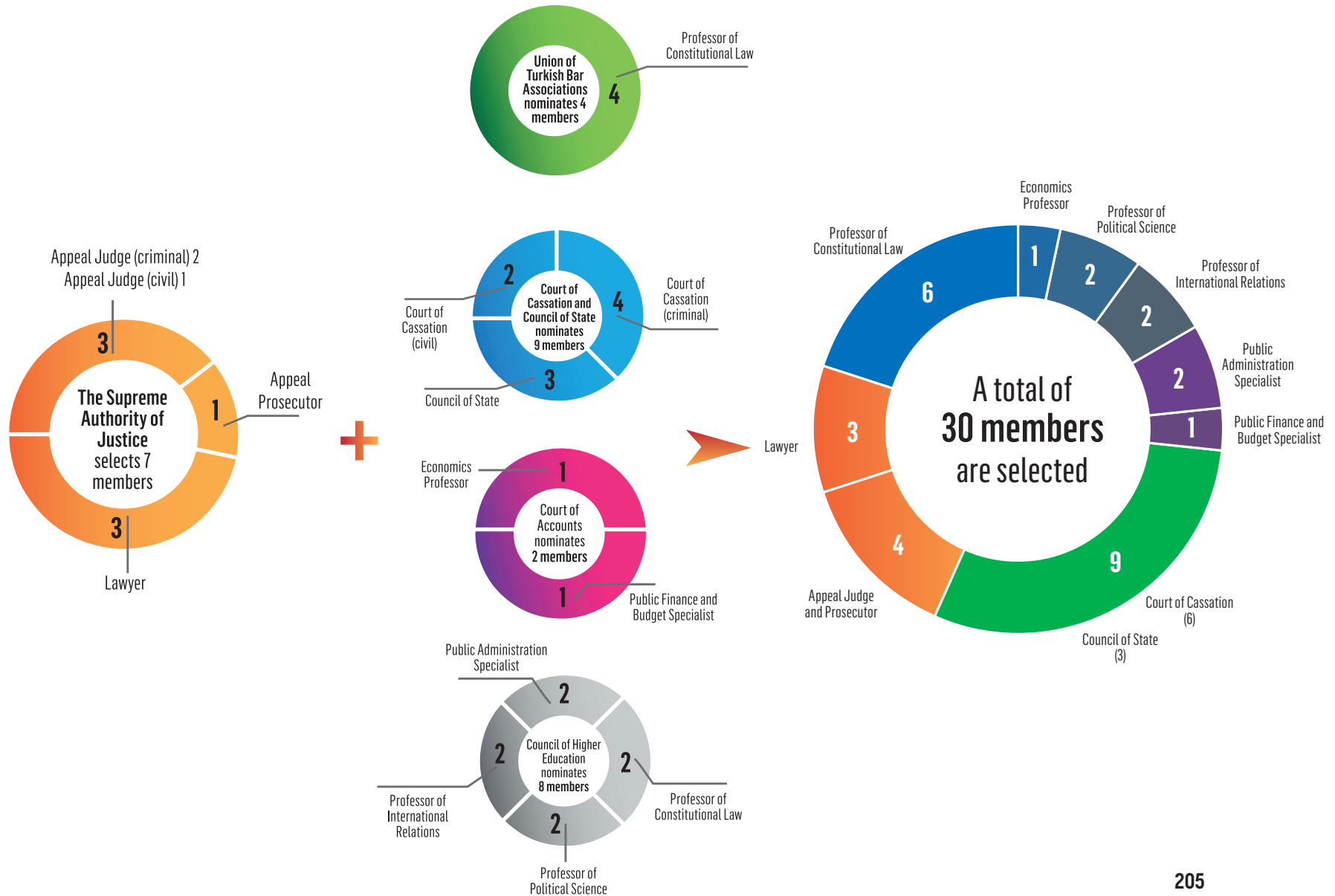
NOTES

Qualitative Distribution of Constitutional Court Members

- The President of the Republic appoints 17 members by selecting from candidates determined by the Council of Higher Education, the Court of Cassation and the Council of State, based on merit.
- The Grand National Assembly of Turkey selects six members from among the candidates determined by the Court of Accounts and Union of Turkish Bar Associations.
- Seven members are selected and appointed from among the candidates for nomination in the final list of the Supreme Authority of Justice, based on merit.



Nomination, Selection and Appointment of Members



Qualifications of members of the Constitutional Court and distribution of the sources nominating and selecting them

Candidates for nomination are first announced in the preliminary list according to competence and merit.

After public debate and objections, the final list of Candidates for nomination is announced.

Nominating institutions determine candidates from the definitive list based on merit.

The institution that makes the selection does so based on merit.

Candidates for nomination, nomination and election decisions are subject to judicial review in the Supreme Court of Justice.

	Court of Cassation Member (Criminal Law)	Court of Cassation Member (Law)	Council of State Member	Appeal Judge (Criminal Law)	Appeal Judge (Law)	Appeal Chief Prosecutor	Attorney at Law (Self-employed)	Professor of Constitutional Law	Professor of Political Science	Professor of International Relations	Public Administration Specialist	Economist Professor	Public Finance and Budget Specialist	TOTAL
Court of Accounts nominates – Grand National Assembly of Turkey selects												1	1	2
Court of Cassation nominates – President of the Republic selects	4	2												6
Council of States nominates – President of the Republic selects			3											3
Union of Turkish Bar Associations nominates Grand National Assembly of Turkey selects								4						4
Council of Higher Education nominates – President of the Republic selects								2	2	2	2			8
General Assembly of Supreme Authority of Justice selects from Definite Candidate list				2	1	1	3							7
TOTAL	4	2	3	2	1	1	3	6	2	2	2	1	1	30

Saim Dursun,
"Dingin" (Calm),
60 x 70cm,
oil on canvas,
spatula technique,
2013



LAW ON REPUBLIC'S CHIEF PUBLIC PROSECUTOR'S OFFICE - DRAFT

CHAPTER ONE

General Provisions

SECTION ONE

Purpose, Scope and Definitions

Scope

ARTICLE 1 – (1) The qualifications, duties, term of office and nomination of Chief Prosecutors and Deputy Chief Prosecutors are regulated as per the provisions of this Law.

(2) Candidacy for nomination, determination of those who fulfill the candidacy requirements, announcement of candidates for nomination, public disclosure of the personnel and other personal information, and public debate on the same are also regulated as per the provisions of this Law.

SECTION TWO

The Qualifications to be Elected as a Chief Prosecutor or Deputy Chief Prosecutor, and the Nomination Process

Qualifications to be Elected as Chief Prosecutors and Deputy Chief Prosecutors

ARTICLE 2 – (1) To be elected as a Chief Prosecutor or Deputy Chief Prosecutor, the following qualifications should be sought:

- a) Being over 55 years old,
- b) Having completed a bachelor's degree in law,
- c) Having at least 20 experience as a prosecutor,
- d) An absence of any psychological or physical health problem preventing the fulfilling of the duties
- e) Having the high level of morality and character required

for the duty

f) An independence of any political opinion, absence of any political party membership and absence of performing a duty in a political party or movement in the past; and

g) Absence of any criminal conviction during their professional career, even if it is absolved or removed from the criminal records and an absence of any disciplinary sanction arising from any actions performed in the past.

The Procedure for the Determination of Candidates for Nomination

ARTICLE 3 – (1) Anyone who fulfills the qualifications sought to be Chief Prosecutors and Deputy Chief Prosecutors may submit directly to the Supreme Authority of Justice or to the judicial professional institutions that nominate candidates at least three months before the date of the election. The person who applies for candidacy for nomination is deemed to accept the public disclosure of all kinds of information related to himself/herself, including their confidential professional records. Additionally, they have to answer the questions asked or explain their reasons for not answering them.

(2) Judicial professional associations' boards of directors can notify their candidates for nomination (the number of candidates are to be determined by these boards of directors) to the Supreme Authority of Justice Personnel, Career, Performance and Audit Department at least three months before the date of the election.

(3) The Supreme Authority of Justice Personnel, Career, Performance and Audit Department shall announce a list of

the candidates for nomination notified by the professional organization or applied through direct application by ranking them based on their merit and shall publicly disclose the candidates' personnel and personal information.

(4) The candidates for nomination are to freely debate before the public. They are to be interviewed by TRT (Turkish Radio and Television Corporation) before an inclusive stakeholder panel. Candidates shall answer all questions asked and candidly disclose information to the public. The information that arises from these debates will also be included in the file of candidates for nomination.

The Procedure for Judicial Professional Associations' Nominations

ARTICLE 4 – (1) Following the public debates but before 45 days at the latest, the judicial professional associations' board of directors shall determine their nominees and notify them to Supreme Authority of Justice. Judicial professional associations shall nominate and notify the following maximum number of nominees: Union of Prosecutors' Chambers – 6, Union of Judges' Chambers – 4 and Union of Turkish Notaries – 2. Different professional organizations can nominate the same person.

(2) The judicial professional associations' boards of directors shall determine the nominees based on open and justified vote. Everyone can vote for one nominee. The name and surname of the person voting, the name and surname of the person voted for and the justification of the voting must be written in the ballot paper. The nominees listed based on the

number of votes shall be notified to the Supreme Authority of Justice along with the number of votes received and the justifications put forward by the voters who voted for this nominee.

(3) An annulment action can be filed before the Supreme Court of Justice with regard to the elections organized in judicial professional associations for the nomination of candidates because of incompliance with the open ballot. A justification for an annulment is required, and the form and legitimacy of any incompliance must be specified. The Supreme Court of Justice will decide on such a case as an urgent matter and without having a hearing session. The Supreme Court of Justice can annul the election altogether or can annul it only regarding certain candidates. The ones whose candidacies are annulled shall not be taken into consideration in the election to be held in the Supreme Authority of Justice's general assembly.

The Nomination and Election of a Chief Prosecutor and Deputy Chief Prosecutor

ARTICLE 5 – (1) The candidates proposed by the judicial professional associations shall be nominated by being elected based on the open and justified vote by the Supreme Authority of Justice's general assembly. Everyone can vote for one candidate. The name and surname of the person voting, the name and surname of the person voted for and the justification of the voting must be written in the ballot paper.

(2) The election of the Chief Prosecutor or Deputy Chief Prosecutor shall be a runoff election with three runs.

(3) In the first run, the person among the candidates who

obtains the simple majority of all the members in the Supreme Authority of Justice's general assembly shall be nominated as the Chief Prosecutor and the person who obtains the second-highest number of votes shall be nominated as the Deputy Chief Prosecutor.

(4) In case, no candidate obtains the simple majority of the votes in the first run, a second run shall be organized among the four candidates who obtain the highest number of votes in the first run. In the second run, the person who obtains the simple majority of all the members in the Supreme Authority of Justice's general assembly shall be nominated as chief prosecutor and the person who obtains the second-highest number of votes shall be nominated as the Deputy Chief Prosecutor.

(5) In case among the candidates running for the second run, no one obtains the simple majority of the votes, a third run shall be organized. The third run shall be between the two candidates who obtain the highest number of votes in the second run. In the third run, the person who obtains the simple majority of votes of the members who participate in to the vote shall be nominated as the Chief Prosecutor and the other shall be nominated as the Deputy Chief Prosecutor.

(6) Between each and every voting round, there should be a minimum of one week and a maximum two weeks.

(7) All decisions taken during the nomination and election of the Chief Prosecutor and Deputy Chief Prosecutor and deputy chief prosecutor shall be subject to judicial review. An annulment action can be filed before the Supreme

Court of Justice with regard to the election because of in-compliance with the open ballot. A justification for an annulment is required, and the form and legitimacy of any in-compliance must be specified. The Supreme Court of Justice will decide on such a case as an urgent matter and without having a hearing session. The Supreme Court of Justice can annul the election altogether or can annul it only regarding certain candidates. From the point affected by an annulment decision, the elections shall be run once again until a final election is made.

SECTION THREE

The Term of a Chief Prosecutor and Deputy Chief Prosecutor

The Term and Its Termination

ARTICLE 7 – The term of the Chief Prosecutor or Deputy Chief Prosecutor is five years in total. Their re-nomination and re-election are prohibited.

The Termination of Duty

ARTICLE 8 – (1) The Chief Prosecutor and Deputy Chief Prosecutor cannot be removed from office during their term and they continue their duty until a new election is held, except in the circumstances below.

(2) In the following circumstances, the Chief Prosecutor's or Deputy Chief Prosecutor's duty is terminated before the normal termination date:

a) Being unable to fulfill their duties because of health problems; in this case, the health condition should be ac-

curately determined with a full-fledged public hospital's medical board report.

- b) Mandatory retirement due to age limit,
- c) Being sentenced as a final judgment for a crime preventing nomination for duty or being sentenced to a final disciplinary sanction.

(3) In the case of the duty of the Chief Prosecutor or Deputy Chief Prosecutor being terminated before the normal termination date, the ordinary procedure or a new nomination and election for their replacement shall commence. In case of a sudden discharge due to a health condition or other unexpected reason a new election procedure shall commence immediately. Until the new nomination and election process is complete, the chief Prosecutor's duties shall be temporarily fulfilled by the Deputy Chief Prosecutor. In case both duties are terminated unexpectedly, the Court of Cassation's Chief Prosecutor, or, in his/her absence, the Court of Cassation's Deputy Chief Prosecutor will take charge of the duty temporarily until a new election can be held.

SECTION FOUR

Chief Prosecutor

The Duties of the Chief Prosecutor and Deputy Chief Prosecutor

ARTICLE 9 – (1) The Chief Prosecutor has the following duties.

- a) Investigating and representing the public in the prosecution of the crimes alleged to have been committed by

those people who have the immunity such as the President of the Republic, ministers or members of parliament, and whose trial shall be conducted before the Supreme Court of Justice, or the Constitutional Court in the capacity of the Supreme Court by the members of Supreme Authority of Justice, judges, prosecutors and high-level public officials.

- b) Acting as Chief Prosecutor before Constitutional Court and Supreme Court of Justice,

- c) Initiating the case for closing down a political party and performing duties assigned as per other laws,

- d) In person or through the Deputy Chief Prosecutor, auditing the compliance of political parties' constitutions and programs, and their founders' judicial background with the provisions of constitution and law, primarily and following its establishments; following up their activities, where needed, site auditing; and examining, investigating, regarding the political party, a member of the political party and its establishment, and

- e) Investigating and prosecuting crimes against constitutional order and its operation regulated under Turkish Criminal Code section 5 in order to uphold the constitution.

- (2) The Deputy Chief Prosecutor performs the duties given by the Chief Prosecutor. Additionally, in case the Chief Prosecutor is unable to perform its duties for a reason mentioned in the law, he/she undertakes all the duties and responsibilities of the Chief Prosecutor until a new one will be elected.