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**TURKISH JUDICIAL SYSTEM**  
BODIES, DUTIES AND OFFICIALS

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BY  
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Turkish Judicial System  
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Publisher : The Ministry of Justice of Turkey  
The Department for Strategy Development

Design & Printing : Grafikana - [www.grafikana.com](http://www.grafikana.com)

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## **PREAMBLE**

Turkish judicial system has significantly changed in the recent periods mainly with the effect of harmonization process of Turkey with the European Union. Fundamental changes were made in the Constitution and other legislation, new implementations were included in the judicial system, new institutions were established or competence and jurisdiction of the existing institutions were rearranged in order to minimize the human rights violations and establish a judicial system, in which people trust. This rapid and fundamental change made it indispensable to update the information related to Turkish judicial system and to carry out a study with regard to the introduction of the system.

This pamphlet is an important source for practitioners and academicians, who would like to have concise and neat information with regard to the general system in particular but who are not supposed to continuously follow the changes in the system due to the rapid transformation process. It is believed that this pamphlet will make a significant contribution to the introduction of the renewed Turkish judicial system. Structures, duties and officials of all institutions in the Turkish judicial system are examined in the pamphlet.

I would like to emphasize that this pamphlet will make undeniable contributions to the introduction of the Turkish judicial system and to thank Judge İsmail Aksel for his efforts in preparing the pamphlet.

**Akın Çakın**

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## ABBREVIATIONS

CJD	: The Court of Jurisdictional Disputes
DGER	: The Directorate General for Electoral Registers
GNAT	: The Grand National Assembly of Turkey
HCoJP	: The High Council of Judges and Prosecutors
HMAC	: The High Military Administrative Court
IFS	: The Institution of Forensic Science
JAT	: The Justice Academy of Turkey
MCC	: The Military Court of Cassation
NJIS	: The National Judiciary Informatics System
SEB	: The Supreme Election Board

## INTRODUCTION

Judiciary, one of the three main powers, has unique characteristics in terms of both its institutional structure and personnel. While it is considered under the administration roof called “state”, its independence is indispensable for a modern democracy as well. This situation resulted in a system that is very difficult to explain. The concept “justice” is used in this pamphlet as a meta-concept including the concept “judiciary” in order to be able to explain this system. Although its contents may vary depending on the administrative structure of different countries, “judicial system” is an umbrella concept including all bodies, which are in association with each other while fulfilling their judicial functions.

Turkish judicial system consists of the bodies that have different nature, are independent of each other to a large extent but have close relationships as well. This system includes a wide range of institutions from prisons to the Ministry of Justice, from enforcement directorates to the courts and from justice commissions to the supreme boards. The main purpose of this pamphlet is to provide a summary on structures, duties and officials of all institutions under this broad field.

The information on general features of the Turkish judicial system is provided in the first chapter. Administrative bodies, primarily the Ministry of Justice, are explained in the second chapter. Supreme courts, district and first instance courts are explained respectively in the pursuant three chapters. The boards carrying out the activities related to elections are examined in sixth chapter and the justice institutions for enforcement of judgements in the last chapter.





## I. GENERAL FEATURES OF TURKISH JUDICIAL SYSTEM

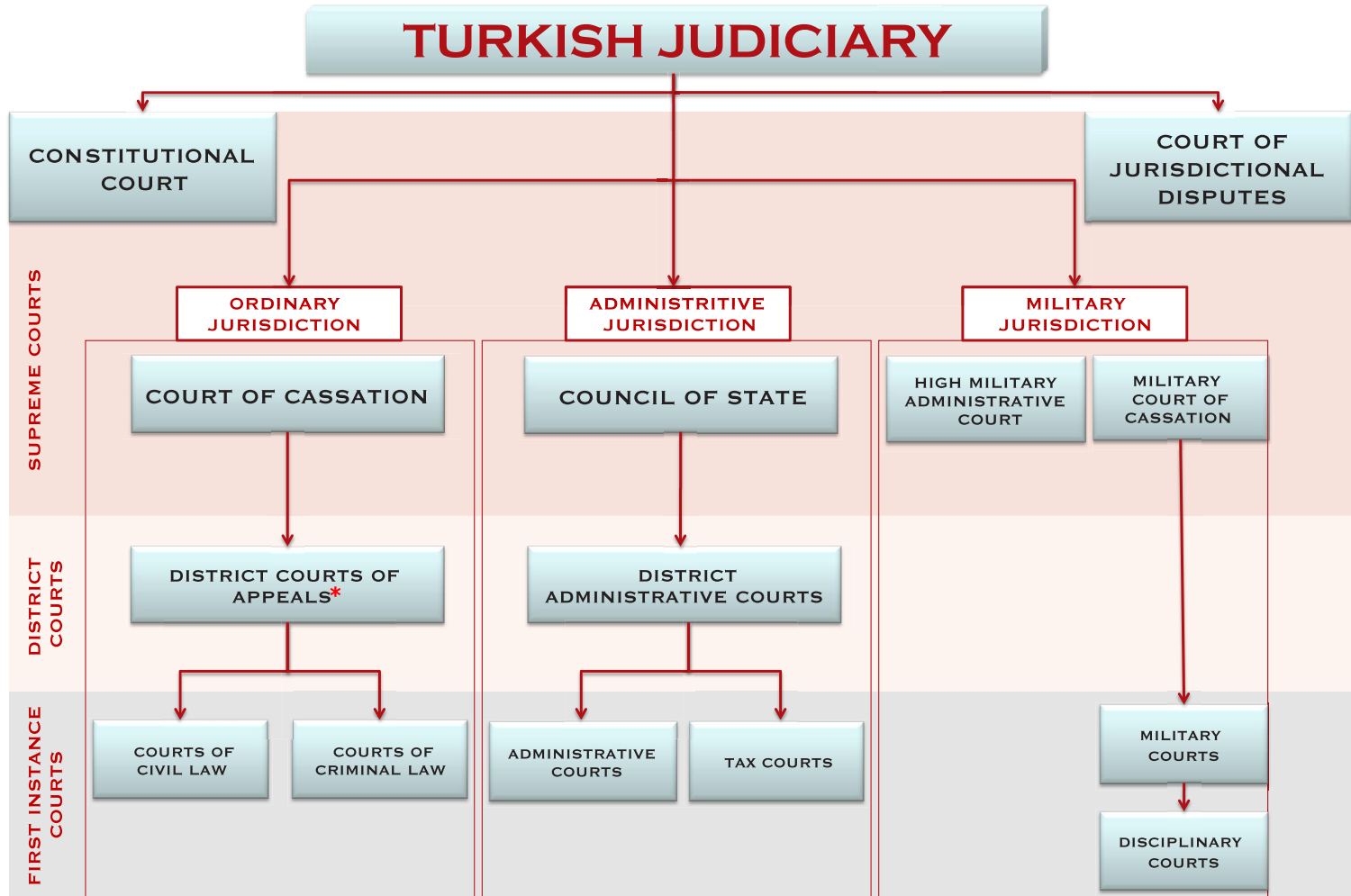
### A. General Structure of Turkish Public Administration

The Republic of Turkey has a unitary structure in terms of administration and this aspect is one of the most important factors shaping the Turkish public administration. When three powers (executive, legislature and judiciary) are taken into account as the main functions of the state, local administrations do not have almost any power. In other words, there are not units called “states” in Turkey and the provinces and cities come after the central administration. Local administrations were established to provide services in place and the government is represented by the governors and city governors. Besides the governors and the city governors, other senior public officials are also appointed by the central government rather than to be appointed by mayors or elected by constituents.

Justice management, on the other hand, is structured separately from this system to a large extent. Governors, city governors or mayors do not have authority on judges and public prosecutors and other judicial personnel. The judges and public prosecutors are appointed in accordance with the rules to be explained in the following parts of this pamphlet and they administrate the judicial organization in line with the principle of “independence of judiciary.”

### B. Separations of Jurisdiction

The judicial system in Turkey has a multipartite structure at the levels of first instance courts, district courts and supreme courts. The main separation is defined as civilian judiciary and military judiciary. Both fields are split into two categories as ordinary and administrative judiciary.



\* Although the General Prosecutors of the district courts of appeals were appointed while the pamphlet was carried out, these courts have not actually entered into operation, yet.

### ***1. Separation of Civilian Judiciary – Military Judiciary***

Turkish judiciary is decisively separated as civil jurisdiction and military jurisdiction. The jurisdiction and administrative duties of military courts; the buildings they work in; the qualifications of the judges, prosecutors and the auxiliary personnel working in these courts; the procedures for their recruitment and appointment are completely separated from the ones working in civil courts. Therefore, unless it is specifically stated in this pamphlet, the explained issues only apply to the civilian judiciary.

### ***2. Separation of Ordinary Judiciary – Administrative Judiciary***

Both civilian judiciary and military judiciary are split into two categories as ordinary judiciary and administrative judiciary. As a result of this multipartite structure, Turkish judicial system has 4 different types of jurisdictional fields and, thus, supreme courts:

- The Court of Cassation as the final decision maker in civilian ordinary judiciary,
- The Council of State as the final decision maker in civilian administrative judiciary,
- The Military Court of Cassation as the final decision maker in military judiciary (only in terms of criminal procedures),
- The High Military Administrative Court as the final decision maker in military administrative judiciary (it serves both as court of first instance and supreme court).

Moreover, the Court of Jurisdictional Disputes was established to resolve the disputes between these courts and the Constitutional Court for constitutional jurisdiction. Each of them has their own prosecution services and general prosecutors except the Constitutional Court and the Court of Jurisdictional Disputes. (The prosecution services in the Constitutional Court are carried out by the General Prosecutor of the Court of Cassation.) Therefore, this complicated system has led to the emergence of six supreme courts and four general prosecutors.

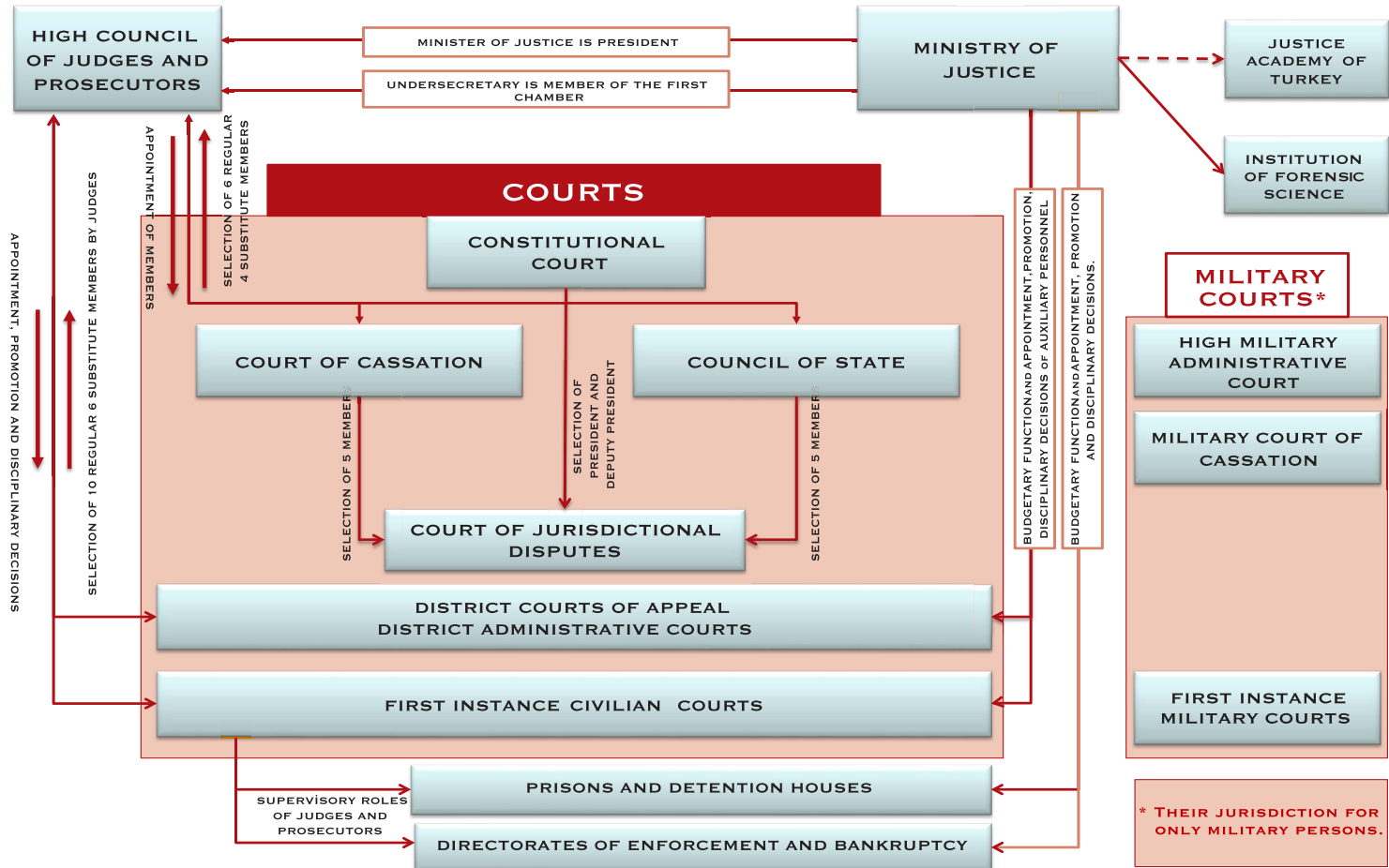
### **C. Scope of Turkish Judicial System**

The scope of judicial systems may considerably differ across countries in line with the public administration structure. The scope of the system in Turkey may be summarized briefly as follows;

- The Ministry of Justice,
- The High Council of Judges and Prosecutors (the HCoJP),
- Supreme Courts; the Constitutional Court, the Court of Cassation, the Council of State, the Military Court of Cassation, the High Military Administrative Court and the Court of Jurisdictional Disputes.
- Courts of first instance and district courts; ordinary and administrative courts, military courts.
- The Supreme Election Board and other election boards,
- The Justice Academy of Turkey,
- The Institution of Forensic Science,
- Directorates of enforcement and bankruptcy
- Prisons and detention houses.

Turkish judicial system, unlike some other countries, has not an “armed law enforcement agency”. Police and gendarmerie that are affiliated to the Ministry of Interior are assigned to assist the judges and public prosecutors in investigating crimes, apprehending fugitives and protection of prisons. Likewise, prisons and detention houses that are affiliated to the Ministry of Interior in numerous countries are affiliated to the Ministry of Justice in Turkey. They function under the control and supervision of the Minister of Justice and public prosecutors authorized in that area.

# TURKISH JUDICIAL SYSTEM



## D. Personnel Structure

The personnel working in Turkish judicial system are split into two categories: judges and auxiliary personnel.

### 1. Judges

The concept of “judge” is defined in the reports of the European Commission for the Efficiency of Justice (CEPEJ) as follows; “A judge is a person entrusted with giving, or taking part in, a judicial decision opposing parties who can be either natural or physical persons, during a trial.”<sup>1</sup> Turkish judicial system, the concept “judge” is used to describe an occupational group. Nevertheless, not all of those in this group serve as judges in practice.

Nevertheless Turkish Constitution has adopted the principle of “professional judge”. This principle requires that decisions in courts must be rendered by professional judges and Turkish judicial system does not allow non-professional judges to render or take part in a judicial decision.

As well as the judges at benches, the persons in the following positions are considered as “judge”;

- All of the public prosecutors,
- Almost all of the middle level and senior bureaucrats assigned in the central organization of the Ministry of Justice, the HCoJP and justice inspectors,<sup>2</sup>
- President and members of supreme courts and the public prosecutors assigned in these courts,
- Most of the judges assigned as rapporteurs in the supreme courts.

For those appointed to administrative positions, it is guaranteed by Constitution to be appointed as judges to the courts by the HCoJP upon their request.

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1 European Commission for the Efficiency of Justice, “European judicial systems – Edition 2012 (2010 data) – Efficiency and quality of justice” p. 143. Available at; [http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf) accessed on 12.12.2012

2 Judges can be occasionally assigned in other institutions as bureaucrats. Those who are assigned in this way will be included in the “judge class” unless it is not upon their requests.

Unless they are the members of the supreme courts, the judges are promoted and appointed to a court by the HCoJP regardless of their positions. However, they are appointed to administrative positions and relieved of their duties by the relevant administrative unit in accordance with the legal arrangements.

Judges are split into two categories as ordinary jurisdiction judges and administrative jurisdiction judges while starting the profession in line with the segregation in the judicial system.<sup>3</sup> Ordinary jurisdiction judges are selected from among graduates of law faculties and administrative jurisdiction judges are selected from among graduates of either law schools or faculties of political science and faculties of social sciences, which include law courses in their programs at a sufficient level. Those who pass the central written exam will be subject to an oral exam by a board consisting of the representatives of the Ministry of Justice, Justice Academy of Turkey and supreme courts and then the ones who pass the oral exam can become “candidate judges.” “Candidate judges” who receive training for 2 years in the courts and the Justice Academy of Turkey will be branched off as judge or public prosecutor (in terms of the candidate judges to serve in the ordinary judiciary) at a certain stage of the training. Those who successfully complete the training are accepted into the profession by the HCoJP as judges or public prosecutors and they are appointed to the courts.

Those working under the judge class are split into four levels as third level, second level, candidate for first level and first level by taking into account the period of office and their achievements. These levels are taken into account while they are appointed for certain positions or places. For example, members of supreme courts can only be appointed from among the judges at first level.

## ***2. Auxiliary Personnel***

Auxiliary personnel working in the judicial system are mainly assigned in courts, public prosecution offices and other judicial institutions as clerks or mid-level managers. It is also exceptionally possible for them to hold certain high-level positions. They can also be assigned as “expert” in certain areas that require expertise.

Auxiliary personnel serve as civil servant and have the same rights with the other civil servants.

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<sup>3</sup> The status of military judges is completely separated from this system.

### **E. Budget and Financial Management**

In Turkish judicial system, budget and financial management are arranged by taking into account the unique natures of the relevant bodies. The main arrangements within this scope are as follows;

- Among the supreme courts; the Constitutional Court, the Court of Cassation and the Council of State have their own budgets. Budgets of these courts are determined in accordance with the Budget Act at the beginning of the fiscal year.

- Budgets of the CJD, SEB and other provincial and city election boards, ordinary and administrative first instance courts and district courts, The Institution of Forensic Science, prisons and detention houses are included in the budget of the Ministry of Justice. The Ministry of Justice transfers the budget allocated to it to the aforementioned courts and institutions as well as its central units.

- The HCoJP and the Justice Academy of Turkey have separate budgets allocated to them.

- Budgets of all courts within the military field (including the Military Court of Cassation and the HMAC) are included in the budget of the Ministry of National Defence.

- Budgets of the bars and the Union of Turkish Bar Associations are comprised of the subscription fees and these budgets are not included in the capital budget.

All of the institutions and the courts use the allocated budgets under the supervision of the Court of Accounts and in line with certain rules and methods.

### **F. Position of the Public Prosecutors**

The recruitment, trainings, personal rights and other issues for judges and prosecutors are arranged completely in parallel with each other. Although it is not very often, the transition between two professions is also possible. As it is emphasized above, those involved in both professions are defined as “judge class.” The different status of the public prosecutors from other countries might be very confusing.

Public prosecution in Turkey is a duty carried out by persons from judge class. In this regard, the public prosecutors have tenure of judges and their appointments, promotions and discipline provisions are finalized by the HCoJP as for the judges. Public prosecutors do not have any relation with the Bar Associations and other occupational organizations for lawyers. Their rights for election as members of supreme courts, being a member of the HCoJP or other rights are the same with the judges. However, they are in the same position with the defence counsels during trial and they cannot intervene in the decisions of the judges.



## II. ADMINISTRATIVE BODIES

### A. Ministry of Justice

The Ministry of Justice having an important role within Turkish judicial system is responsible for determining the main policies about the system as well as controlling the budgets of important bodies within this system.

#### 1. Structure

The Ministry of Justice is split into various units in order to fulfil its duties. Accordingly, there are general directorates, heads of departments and presidencies in the Ministry. The units and their duties in brief are as follows;

- *The Presidency of Inspection Board* is responsible for supervision of the auxiliary personnel serving in justice system and the public prosecutors within the scope of their administrative duties and for investigation of allegations against them.
- *The General Directorate of Criminal Affairs* carries out the proceedings of the auxiliary personnel with regard to discipline and fulfils the obligations on criminal cases attributed to the Ministry of Justice by the law.
- *The General Directorate of Civil Affairs* carries out the proceedings about Public Notaries and lawyers, fulfils the obligations on civil cases attributed to the Ministry of Justice by the law.
- *The General Directorate of Prisons and Detention Houses* carries out the procedures on prisons and detention houses. Moreover, Workshop Institution for Prisons and Detention Houses functions under the same Directorate General. Main purpose of this institution is to protect and develop the professions and craftsmanship of prisoners and detainees or to ensure that they learn a profession or craftsmanship.

- *The General Directorate of Laws* is responsible for preparing drafts about laws, regulation and other regulatory proceedings prepared by the Ministry of Justice or other ministries or expressing its opinion on the prepared drafts.

- *The Department for Strategy Development* is the unit where coordination of strategic management is carried out in the Ministry of Justice. It is responsible for the coordination of activities for planning and strategy development for the entire judicial system as well as the Ministry of Justice and for the financial management of the units whose budgets are included in the budget of the Ministry.

- *The General Directorate of International Laws and Foreign Affairs* is responsible from establishment of relations between the judicial institutions and national/ international/ supranational organizations in other countries. Also, the Department of Human Rights established under this unit is responsible for defending Turkey before the European Court of Human Rights and for the development of human rights in Turkey.

- *The General Directorate of European Union Affairs* coordinates the activities aimed at harmonization of the judicial system as a whole with the law of European Union during the membership negotiations of Turkey with the European Union.

- *The General Directorate of Personnel Affairs* carries out the proceedings of the personnel who are not included in the judge class regardless of that they are assigned in the Ministry of Justice, first instance courts, district courts and the Institution of Forensic Science.

- *The General Directorate of Criminal Records and Statistics* is responsible for keeping the records and statistics of legal penalties imposed as a result of criminal cases.

- *The Presidency of Internal Inspection Unit* carries out financial audit of the institutions affiliated to the Ministry of Justice in terms of budget in line with the new understanding of public administration and guides these institutions.

- *The Department of Information Technologies* is responsible for use of information technologies, establishment and operation of a common system in the institutions under justice system.<sup>4</sup> Moreover, infrastructure services within this scope are also provided by the same department.

- *The Department of Training* carries out the training activities for those who are not included in the judge class.

- *The Department of Technical Issues* carries out activities aimed at meeting the physical infrastructure needs of the institutions affiliated to the Ministry of Justice in terms of their budgets.

- *The Presidency of Publications* is responsible for preparation and publication of the printed works that the judges, prosecutors and other officials would need while fulfilling their duties.

- *The Department of Administrative and Fiscal Affairs* is responsible for repair of the buildings belonging to the institutions that are affiliated to the Ministry of Justice in terms of their budgets and for the works about vehicles.

- *The Consultancy Body of Press and Public Affairs* is responsible for management of public relation and the relations between the Ministry of Justice and media and press organisations.

## **2. Duties**

The functions of Ministry of Justice are vital for the Turkish judicial system in terms of being both comprehensive and influential. Main duties of the Ministry are as follows;

- *To develop and implement policies for Turkish judicial system:*<sup>5</sup> The system is ensured to improve through project activities that are carried out or through legal arrangements by determining the problematic areas within this scope.

<sup>4</sup> Owing to UYAP (National Judiciary Informatics System) initiated by the Department of Information Technologies, all courts are related to each other through electronic networks and all judicial proceedings can be carried out through this system.

<sup>5</sup> In this regard, the Ministry of Justice took the responsibility for ensuring coordination between judicial units on preparation of "The Judicial Reform Strategy" that is identified as the opening benchmark during the membership negotiations with the European Union and foresees arrangements for the whole system.

- *To carry out the financial management of the units whose budgets are included in the budget of the Ministry:* The Budgets of the CJD, first instance courts, district courts and election boards are covered by the Ministry of Justice and their infrastructural and technological needs are also met by the Ministry.
- To carry out the proceedings with regard to the appointment, inspections, pre-service and in-service trainings of the personnel (other than the judges and prosecutors) assigned in the judicial system.
- To prepare the drafts of the regulations on judicial system and to express opinions on drafts aimed at other areas.
- To carry out all kinds of proceedings about prisons and detention houses: For example, to allocate the appropriations of these places, to meet their infrastructural and technological needs and to carry out the proceedings about their personnel.
- To ensure the relations between judicial institutions and national/ international/ supranational organizations in other countries.

### **3. Officials**

The Ministry of Justice is an administrative institution and head of this institution is the Minister of Justice, who is a politician and a member of the Cabinet at the same time. However, in accordance with the law almost all of the other medium level and senior managers, particularly Undersecretary of the Minister of Justice, must be selected from members of judge class, regardless of that they are working in courts or other administrative bodies. Justice inspectors and the rapporteur judges must also be appointed from judge class. These officials continue to have the tenures of judges and they may request to be assigned in the courts as a judge or prosecutor again upon their request. Among these officials; Undersecretary, deputy undersecretaries, general managers, deputy general managers and justice inspectors are appointed through a joint decree bearing the signatures of the President of the Republic, Prime Minister and the Minister of Justice and others are appointed through the decision of the Minister of Justice upon their consent.

There are also civil servants to carry out the duties of low-level management and office services.

## B. High Council of Judges and Prosecutors

The High Council of Judges and Prosecutors (the HCoJP) is an independent supreme board that is established to act in accordance with the principles of independence of courts and tenures of judges and prosecutors. Its establishment purpose is to make decisions on appointments, promotions and assignments of those working under the judge class.

### 1. Structure

In HCoJP, the decisions are taken by the departments and General Assembly. Its structure can be summarized as follows:

- *The President:* The President of the HCoJP is the Minister of Justice. The President can vote in limited number of situations decided by the General Assembly but cannot participate in the decisions of the chambers. Moreover, the President has also such duties as representing the HCoJP, election of the Secretary General from among the candidates, approving the proceedings for inspection, conducting research, review and investigation about the judges and prosecutors on proposal of the relevant chamber.

- *The Deputy President:* The Deputy President is elected from among the members of the General Assembly by the Assembly. He chairs the activities of the General Assembly when the President does not participate in and uses the powers conferred by the President to him/her.

- *The General Assembly:* The General Assembly consists of the President and all of the members of *the* HCoJP. Its main duties are to review the objections against the decisions of the chambers, to organize the distribution of tasks between the chambers, to make decision on repealing a court or changing the jurisdiction, and to elect members of the Court of Cassation and the Council of State. Moreover, the General Assembly elects the Deputy President and heads of chambers, appoints the inspectors assigned in the Inspection Board and the employees working under the judge class and nominates the candidates for the position of secretary general in HCoJP.

- *Chambers:* There are three chambers in *the* HCoJP. The First Chamber takes decisions on proceedings with regard to appointment, transfer, cadre, authority and annual leaves of judges and prosecutors. The Second Chamber renders decisions on promotions and disciplinary proceedings of judges and prosecutors. The Third Chamber makes decisions on the acceptance of the nominee judges and prosecutors and those who are dismissed of the profession or left the profession on their own will into the profession, carries out their inspections and conducts the investigations about the claims against them. The Inspection Board that was established under the HCoJP serves under this Chamber.

- *The Inspection Board:* It consists of the President, two deputy presidents and inspectors. It serves in the name of the HCoJP under the control of the President of the Third Chamber. The Inspection Board is responsible for the inspection of judges and prosecutors assigned in the first instance and district courts about their duties and carries out the proceedings of investigations. The Inspection Board can make suggestions to the HCoJP on the measures required to be taken with regard to the disruptions that occur on the issues under its area of responsibility.

- *The General Secretariat:* The General Secretariat is established in the HCoJP in order to carry out the administrative tasks. The Secretary General, 4 deputy secretary-generals, inspection judges and auxiliary personnel are assigned under this office. The General Secretariat carries out the secretarial tasks, keeps the records of files of judges and prosecutors about their duties and manages the financial affairs of the Board. In the General Secretariat, there are divisions that are established on the basis of different tasks.

## **2. Duties**

The main duty of the HCoJP is to make decisions about professional issues of those working under the judge class. However, it also has some other duties attributed by the laws taking into account the HCoJP's position in Turkish judicial system. Its main duties are as follows:

- Primary duty of the HCoJP is to make decisions and carry out the operations on acceptance into profession, appointments, promotions and disciplinary procedures with regard to judges and public prosecutors assigned in the ordinary and administrative judiciary district and first instance courts, with the exception of military judges.

- The HCoJP is also responsible for inspection of judges and prosecutors and investigate whether they committed a crime about their duties, and carrying out review and investigation against them when it is required. However, this power of the HCoJP is restricted; the judges and prosecutors who are assigned under the Ministry of Justice or other administrative institutions and boards to carry out the administrative duties are inspected by the Ministry of Justice or the institution or board the relevant person works for.

- Another important duty of the HCoJP is to elect all members of the Court of Cassation and  $\frac{3}{4}$  of the members of the Council of State. Other than election of the members, the HCoJP does not have any power on the members of these supreme courts.

- The proposal of the Ministry of Justice on repealing court or changing its jurisdiction is finalized by the HCoJP.

- The HCoJP may issue a circular with regard to the matters except for the issues related with trials.

### **3. Officials**

In the HCoJP, board members, secretary general, deputies of secretary general, justice inspectors and rapporteur judges are assigned.

- *The President and members of the HCoJP:* The Minister of Justice is the President of *the* HCoJP. Undersecretary of the Ministry of Justice is the regular member of the HCoJP. Of the other 20 members; 4 members are elected from among the academicians and lawyers working in the field of law by the President of the Republic, 3 members are elected from among the members of the Court of Cassation by the General Assembly of the Court of Cassation; 2 members are elected from among the members of the Council of State by the General Assembly of the Council of State; 1 member is elected from among the members of the General Assembly of Justice Academy of Turkey; 7 members are elected from among the first level ordinary judiciary judges and prosecutors by the ordinary judiciary judges and prosecutors; 3 members are elected from among the first level administrative judiciary judges

and prosecutors by administrative judiciary judges and prosecutors for 4 years. Also, 12 substitute members are elected as 3 members from the Court of Cassation, 2 members from the Council of State, 1 member from the General Assembly of Justice Academy of Turkey, 4 members from among the ordinary judiciary judges and prosecutors and 2 members from among the administrative judiciary judges and prosecutors. However, these substitute members can take place in the Board only if the regular members do not show up.

- *Employees under the General Secretariat:* The General Secretariat carries out the administrative tasks in the HCoJP. The Secretary General and his/her 4 deputies are selected from among the first level members of judge class and assigned in this office. The Secretary General is elected by the Minister of Justice from among 3 nominees, nominated by the HCoJP; rapporteur judges are elected from among those who served as judge or prosecutor for minimum 5 years by the General Assembly.

- *Justice inspectors:* In the Presidency of Inspection Board, in addition to the President, 2 deputies, there are also justice chief inspectors and justice inspectors. The President and the deputies are elected from among the first level members of judge class, chief inspectors are elected from among the first level inspectors, who have been serving in the Board for minimum 5 years, and inspectors are elected from among those who served as judges or prosecutors for 8 years, by the General Assembly.

### **C. Justice Academy of Turkey**

The Justice Academy of Turkey (The JAT, The Academy) is an institution founded to meet the training needs of judicial professionals assigned in the Turkish judicial system. The JAT has scientific, administrative and financial autonomy.

#### **1. Structure**

The Administrative structure of the JAT is in parallel to a large extent with the other public institutions:



- *Presidency*: The Academy is administered by the Presidency with a President and two deputies and a Secretary General. The executive manager of the Academy is the President. The President performs as the chairman in the Executive Board at the same time. Deputies substitute for the President in the absence of the President and fulfil the duties assigned by him. The Secretary General carries out the financial affairs and office works of the Academy and is responsible for the supervision of the administrative personnel.

- *The General Assembly*: It is the decision making body in the Academy that convenes once a year and fulfils the tasks stated in the law. The General Assembly consists of the Minister of Justice, Undersecretary of the Ministry of Justice, General Director for Criminal Affairs, General Director for Civil Affairs, General Director for Laws, General Directorate for European Union Affairs, General Directorate for Personnel Affairs, Head of Department of Training and representatives from other institutions and the representatives to be elected from the lecturers in the Academy by themselves. Two members to be elected from the academicians in law faculties in Turkey by the Council of Higher Education as well as the representatives from the Court of Cassation, Council of State, Military Court of Cassation, HMAC and HCoJP take place in the General Assembly. The President and the former presidents of the Academy are also members of the General Assembly. The main duties of General Assembly are; to select 5 regular and 3 substitute members for the Board of Directors, to approve the annual working report, the Audit Board report, training and education plans and Academy budget; to decide on the discharge of the President, Board of Directors and Audit Board.

- *Board of Directors*: It is the permanent decision making body of the Academy. It consists of 6 regular and 3 substitute members under the chairmanship of the President. The General Director of Personnel Affairs of the Ministry of Justice is the permanent member of the Board and his deputy to be assigned by the Director General acts for him in his absence. Other members are elected either from the General Assembly or outside on condition that they fulfil the required qualifications by the General Assembly. Main duty of the Board is to make proposals to the Council of Ministers with regard to the President and the deputies of President. Other duties can be summarized as to review and approve the regulation and similar arrangements; to prepare training and education plans and to take the necessary decisions; to carry out the tasks with regard to estates and assets of the Academy.

- *Audit Board*: It consists of three members elected from the members of the General Assembly. It is responsible for the administrative and financial audits of the Academy.

- *Training Centre*: The Training Centre was established in the Academy to carry out activities with regard to pre-service and in-service trainings of judges and prosecutors of ordinary, administrative and military judiciary and lawyers, notaries and auxiliary judicial staff. The Training Centre is administered by a director and two deputy directors.

## **2. Duties**

The duties fulfilled by the JAT are classified under six main headings:

- *Training*: The JAT arranges courses for pre-service and in-service trainings of judges and prosecutors of ordinary, administrative and military judiciary and notaries and auxiliary judicial staff and the lawyers upon request; it organizes expertise programs, seminars, conferences and similar activities; implements training and education programs to be evaluated through certificates; helps relevant institutions, organizations and boards create and carry out training programs to be prepared in the fields of law and justice. Also, the Justice Academy delivers opinion with regard to the training and education activities related to fields of law and justice. In-service training activities for judges and prosecutors are carried out in cooperation with the HCoJP.

- *External affairs and projects*: The Academy may organize joint training programs, mutual study visits, seminars and scientific activities such as congresses for candidate judges and prosecutors, in cooperation with its counterpart institutions abroad. It contributes to the development of Turkish judiciary by developing projects together with the relevant institutions of the European Union.

- *Consultancy and assistance*: The Academy has a duty to provide consultancy service and deliver opinion on national and international law and civil and occupational issues.

- *Review, research and publication:* The Academy has a duty to conduct researches and prepare drafts with regard to development of legislation in accordance with social needs. The Academy may arrange examinations and researches on issues related to the fields of law and justice in general. The Academy also has a duty to follow the publications of international organizations and institutions and publish the required ones after being translated into Turkish.

- *Documentation:* The Academy has a duty to establish an information and document center, databank and library that contains the documents, legislation, court decisions and publications related to the fields of law and justice with the aim of submitting them to the use of the concerned persons.

- *Pre-service training and internship:* Judges and prosecutors, who are assigned in the civilian and administrative judiciary, complete their preparatory and final terms of education regarding pre-service training at the Training Centre within the Academy. It is among the duties of the Academy to organize pre-service training programs for lawyers, notaries and military judges and prosecutors.

### **3. Officials**

Personnel structure of the Academy is affected from the facts that it is an academic institution as well as having a strong relation with the Ministry of Justice. In addition to the academicians, those working under judge class, lawyers, notaries and auxiliary judicial personnel are also assigned in the Academy.

- *The President and deputies* are appointed by the Council of Ministers out of three members to be nominated by the Board of Directors from among the members of the Court of Cassation and Council of State, first level judges and prosecutors, law professors, lawyers who has an experience of minimum 20 years and first level notaries for a period of 4 years. The President and deputies return to their prior posts when their term of office is over. The Secretary General is appointed by the President from those who have a degree of 4-year higher education and served for 12 years as a civil servant.

- *Members of General Assembly:* Specific qualifications have not been indicated for members of the General Assembly. However, when the election methods and forms are taken into account it is obvious that majority of them will be from the judge class.

- *Members of Board of Directors:* The Members of the Execution Board except for the General Director of Personnel Affairs of the Ministry of Justice are required to be a member of the General Assembly or have the qualifications for presidency.

- *Training Center Officials:* The Training Center director and deputy directors are appointed by the Minister of Justice on proposal of the President among those working under judge class by taking their consent.

- *Lecturers:* Lecturers serve in the Academy within the scope of educational activities. Lecturers can be selected from native and foreign academicians. Members of the Court of Cassation, Council of State, Military Court of Cassation and the HMAC and judges and prosecutors, who have worked for minimum 10 years in the profession, lawyers and notaries can also become lecturers at the Justice Academy upon request of the President. On condition that the required permission is received, it is possible for those serving under other institutions to be assigned to the Academy for maximum 1 year by the Board of Directors.

- *Auxiliary Judicial Personnel:* There are officials to carry out the office services in the Academy.

#### **D. Institution of Forensic Science**

The Institution of Forensic Science is a judicial institution established to act as an official expert witness on legal issues. Its main duty is to deliver opinion to the legal bodies on scientific matters about the cases.

##### **1. Structure**

The Institution of Forensic Science (The IFS, The Institution) has a central organization and provincial organizations across the country.

- *Central Organization:* Unlike other judicial institutions, the center of the IFS is located in Istanbul. The President and five deputy presidents minimum two of them being forensic science experts are at the executive level

of the Institution. The Institution fulfils its duties through boards and chambers; specialization boards, specialization chambers, the Council of Presidents and the General Assembly. Specialization boards consist of experts from various fields while specialization chambers consist of the experts specialized in a certain field. The Institution has 6 chambers; the Chamber of Morbid Anatomy, the Chamber of Psychiatric Observation, the Chemistry Specialization Chamber, the Biology Specialization Chamber, the Physics Specialization Chamber and the Traffic Specialization Chamber. The Council of Presidents consists of deputy presidents, heads of specialization boards and specialization chambers under the chairmanship of the President. The General Assembly consists of the heads and members of specialization boards under the chairmanship of the President. The Council of Presidents takes administrative decisions about internal operations of the Institution while the General Assembly is responsible to deliver scientific opinions. Also, there are units for training activities in the central organization of the Institute; these are the Training and Scientific Research Commission and Ethics Committee. The Commission and Committee carry out tasks within the scope of training activities of the Institution. Besides, there are units carrying out administrative works such as the Legal Counsel Department, Personnel and Training Department in the central organization.

- *Provincial Organizations:* The Institution is organized as regional presidencies and divisional directorates outside the center in order to provide direct and faster services to all sections of the country. Both organizations deliver scientific opinions to judicial bodies and they act independently from each other while delivering these opinions. Both units are affiliated to the Institution of Forensic Science in terms of administrative works. Regional presidencies are administered by a president, who is a forensic science expert and divisions are administered by a director, who is also a forensic science expert. However, regional presidencies are organized at higher level. They handle more complicated scientific issues and have specialization chambers to provide scientific opinion.

## **2. Duties**

The raison d'être of the Institution can be summarized as to act as an expert witness on the required issues and deliver scientific opinion to the judicial bodies.

- *Expert witnessing function:* The Institution has a duty to act as an official expert witness on the issues that are submitted to it by central and provincial organizations, courts, judiciatures and prosecution offices and that are within its areas of responsibility. The Institution delivers opinion on traffic issues as well as issues related to forensic science medicine.

- *Training function:* The Institution carries out training activities as well as its expert witnessing. In this regard, the Institution is also responsible for implementing forensic science taught and research programs at postgraduate level. This is mainly because, the Institution aims to train the expert staff it needs. Therefore, the Institution carries out the other tasks that a higher education institution is required to carry out. The Institution can also organize training activities such as symposium, conference and etc. on forensic science.

### **3. Officials**

There two types of employees assigned under the Institution: experts and auxiliary personnel. The duty to deliver opinion on scientific issues is carried out by the experts.

- *Experts:* The scientists, who are experts on a certain field of forensic science, hold positions as administrators in the Institution as well as delivering scientific opinion. The President of the Institution of Forensic Science, minimum two of the deputy presidents, president and members of forensic science specialization boards are appointed through a joint decree with the signatures of the President of the Republic, the Prime Minister and the Minister of Justice among the expert staff or lecturers in the relevant faculties of universities or their assistants on being nominated as candidate by the Minister of Justice. Presidents of specialization chambers, region presidents, division directors, other experts and scientists and legal consultants are appointed by the Ministry of Justice on proposal of the President. Lecturers and their assistants in the relevant faculties of the universities can also be assigned temporarily to posts other than presidency.

- *Auxiliary personnel:* Other officials carry out office services and serve as civil servants. They are appointed by the President of the Institution of Forensic Science.

### III. SUPREME COURTS

Turkey has supreme courts, rather than one supreme court, because of its multipartite structured judicial system. These supreme courts are the final decision making authorities in the fields of civilian, administrative and military judiciary. Structures and duties of the supreme courts and officials working under these courts will be explained in this section.

#### A. Constitutional Court

The Constitutional Court is a court established to carry out constitutional adjudication. However, with the recent constitutional amendment the Constitutional Court obtained the authority to review the individual applications against human rights violations regardless of that these applications arise from decisions of other supreme courts.

##### 1. Structure

The Constitutional Court carries out its functions through two sections and the General Assembly:

- *Sections* consist of 7 members with the chairmanship of the deputy president. Sections deal with and finalize the individual applications against human rights violations.
- *General Assembly* consists of the President Judge, deputies of the President Judge and members. The decisions other than those about the individual applications against human rights violations are rendered by the General Assembly.
- *Commissions* are established to review the admissibility of individual applications against human rights violations.

- *General Secretariat* is established to conduct the financial management of the Court; to manage office services; to follow the implementation of the Court decisions and to carry out the scientific, administrative, financial and technical tasks. The President elects the Secretary General and three deputies from among the rapporteurs. There are service units to carry out the administrative tasks in the Court.

## **2. Jurisdiction and Administrative Duties**

In the Constitutional Court, individual applications are finalized by the sections while other matters are finalized by the General Assembly. The decisions in the General Assembly and the sections are taken by an absolute majority of votes as a rule. However, a higher majority rate could be required in some cases.

The duties of the Constitutional Court are as follows:

- *Constitutional adjudication*: The Constitutional Court inspects the laws, decree laws and rules of procedure of the GNAT in terms of compliance with the Constitution. The constitutional amendments can be inspected only in terms of compliance with the required procedures. The President of the Republic, 1/5 of the members of the GNAT and members of the ruling party and the main opposition party in the GNAT may put forward that a law is against the Constitution. Moreover, any court may apply to the Constitutional Court by claiming that any law they implement is against the Constitution. The decision of the Court is final and binding in both cases.

- *Assessment of individual applications for the violation of fundamental rights and freedoms*: Through the amendment in the Constitution in 2010, the persons were given the right to individually apply to the Constitutional Court with the claim that their fundamental rights and freedoms have been violated by a public authority. Accordingly applications will be reviewed by the commissions in terms of admissibility and the request will be considered as rejected if the inadmissibility decision is taken unanimously. This decision is final. In cases when a consensus is not reached, the file will be sent to the sections for review on merits. The decisions of the sections on merits are final.



- *Supreme Criminal Court adjudication:* Senior public officials are tried by the Constitutional Court due to crimes of duty. In this regard, the President of the Republic, Government members, president and members of supreme courts and the HCoJP, Chief of General Staff and commanders of land, air, marine and gendarmerie forces are tried due to crimes of duty by the Constitutional Court in the capacity of the Supreme Criminal Court. During the trial, the duty of the public prosecution is carried out by the General Prosecutor of the Court of Cassation or his/her deputy assigned by him/her.

- *The adjudication on the banning of political parties:* One of the duties of the Constitutional Court is to deal with the cases for closure of political parties. As a result of the case opened by the General Prosecutor of the Court of Cassation, the Constitutional Court may decide on banning of a political party or the deprivation of financial aid provided by the Treasury. Majority of votes of the 2/3 of members participating in the meeting in the General Assembly will be required for such decisions.

- *The duties on the other decisions of the GNAT:* The Constitutional Court finalizes the objections made against the decisions taken by the GNAT on lifting the parliamentary immunity or loss of parliament membership. The deputy or the minister in question and another deputy may appeal to the Constitutional Court against such decisions of the GNAT.

- *The financial audit of political parties:* Political parties are audited by the Constitutional Court in terms of financial issues. The Constitutional Court may request assistance from the Court of Accounts, may assign one of its members or may take assistance from another senior judge while carrying out this audit. If any irregularity, which will require closing the party, is identified as a result of the audit, the Constitutional Court will inform the General Prosecutor of the Court of Cassation about the situation.

- *The election of the President and the Deputy President for the CJD:* The President and the Deputy President of the CJD, one of the supreme courts, are elected from its regular members for 4 years by the Constitutional Court.

### 3. Officials

The members, rapporteurs and auxiliary personnel work in the Constitutional Court;

- *Members*: The Constitutional Court consists of 17 members and they are selected by the GNAT and the President of the Republic. 2 members from among members of the General Assembly of the Court of Accounts, 1 member from among the self-employed lawyers by the GNAT, 3 members from among members of the General Assembly of the Court of Cassation, 2 members from among members of the General Assembly of the Council of State, 1 member from among members of the Military Court of Appeals, 1 member from among members of the HMAC, 3 members from among the lecturers in the fields of law, economics and political sciences in higher education institutions, 4 members from among senior managers (President or members of the Council of Higher Education, rectors and deans of universities, undersecretaries, deputy undersecretaries, ambassadors and governors are regarded as senior managers in this respect), self-employed lawyers, first level judges and prosecutors and the rapporteurs, who served in these posts for minimum 5 years are elected by the President of the Republic. The election of the members from supreme courts and the Court of Accounts is made from among 3 nominees nominated by their general assemblies; the election of the members from the lecturers is made from among 3 nominees nominated by the Higher Council of Education; the election of the members from self-employed lawyers by the GNAT is made from among 3 nominees nominated by bar presidents.

In order to be elected as a member to the Constitutional Court, it is required to be 45-years old or older, to assume the titles of professor or associate professor (for the lecturers in the higher education institutions), to have served actively as lawyer for minimum 20 years (for the lawyers), to have higher education and have worked in public service actively for minimum 20 years (for senior managers), to have worked for minimum 20 years including the candidacy period (for the first level judges and prosecutors).

The members of the Constitutional Court are elected for 12 years<sup>6</sup> and they may not be re-elected. Members retire on age grounds when they are 65 years old. The President of the Constitutional Court and two deputies are elected by the General Assembly from among the members.

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<sup>6</sup> This time limit is not valid for members who are elected before the constitutional amendment in 12 September 2010

- *Rapporteurs*: They are assigned to carry out the first review of the files and provide opinion at the Constitutional Court. Rapporteurs are accepted into profession in two different ways; first way is to be appointed to the position of deputy rapporteur at the end of the nomination period by passing the exam. After 5- year period they can be appointed as rapporteur. Other method is that the associate professors, assistant professors or research assistants, who completed their PhD on the fields of law, economics or political sciences; civilian or administrative judges or prosecutors, auditors of the Court of Accounts, who have successfully worked in the profession for minimum 5 years are appointed as rapporteurs through the approval of the President by receiving the required permissions from the relevant authorities. Rapporteurs are affiliated to the President in terms of administration and they carry out their duties in accordance with the tenure of judges.

- *Auxiliary Personnel*: Auxiliary personnel are employed in the Constitutional Court to carry out the office services and other administrative tasks. They hold the position of civil servants and may be appointed to the Ministry of Justice when it is required.

## **B. Court of Cassation**

The Court of Cassation is a supreme court established as a court of last resort to conduct the appellate review for the decisions finalized by the civilian ordinary judiciary courts. However, it has some other duties attributed by law as well as the cases that it deals with as the first instance court.

### **1. Structure**

The Court of Cassation operates as chambers, boards and assemblies. Also, there is the Office of General Prosecutor established within the structure of the court.

- *Chambers*: There are 23 civil law chambers and 15 criminal law chambers within the Court of Cassation. The chambers conduct the appellate review of the decisions of the first instance and district courts and deal with the cases of those who, according to the law, must be tried by the Court of Cassation in the capacity of first instance court. In each chamber, there is 1 president and 9 members and they may work as two separate teams with five members.

- *Assemblies*: In the Court of Cassation, there are the Assembly of Civil Law Chambers consisting of the president and all members of the civil law chambers and the Assembly of Criminal Law Chambers consisting of the president and all members of the criminal law chambers. Each assembly comes together under the chairmanship of the relevant deputy president. The main duty of the assemblies is to finalize the chamber decisions by examining them in cases when the General Prosecutor of the Court of Cassation raises objection against the decision or the judges insist on their prior decisions reversed by the chambers. Assemblies of civil law and criminal law chambers also deal with the cases of those who, according to the law, must be tried by the Court of Cassation as the first instance court. The assemblies may decide to finalise the conflicted judgments on their own fields.

- *Grand Plenary Assembly*: The Grand Plenary Assembly consists of the Prime President, first deputy presidents, heads of chambers, members and the General Prosecutor and Deputy General Prosecutor of the Court of Cassation. The Grand Plenary Assembly elects the Prime President, deputy presidents, heads of chambers and the General Prosecutor and the Deputy General Prosecutor and takes decision on the finalization of the conflicted judgments in the case of confliction between judgements of different chambers and assemblies.

- *Board of Presidents*: There is the Board of Presidents in Court of Cassation, consisting of the Prime President and deputy presidents and heads of all chambers. It is the final decision making authority in terms of many administrative decisions. Moreover, it also finalizes the jurisdictional disputes between the criminal law and civil law chambers. Besides, the Board of Heads of Civil Chambers and the Board of Heads of Criminal Chambers are established to resolve the jurisdictional disputes between the criminal law and civil law chambers respectively.

- *Board of Prime Presidency*: It consists of the Prime President of the Court of Cassation, 4 heads of chambers and 4 members elected by the Grand Plenary Assembly. Its main responsibility is to decide on the chamber where the member elected for the Court of Cassation will be assigned and change of the chamber of a member or head of chamber when it is required.

- *High Disciplinary Board:* It is a board assigned to carry out disciplinary proceedings against members of the Court of Cassation. The Board consists of the Prime President, senior deputy president, General Prosecutor and heads of six civil law chambers and three criminal law chambers and 5 members. It is possible to submit objection to the Board of Presidents against the decisions of the High Disciplinary Board.

- *Board of Management:* It is established to deal with the administrative proceedings in the Court of Cassation. It consists of the Prime President, the General Prosecutor, the Secretary General and one chamber president and 3 members. Its main duty is to conduct the personal proceedings of the auxiliary personnel in the Court of Cassation and to take decisions and measures about them.

- *Prime President and Deputy Presidents:* The Prime President is special name of the president of the Court of Cassation. There are two deputy presidents, one from civil law chambers and one from criminal law chambers. The Prime President and deputy presidents are elected by the General Assembly. One of the deputy presidents is assigned in the absence of the Prime President. The Prime President takes place in all decision making bodies of the Court of Cassation, except chambers. The Prime President is elected by the Grand Plenary Assembly by an absolute majority of total number of members and by secret ballot. The term of office is 4 years and the Prime President may be re-elected when the term of office is over.

- *General Secretariat:* The Secretary General is elected by the Prime President among the members of the Court of Cassation. The Secretary General is the assistant of the Prime President in administrative tasks and carries out the administrative and financial duties assigned to him by the Prime President. Deputies of the Secretary General are appointed from among the rapporteur judges upon approval of the Prime President.

- *Office of General Prosecutor of the Court of Cassation:* It serves under the Court of Cassation and consists of the General Prosecutor, Deputy General Prosecutor, and prosecutors. The General Prosecutor and the Deputy General Prosecutor are appointed by the President of the Republic from the 5 candidates to be nominated among the members by the Grand General Assembly. The General Prosecutor and the Deputy General Prosecutor hold their titles

of member of the Court of Cassation and are members of the Grand Plenary Assembly due to these titles. Prosecutors are appointed by the HCoJP from among ordinary judiciary judges and prosecutors, who served minimum five years.

## ***2. Jurisdiction and Administrative Duties***

The main responsibility of the Court of Cassation is to carry out the appellate review of the decisions finalized by the first instance and district courts of civilian ordinary jurisdiction. However, it may serve as the first instance court in terms of some special cases.

- *Jurisdiction as Supreme Court:* The actual function of the Court of Cassation is to carry out the appellate review of the decisions finalized by the courts of civilian ordinary jurisdiction. Appellate review is carried out by the chambers. The Court of Cassation also has a duty to resolve the jurisdictional disputes between the district courts and first instance courts. Other than these general duties, there are also special duties assigned by the law, for example; to decide on the transfer of the case if it endangers the public safety where the prosecution is carried out.

Another judicial duty of the Court of Cassation that stems from being a supreme court is decisions on the *finalisation of conflicted judgments*. In cases when the chambers or boards of the Court of Cassation make contradictory decisions, the General Assembly of Criminal Law Chambers, the General Assembly of Civil Law Chambers and the Grand Plenary Assembly may make a decision to finalise the conflicting judgments. Decisions on *the finalisation of conflicted judgments* are binding for the chambers, boards, courts and all public institutions with regard to similar legal matters.

- *Jurisdiction as First Instance Court:* As the first instance court, the Court of Cassation deals with compensation cases stemming from the assignment or the criminal cases filed due to personal offences of the members of the Court of Cassation; criminal cases against the first level judges and prosecutors, members of the high criminal courts, and some senior bureaucrats due to their crimes of duty. The relevant chamber or assembly of the Court of Cassation carries out the trial in these cases.

- *Functions of the Office of General Prosecutor:* The main function of the Office of General Prosecutor is to deliver opinion in the name of the public by reviewing the files that are appealed. Moreover, it may raise objection to the General Assembly of Criminal Law Chambers against the decisions taken by the criminal chambers. In the cases that a hearing is held, the General Prosecutor, Deputy General Prosecutor or prosecutors may be present. The Office of the General Prosecutor also carries out the investigation proceedings in cases against the senior bureaucrats, who are required to be tried in the Court of Cassation due to their duty crimes. The Office of the General Prosecutor acts as the prosecution authority in the name of the public on the criminal cases dealt with by the Constitutional Court as the Supreme Criminal Court. It is also assigned to file lawsuits in the Constitutional Court for closure of a political party or deprivation of financial aid provided by the State by conducting the inspection of political parties.

- *Administrative duties:* Besides its judicial duties, the Court of Cassation carries out certain administrative duties. Main administrative duties of Court of Cassation are to present candidates for the Constitutional Court membership and to elect the 5 members of the CJD, 3 members of the HCoJP and 6 members of the SEB.

### **3. Officials**

The Court of Cassation personnel are classified under three categories as members, rapporteur judges and auxiliary personnel;

- *Members:* The members are elected by the HCoJP from among first level ordinary judiciary judges and prosecutors who successfully served for minimum three years after being a first level judge and have not lost the qualifications required by being a first level judge (regardless of their position such as prosecutor, bureaucrat or rapporteur). Those who are elected as members may serve until the age of 65, when they retire, as long as they do not resign or are not considered to retire from the office due to disciplinary penalties. Members have the duty of reporting the votes in chambers or boards after reviewing the files of appellate. The Prime President, deputy presidents, the General Prosecutor, the Deputy General Prosecutor and the Secretary General are elected among members. In cases when the Court of Cassation is required to elect members or candidates for the other supreme courts or boards, they are elected from the members.

- *Public Prosecutors*: Prosecutors other than the General Prosecutor and Deputy General Prosecutor in Court of Cassation are appointed by the HCoJP from among ordinary judiciary judges. They serve under the inspection of the *General Prosecutor* and they are in the same position with other judges in term of their rights.

- *Rapporteur judges*: There are rapporteur judges in chambers, assemblies and boards of the Court of Cassation to prepare reports about files after an initial review. Rapporteur judges are appointed by the HCoJP from among the members of judge class and serve under the inspection of the president of the relevant chamber, assembly or board.

- *Auxiliary Personnel*: Auxiliary personnel are employed in the Court of Cassation to carry out the office services and other administrative proceedings. They hold the position of civil servants.

### **C. Council of State**

The Council of State is a supreme court established as a court of last resort to conduct the appellate review of the decisions given by the courts of administrative judiciary and to make decisions on certain administrative issues as the final decision making authority. However, it has some other duties attributed by law as well as the cases that it deals with as the first instance court.

#### **1. Structure**

The Council of State operates as chambers and boards. Also, there is the Office of General Prosecutor established within the Council of State.

- *Chambers*: There are 15 chambers in the Council of State, 14 of them are judicial chambers and 1 of them is administrative chamber. The First Chamber is assigned as the administrative chamber. 4 of the other chambers deal with the tax cases and 10 of them deal with other administrative cases. The judicial chambers take decisions by dealing with the cases sent to them on appeal by the first instance administrative and tax courts. Moreover, they adjudicate the cases that must be dealt with in the capacity of the first instance court by the Council of State



according to the law. Administrative chamber, on the other hand, deliver opinion on administrative tasks assigned to them by law. Decisions can be taken with minimum five members and chambers may serve as two separate teams with five members in each of them upon constitution of quorum.

- *Boards:* In the Council of State, there are the Board of Administrative Litigation Chambers consisting of the president and members of the administrative chambers; the Board of Tax Litigation Chambers consisting of the president and members of tax chambers and the Board of Administrative Proceedings consisting of head and members of administrative chamber and one president or member to be elected from each other chambers by the Plenary Assembly. Main duties of the boards include making the final decision by reviewing the file in cases when the first instance courts insist against the decisions taken by the chambers or when the chamber takes a decision in the capacity of first instance court.

- *Plenary Assembly:* The Plenary Assembly, which is the executive decision making body, consists of the President of the Council of State, the General Prosecutor, deputy presidents, heads of chambers and members and the Secretary General. The Plenary Assembly has the final word on most of the administrative decisions about the Council of State, for example; to elect the President, the General Prosecutor, deputy presidents and heads of chambers, to make decision on the jurisdiction of the chambers or the chambers which the members will be assigned to.

- *Assembly on the Finalisation of Conflicted Judgments:* It takes decisions on *the finalisation of conflicted judgments*, which is one of the most important judicial duties in the Council of State. It consists of the President of Council of State, the General Prosecutor, deputy presidents, heads and members of judicial chambers.

- *Committee of Presidency:* It consists of 6 regular members, three of them are heads of chambers and three of them are the members of the Council of State, and four substitute members, two of them are heads of chambers and two of them are members of the Council of State, under the chairmanship of the President. The members are elected by the Plenary Assembly. It is responsible for deciding on changing the heads and members of chambers when required.

- *Committee of Presidents:* It consists of the General Prosecutor, deputy presidents and heads of chambers under the chairmanship of the President. It resolves the jurisdictional disputes between the administrative courts with different jurisdiction.

- *Disciplinary Boards:* High Disciplinary Board carries out the disciplinary proceedings about the members and consists of members elected by the Plenary Assembly and the General Prosecutor under the chairmanship of the President. On the other hand, disciplinary proceedings about the auxiliary personnel are carried out by the Disciplinary Board.

- *President and Deputy Presidents:* The President of the Council of State is elected by the Plenary Assembly from among the members. The term of office is 4 years. However, re-election is possible. There are two deputy presidents in the Council of State and they can stand in for the President when required and assist the President in his duties.

- *Office of the General Prosecutor:* The Office of General Prosecutor delivers opinion in the name of the public. The General Prosecutor and the prosecutors are assigned in the Office of General Prosecutor. The General Prosecutor is elected by the Plenary Assembly from among the members. The prosecutors of the Council of State are appointed by the HCoJP from among the administrative judges who have served for 5 years in the profession and have positive records. Prosecutors of the Council of State review the files given to them and deliver opinion in the name of the General Prosecutor.

- *General Secretariat:* It is established in the Council of State to carry out the administrative works. The General Secretariat consists of two deputy secretary-generals, rapporteur judges, prosecutors and public officials under the chairmanship of the Secretary General. The Secretary General is elected by the President from among the members of the Council of State. Deputy secretary generals are elected from the rapporteur judges and prosecutors who are first level in their profession.

## **2. Jurisdiction and Administrative Duties**

The main duty of the Council of State is to carry out the final review of the decisions made by the first instance courts in the branch of administrative judiciary and provide consultancy or make a decision on certain administrative matters. However, it may serve as the first instance court in certain cases:

- *Functions as Supreme Court:* The actual duty of the Council of State is to conduct the appellate review of the decisions finalized by the courts of administrative judiciary. Accordingly, if the decisions of the first instance and district courts of administrative judiciary are appealed, the Council of State reviews them. The Council of State also finalizes the jurisdictional disputes between the district administrative courts and the first instance courts when required.

One of the functions of the Council of State that stems from its position as the final review authority is about the decisions on *the finalisation of conflicted judgments*. In cases when there are conflicts or disputes between the decisions of the chambers or boards, the Assembly on the Finalisation of Conflicted Judgments makes the decision to finalise the conflicted judgments. The chambers and boards of the Council of State and administrative courts and public institutions have to comply with these decisions.

- *Functions as the first instance court:* There are also cases that the Council of State deals with as the first instance court, for example; the decrees of the Council of Ministers.

- *Administrative functions:* Besides being a supreme court, the Council of State also has the authority to make decisions on several administrative matters including decisions on whether municipal bodies will lose their official status and opinions on law drafts and bills of law that are sent by the Prime Ministry or the Council of Ministers.

## **3. Officials**

Those serving under the Council of State are split into three categories as members, personnel under the judge class and auxiliary personnel:

- *Members:* Two different methods are used to elect the members of the Council of State. 1/4 of the members are directly elected by the President of the Republic from the senior bureaucrats whose qualifications are identified by law while 3/4 of the members are selected by the HCoJP from among those who successfully served in their professions for minimum three years after taking place in the first level and did not lose the quality to be separated for the first level. Those who are elected as members may serve until the age of 65, when they retire, as long as they do not resign or are not considered to retire from the office due to disciplinary penalty. The President, the deputy presidents and the General Prosecutors are elected from among the members.

- *Prosecutors:* Prosecutors other than the General Prosecutor are appointed by the HCoJP from among administrative judges. They serve under the inspection of the General Prosecutor and they are in the same position with the other judges in terms of their rights.

- *Rapporteur judges:* There are rapporteur judges in the chambers and boards of the Council of State, who prepare reports and deliver opinion by reviewing the files. Rapporteur judges are appointed by the HCoJP from among the administrative judges.

- *Auxiliary personnel:* Auxiliary personnel are employed in the Council of State to carry out the office services and other administrative tasks. They hold the position of civil servant.

#### **D. Military Court of Cassation**

Military courts are established as a result of the understanding that soldiers and military persons should be tried by separate courts. The Military Court of Cassation (the MCC) is established as a court of last resort of the military criminal jurisdiction. The MCC also serves as the first instance court in some cases.

##### **1. Structure**

The MCC operates as chambers and boards. Also, there is the Office of General Prosecutor established within the court.

- *Chambers*: The Military Court of Cassation carries out its duties through its chambers. There are five chambers, however, the number of the chambers may be increased to six or decreased to four in accordance with the workload. There are a head and seven members in each chamber. The heads of chambers are appointed from among the members of the MCC in line with rank and seniority. They are appointed on proposal of the Chief of Staff and joint decree of the Minister of the National Defence and the Prime Minister and with the approval of the President of the Republic.

- *Board of Chambers*: It is a board established to conduct review against the decisions rendered by the chambers of the MCC. The Board of Chambers, under the chairmanship of the President of the MCC, consists of the vice president and heads of chambers and two members from the chambers except for those whose decisions are objected to or resisted against. The Board of Chambers carries out three types of duties. It finalizes the cases that the first instance military courts insists on their decisions; it reviews and finalizes the objections raised by the General Prosecutor of the MCC against the decisions of chambers and it conducts the appellate review of the decisions made by the chambers in the cases, which the MCC must deal with as the first instance court.

- *Plenary Assembly*: It consists of the President, the General Prosecutor, the Vice President, heads of chambers and all of the members. It carries out the administrative duties and does not have any judicial duty.

- *The President and the Vice President*: The President is at the highest level of the MCC in terms of the administrative duties. The Vice President is responsible to carry out the duties assigned by the President and to stand in for the President in the absence of him/her. The President and the Vice President are appointed in line with their ranks and seniorities from among the members of the MCC upon the proposal of the Chief of Staff and the joint decree of the Minister of the National Defence and the Prime Minister and with the approval of the President of the Republic. The President, and the Vice President in the absence of the President, take the chair in the assemblies of the MCC and ensure that the court operates regularly.

- *Office of the General Prosecutor:* The Office of the General Prosecutor consists of the General Prosecutor, the deputy chief prosecutor and prosecutors. The General Prosecutor is appointed from among the members. The deputy chief prosecutor and prosecutors are appointed from among the military judges.

- *Committee of Presidents:* It carries out the administrative duties in the MCC. The Committee of Presidents does not have any judicial duty. The Committee consists of the President of the MCC, the Vice President and heads of chambers.

- *High Disciplinary Board:* It carries out the disciplinary proceedings about the members in the MCC. The Board consists of the President, the General Prosecutor, the Vice President and heads of chambers. The High Disciplinary Board takes the legal proceedings against the President, the General Prosecutor, the Vice President, heads of chambers and members due to their behaviours damaging the judicature and military dignity and the pride, personal honour and reputation or the behaviours that are not in line with the requirements of the duty.

- *General Secretariat:* It carries out the administrative duties within the MCC. The Secretary General is elected by the President from among the members

## **2. Jurisdiction and Administrative Duties**

The MCC is a supreme court established to conduct the appellate review of the decisions made by the military courts. However, it also deals with certain cases as the first instance court:

- *Jurisdiction as Supreme Court:* The MCC acts as court of appeal for the military courts. It also has duties such as to resolve the jurisdictional disputes between the military courts, to authorize other military courts in cases of a crime committed in foreign countries decided to be prosecuted in the military court in Turkey, to decide on the transfer of the case when it is required and to decide on withdrawal of a judge.

The MCC may also make the decision to finalise the conflicted judgments. The decisions on *the finalisation of conflicted judgments* are binding for chambers, boards, military courts and disciplinary courts in the similar cases.

- *Jurisdiction as the First Instance Court:* The MCC deals with certain cases as the first instance court. Accordingly, the MCC is assigned to deal with criminal cases on personal crimes subject to military judiciary of the President, the General Prosecutor, chamber heads and members of the MCC and the HMAK.

- *Administrative duties:* The MCC also deals with certain administrative duties in the field of justice. Accordingly, one regular member of the Constitutional Court is elected by the President of the Republic from among three candidates to be nominated by the MCC. It also elects three regular members and three substitute members for the Criminal Department of the CJD from among its own members. This election is carried out by the Plenary Assembly.

### **3. Officials**

Military judges and military and civilian auxiliary personnel are assigned in the MCC:

- *Members:* The members of the MCC are elected by the President of the Republic from among the candidates from the first level military judges, whose rank is lieutenant colonel minimum, in the number of threefold of each vacancy with an absolute majority of the total number of members of the Plenary Assembly of the MCC. The President, the General Prosecutor, the Vice President and heads of chambers are appointed from among the members on proposal of the Chief of Staff and joint decree of the Minister of the National Defence and the Prime Minister and with the approval of the President of the Republic.

- *Prosecutors:* Prosecutors, except the General Prosecutor, are not appointed from among the members. The chief deputy of the General Prosecutor is appointed by the Minister of National Defence from among the three candidates to be nominated by the General Prosecutor from among the first level military judges with the rank of colonel. Prosecutors are appointed from among the three candidates to be nominated by the General Prosecutor as per the provisions of the Law on Military Judges.

- *Rapporteur judges*: Rapporteur judges, who are elected from among the military and civilian judges may serve in the MCC. Certain part of rapporteur judges is appointed from among those, who served as military judge for minimum 5 years as per the provisions of the Law on Military Judges. The rapporteur judges may be appointed through the decision of the HCoJP from among the civilian judges.

- *Auxiliary Personnel*: Military and civilian auxiliary personnel is employed in the MCC to carry out the office services and other administrative proceedings.

### **E. High Military Administrative Court**

The High Military Administrative Court is established to conduct the judicial inspection of the administrative decisions taken by the military authorities. Military judges as well as high-ranking soldiers, who are not military judge, may also serve in the HMAC. The HMAC serves as both the first instance court and the court of last resort with regard to the matters that are within its jurisdiction. There is not any other legal remedy against its decisions.

#### **1. Structure**

The HMAC operates as chambers and boards. Also, the Office of the General Prosecutor is established within the court:

- *Chambers*: There are two chambers in the court. However, the number of these chambers may be increased to three according to the workload. There are a head and six members in each chamber. Four of the members must be from the military judges and two of them must be staff officer. Heads of chambers are appointed in line with their ranks and seniorities. However, heads of chambers must be from the military judges.

- *Board of Chambers*: It consists of heads of chambers and the members, one of them is military judge and the other is not from this class, to be elected by each chamber from their own members for a year under the chairmanship of the President. Board of Chambers deals with the cases that are within the responsibility area of more than one chamber and the cases opened against the decree of the Council of Ministers. It also finalizes the duty and authority disputes between the chambers.



- *Plenary Assembly:* The Plenary Assembly consists of the President, the General Prosecutor, heads of chambers and all of the members. The judicial duty of the Plenary Assembly is to decide on *the finalisation of conflicted judgments*. These decisions are binding for all bodies within the HMC and administrative institutions. The Plenary Assembly also presents 3 candidates to be elected by the President of the Republic for the Constitutional Court membership.

- *Committee of Presidents:* It is established to carry out the administrative duties in the HMC. The Committee consists of the President, heads of chambers and the most senior member from each chamber. The General Prosecutor attends the meetings and votes with regard to the discussion of the issues that concern his / her responsibility. The Committee of Presidents decides the chambers where the members will serve, on the election of the Secretary General and changing the workload between the chambers.

- *President:* The President represents the court and carries out the administrative and judicial duties. The President is appointed from among the members in line with their ranks and seniorities by the decision of the Minister of the National Defence and the Prime Minister and the approval of the President of the Republic. The President must be military judge. The President chairs the Plenary Assembly, the Committee of Presidents, the High Disciplinary Board and the Board of Chambers and he/she may convene these boards and committees when it is required. The President may inform the Plenary Assembly so as to decide on whether to conduct an investigation against the heads of chambers, members and the Secretary General due to their duty crimes.

- *High Disciplinary Board:* The High Disciplinary Board consists of the President, the General Prosecutor, heads of chambers and the most senior member of the court. It conducts the disciplinary proceedings about the President, the General Prosecutor, heads of chambers and the members and imposes a disciplinary punishment when required.

- *Office of General Prosecutor:* It is the prosecution authority of the HMC. The General Prosecutor is appointed from among the members in line with their ranks and seniorities by the Minister of National Defence and the Prime Minister and with the approval of the President of the Republic.

Military prosecutors serve under the supervision of the General Prosecutor in the Office. They are appointed from among the candidates to be nominated at the number of threefold of vacancy by the General Prosecutor in accordance with the general rules. Prosecutors review the files and they submit their opinions with the approval of the General Prosecutor.

- *General Secretariat:* It carries out the administrative tasks within the HMAC. The Secretary General is elected by the Committee of Presidents from among the military judge members. The Secretary General ensures that principal clerk and office organization work in an organized way.

## **2. Jurisdiction and Administrative Duties**

The HMAC is a first instance court as well as being a supreme court. For this reason, the appeal against the decisions of this court is not possible.

- *Jurisdiction as Supreme Court:* The HMAC is the first and last instance court that conducts the judicial inspection of disputes stemming from the administrative proceedings and actions that concern the military persons and are related to the military services even if they are fulfilled by non-military authorities. Only duty it carries out in the capacity of the supreme court is to make decision to finalise the conflicted judgments. This duty belongs to the Plenary Assembly. Accordingly, the Plenary Assembly makes decisions to finalise conflicted judgments in cases when there are contradictions or disputes between the decisions of Board of Chambers or the decision taken separately by the chambers.

- *Jurisdiction as First Instance Court:* The HMAC acts in the capacity of the first instance courts for the matters that are within its responsibility area. The jurisdiction belongs to the chambers. Appeal and objection remedies against the decisions of the chambers are not possible. However, there are remedies that the chambers re-evaluate their own decisions.

- *Administrative Duties:* The HMCAC presents candidates for the membership to the Constitutional Court and elects members for the CJD. Accordingly, one regular member of the Constitutional Court is elected by the President of the Republic from among the three candidates to be nominated by the HMCAC. The HMCAC elects two regular members and two substitute members of the Civil Law Department of the CJD from among its own members.

### **3. Officials**

Military judges and the military and civilian auxiliary personnel serve in the HMCAC:

- *Members:* High-ranking soldiers, who are not under the judge class as well as military judges serve in the HMCAC. The members, who are appointed from among military judges, must be first level military judges in the rank of minimum lieutenant colonel. Three candidates with these qualifications are elected by the Plenary Assembly and one of them is appointed by the President of the Republic. The members who are not judge are nominated by the Chief of Staff from among the staff lieutenant colonels and colonels, who have been serving for minimum two years and they are appointed by the President of the Republic from among three candidates. The President, the General Prosecutor, the Vice President and heads of chambers are appointed in line with their ranks and seniorities on proposal of the Chief of Staff and joint decree of the Minister of the National Defence and the Prime Minister and with the approval of the President of the Republic.

- *Prosecutors:* The prosecutors except for the General Prosecutor are not appointed from among the members. They are appointed from three candidates among the military judges with appropriate qualifications to be nominated by the General Prosecutor by taking into account the general appointment qualifications and as per the Law on Military Judges. Prosecutors review the files and deliver opinions under the supervision of the General Prosecutor.

- *Rapporteurs:* The rapporteurs work within the HMCAC. They are not members of the HMCAC and are appointed from among the military judges. The main responsibility of rapporteurs is to examine the files and deliver their opinions and thoughts.

- *Auxiliary personnel*: Civilian and military auxiliary personnel is employed in the HMC in order to carry out the office services and other administrative proceedings.

## **F. Court of Jurisdictional Disputes**

As mentioned above, Turkish judicial system has a multipartite structure and this leads the existence of 4 different jurisdictional areas. The Court of Jurisdictional Disputes (the CJD) is a supreme court that is established to finalise the jurisdictional disputes that may occur between the courts of different jurisdictional areas. It does not have district and first instance courts. Its decisions are binding for the supreme, district and first instance courts except for the Constitutional Court. The Constitutional Court is outside the area of jurisdiction of the CJD.

Unlike other supreme courts, it does not have a separate budget and its budget is included in the budget of the Ministry of Justice. Both members and rapporteurs and other officials continue to receive their personal rights from the institutions they are affiliated to.

### **1. Structure**

The CJD has two chambers and the Plenary Assembly:

- *Chambers*: There are two chambers as the Civil Law Chamber and the Criminal Law Chamber in accordance with the nature of the cases dealt with in the CJD. Each department consists of a president and six regular members. Also, six substitute members are elected to serve in place of the regular members in cases when they have an excuse. The Civil Law Chamber reviews and finalizes the disputes between the civil law courts, administrative courts and military administrative courts. The Criminal Law Chamber finalizes the disputes between civilian judiciary criminal courts and military judiciary criminal courts. Presidency of the both chambers is chaired by the President of the CJD.

- *Plenary Assembly*: The Plenary Assembly resolves the contradictions between the decisions of chambers and duty disputes between the chambers and it addresses resolutions in this regard. It consists of the President, deputy president and members. The President of the CJD chairs the Plenary Assembly.

- *The President and the Deputy President:* The President administers and represents the CJD. The President and the Deputy President to serve in absence of the President are elected by the Constitutional Court from among its regular and substitute members.

## **2. Jurisdiction and Administrative Duties**

The CJD is established to resolve the jurisdictional disputes between the courts in the branches of civilian, administrative and military judiciary. There are two different types of disputes between these courts as “duty disputes” and “judgment disputes”. While the concept of “duty dispute” means that two courts from different jurisdictional branches have made contradictory judgements on which court should hold a case, the concept of “judgment dispute” means that two courts from different jurisdictional branches have made contradictory judgements in merits of the same case. If the case is in the nature of conflict of civil law, the CJD finalizes the case. However, if the case is in the nature of the criminal law, the CJD only decides on the court that should deal with the case.

## **3. Officials**

The President and members of the CJD are elected from among the members of other supreme courts. Rapporteurs and public officials also serve in the CJD.

- *Members:* 12 regular members, 12 substitute members and the President serve in the CJD. 6 regular members and 6 substitute members are elected for the Civil Law Chamber, in a way two regular and substitute members from each by the Assembly of Civil Law Chambers (of the Court of Cassation) and the Plenary Assembly of the Council of State from among their own members and by the Plenary Assembly of the HMAC from among its members, who are from the military judge class. Three regular members and three substitute members, 6 regular and 6 substitute members in total, are elected for the Criminal Law Department of the CJD by the Assembly of Criminal Law Chambers (of the Court of Cassation) and the Plenary Assembly of the Military Court of Cassation from among their own heads of chambers and members.

- *President and Deputy President:* The President and the Deputy President are elected by the Constitutional Court from among its own members. The Deputy President acts on behalf of the President in absence of him.
- *Rapporteurs:* In the CJD, those working under the civil and military judge class serve as rapporteurs. Rapporteurs are temporarily assigned by the competent authority of the institution they are affiliated to and on request of the President and acceptance of the relevant person. Rapporteurs review the files and deliver their opinions.
- *Auxiliary personnel:* Auxiliary personnel are employed in the CJD to carry out the office services and other administrative tasks.

## IV. DISTRICT COURTS

In Turkey, district courts are found only in civilian judiciary branch. These courts evaluate the appeal applications against the decisions of the first instance courts and act as the first instance court in some cases with special nature as well.

District courts do not have their own separate budgets and the judges and prosecutors are subject to the inspection of the Ministry of Justice in terms of administrative issues and the supervision of the HCoJP in terms of the issues of appointment, promotion and discipline. The only exception in this regard is the members of the high courts (the Court of Cassation and the Council of State), who are assigned in these courts on their own requests.

Other than these issues, district courts have their unique features in line with their positions in civilian judiciary or administrative judiciary branches.

### A. District Courts of Appeals<sup>7</sup>

The district courts of appeals are the regional courts established to evaluate the appeal applications against the decisions of the civilian judiciary first instance courts.

#### 1. Structure

The district courts of appeals are established in 15 different provinces of Turkey in a way to cover the area of jurisdiction in the neighbouring provinces as well. Each court is established independently and there is not a joint body.

Each district court of appeals is structured in itself in parallel with each other:

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<sup>7</sup> Although the General Prosecutors for the district courts of appeals were appointed while the pamphlet was carried out, these courts have not actually entered into operation, yet. Therefore, only the legal arrangements will be touched upon in this section.

- *Chambers:* The district courts of appeals consist of chambers in different numbers. Each court must have minimum 3 civil chambers and 2 criminal chambers within its body in accordance with the workload. Each chamber has a head and members. The number of members is not limited however, it is compulsory that the head of a chamber and at least two members should be present to hold a meeting and make a decision.

- *President:* The presidents of district court of appeals are appointed by the HCoJP. The members of the Court of Cassation may be assigned as president or head of chamber in the district court of appeals on their requests.

- *Committees of Presidents:* These committees consist of the president and heads of chambers of district court. They are established to carry out administrative and judicial functions within the court.

- *Justice Commissions:* Justice commissions make decisions on issues related with civil servant status of the auxiliary personnel working in the court such as appointment, promotion and discipline. The commissions consist of a regular member determined from among the heads of chambers by the HCoJP; the district prosecutor and the president of the relevant district court of appeal. Also, a substitute member is elected from among the heads of chambers or members by the HCoJP.

- *Office of district prosecutor:* Offices of district prosecutor are established within the district courts of appeals. District prosecutor, deputy district prosecutors and prosecutors are assigned in the offices. It carries out the prosecution on behalf of the public in the courts as well as administrative duties such as budget management.

## **2. Jurisdiction**

District courts of appeals are established to evaluate the appeal applications against the decisions of the first instance courts of civilian ordinary jurisdiction. District courts of appeals carry out the trial of cases when they consider that the decision of the first instance court is inappropriate rather than to reverse the judgement to trial court. They are in the position of court of higher jurisdiction within their district other than the “appeal” review. Accordingly, these courts will also finalise the jurisdictional disputes between the first instance courts in their responsibility area. District courts of appeals also deal with the cases of compensation filed against the judges in their district (except military judges) due to their duties as the first instance court.



### **3. Officials**

Those working under the judge class and the auxiliary personnel serve in the district courts of appeals.

- *Judges:* Presidents of the district courts of appeals are appointed from among the first level judges. Heads of chambers and members are appointed from among judges who are candidate for the first level. The members of the Court of Cassation may also be appointed as the president and head of chambers for the district courts of appeals in line with their requests. All appointments are carried out by the HCoJP.

- *Prosecutors:* District prosecutors are appointed from among judges who are candidate for the first level. The members of the Court of Cassation may also be appointed as the district prosecutor for the district courts of appeals in line with their requests. Other prosecutors are appointed from among judges who have been serving in their profession (regardless of their position as judge or prosecutor) for minimum 8 years. All appointments are carried out by the HCoJP.

- *Auxiliary personnel:* Auxiliary personnel are employed in these courts to carry out the office services and other administrative tasks. They are appointed by the justice commissions or the Ministry of Justice.

### **B. District Administrative Courts**

District administrative courts are regional courts established to evaluate the applications for objection remedy against the decisions of the first instance courts. Unlike the district courts of appeals, district administrative courts do not make “appeal” review.

#### **1. Structure**

District administrative courts are established in 26 different provinces of Turkey in a way to include the neighbouring provinces within their areas of jurisdiction. Each court is established independently and there is not a joint body.

Each district administrative court has parallel structure;

- *President and members:* There are a president and members in each court. President and the members are appointed by the HCoJP. According to the law, there must be one president and at least two members to make decisions. President of the court carries out the administrative and financial management of the court. They are also responsible for the general operation of the first instance administrative courts and tax courts in their jurisdictional area.

- *Justice Commissions:* Justice commission makes decisions on issues related with civil servant status of the auxiliary personnel working in the court such as appointment, promotion and discipline. Under the chairmanship of the president of the district administrative court, the commission consists of two regular members and one substitute member appointed by the HCoJP.

Office of prosecutor does not exist within the district administrative courts.

## **2. Jurisdiction**

District administrative courts are established to evaluate the objection (not appeal) applications against some of the decisions of administrative and tax courts at the first instance level. Other decisions are reviewed by the Council of State.

District administrative courts are also assigned to finalize the jurisdictional disputes between the first instance administrative courts in their jurisdictional area.

## **3. Officials**

Administrative judges and the auxiliary personnel serve in the district administrative courts;

- *Judges:* Presidents and the members of the district administrative courts are appointed by the HCoJP from among the judges of administrative judiciary. Also, the members of the Council of State after their consent may also be appointed for the presidencies of district administrative courts in Ankara, Istanbul and Izmir by the HCoJP.

- *Auxiliary personnel:* Auxiliary personnel are employed in these courts to carry out the office services and other administrative works. They are appointed by the justice commissions or the Ministry of Justice.

## V. FIRST INSTANCE COURTS

First instance courts are trial courts established to deal with the cases at the first stage. In Turkey, three types of first instance courts are established on the basis of jurisdictional separation of civilian – military jurisdictions and ordinary – administrative jurisdictions.

### A. First Instance Courts of Ordinary Jurisdiction

First Instance Courts of Ordinary Jurisdiction are the courts assigned to deal with all types of cases outside the jurisdiction of the military and administrative courts.

#### 1. Types and Structures

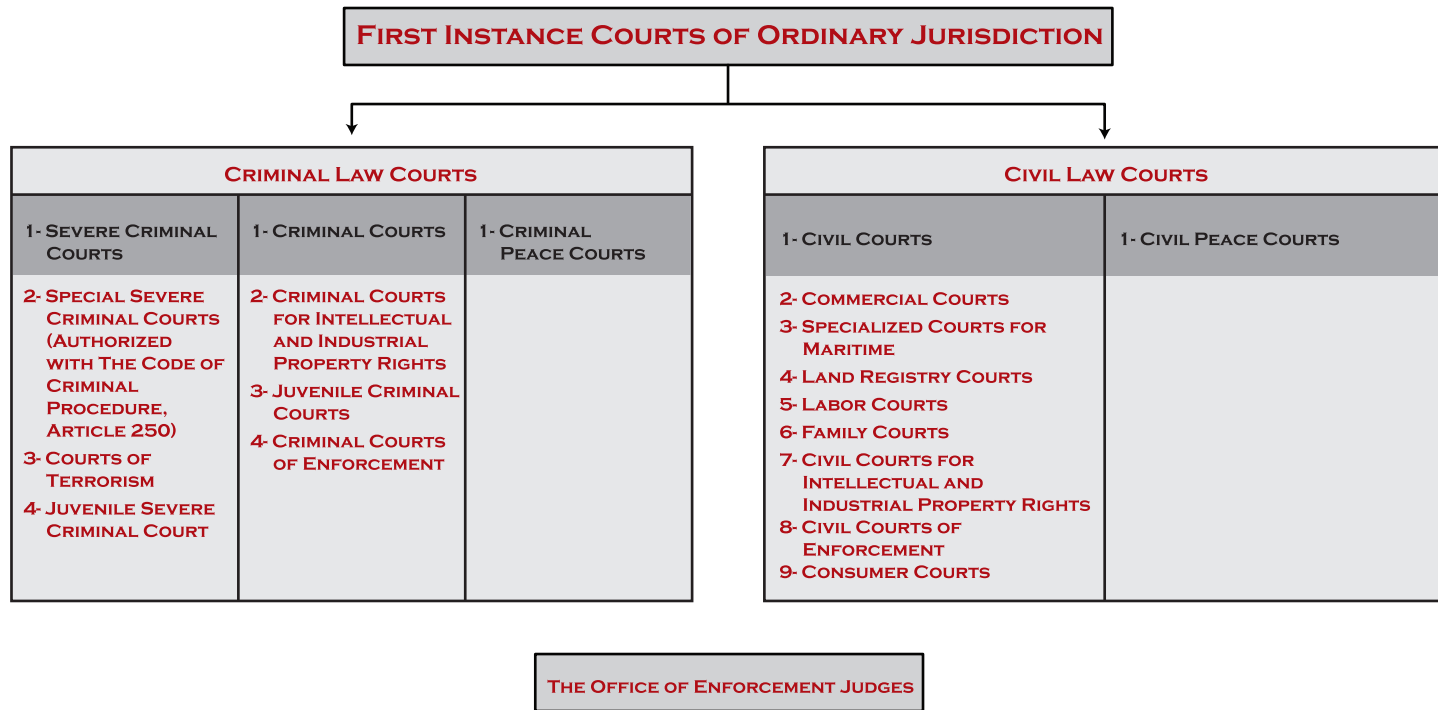
First Instance Courts of Ordinary Jurisdiction are split into two categories as criminal law courts and civil law courts. Some of these courts are courts of general jurisdiction and others are specialized courts. Their jurisdictions are decided by the HCoJP considering the borders of the city centers and districts to a large extent. However, there are not any courthouses in some small cities and courts close to that cities deal with the cases of those cities with the decree of the HCoJP.

In terms of internal structuring, among these courts, only the severe criminal courts and some other specialized courts are called as “delegation courts” and consist of one president and two members. One judge serves in all of the other courts. Judicial decisions in the courts are made by judges. Administrative tasks (such as disciplinary and general management) are carried out by the president of the court in delegation courts and by the judge in the courts with only one judge.

First Instance Courts of Ordinary Jurisdiction could be assigned to general jurisdiction or specialized jurisdiction;

- *Courts of general jurisdiction*: The courts of general jurisdiction are established to deal with the cases, which are not included in the jurisdiction of a specialized court. They are separated to levels on the basis of the severity of crimes for criminal law courts and on the basis of the economic value of claims for civil law cases. Severe criminal courts, penal courts and penal peace courts are found in criminal law jurisdiction, while civil courts and civil peace courts are found in civil law jurisdiction. There is no superiority between these courts and only separation is jurisdictional. However, if case parties raise an objection against an *interim decision* of a court, this objection can be evaluated and finalised by another court.

- *Specialized courts*: These courts are established to deal with the cases in their jurisdiction and they are found at an equal level to one of the courts of general jurisdiction. In the case of that a specialized court is not found in a city or a city is not covered by the jurisdiction of a specialized court, courts of general jurisdiction deal with the cases in the jurisdiction of this specialized court. For example, if a city has not *criminal court for intellectual property*, the cases related with intellectual property is held by *criminal court* of general jurisdiction. In the following scheme, courts written at first line are courts of general jurisdiction and those mentioned in the list below are specialized courts that are established at an equal level.



**Table 1.** First Instance Courts of Ordinary Jurisdiction. Those written in the first line are the courts of general jurisdiction and those that are written in the list below are specialized courts that are established at an equal level to them.

- *Offices of Public Prosecutors:* Offices of public prosecutors are found at first instance level. Public prosecutors carry out prosecution services under the supervision of chief public prosecutor and deputy chief public prosecutors. Courts and offices of prosecutors use the same buildings called “courthouse” together. The tasks related to the management of these buildings, peculiarly to Turkish judicial system, are carried out by the prosecutors and chief public prosecutors who are also responsible for financial management of courthouses.

- *Justice commissions:* Justice commissions, which are established in cities where the severe criminal courts are, consist of a president and a member who are appointed by the HCoJP from among the judges and the chief public prosecutor of that city. Justice commissions serve as the decision-making body for the issues related with civil servant status of the auxiliary personnel such as appointment, promotion and discipline. The presidents of these commissions is also responsible for the assignment of judges to a court in absence of a judge.

## **2. Jurisdiction**

The legal limits of the jurisdiction of first instance courts must be identified by law, while the territorial limits of their jurisdiction are identified by the decrees of the HCoJP. The legal limits of the jurisdiction of first instance courts on the basis of types of courts as follows;

- *Severe criminal courts:* These courts deal with the severe criminal offences that result in aggravated life sentence, life sentence and confinement for more than 10 years. They also deal with offences that are prescribed in a special law, such as larceny and corruption in tenders, and with offences that is committed by public officials who must be tried in these courts according to law such as judges and lawyers.

- *Juvenile severe criminal courts:* These courts deal with the cases filed against the juvenile due to the crimes within the jurisdiction of severe criminal courts.

- *Special severe criminal courts: (The Code of Criminal Procedure, Article 250):* These courts have been abolished by an amendment in the Anti-Terror Law, however this amendment also lays down the existence of these

courts until they finalise cases in their hand. These courts have been regulated by Article 250 of The Code of Criminal Procedure and deal with the offences prescribed in this article such as offences committed by a crime organization and breach of territorial integrity of the state.

- *Courts of Terrorism:* These courts have been established in lieu of “special severe criminal courts” to deal with the cases of terrorism crimes. The jurisdictional area of these courts is specified in a way to cover more than one city and province. Therefore, in places where these courts do not exist, it is not possible for other severe criminal courts to deal with the crimes within their jurisdiction. These courts deal with not only terrorism crimes but also some crimes that are committed against the State.

- *Criminal courts* are the primary authorized courts. They deal with all criminal cases that remain outside the duties of other courts.

- *Criminal Courts for Intellectual and Industrial Property Rights:* These courts are established based on the Law on Intellectual and Industrial Works and hear the cases with regard to the crimes on intellectual and industrial property.

- *Criminal courts of enforcement* are established based on the Law on Enforcement and Bankruptcy. Criminal courts of enforcement have criminal jurisdiction due to the crimes or actions committed during the collection of debts, whether secured by a court judgment and to make a judgment for preventive detention when required.

- *Juvenile courts:* These courts deal with the cases which are filed against the juvenile in terms of the crimes within the jurisdiction of criminal courts and the criminal peace courts.

- *Criminal peace courts:* These courts are assigned to hear cases on crimes concerning the prison sentences up to two years (including two years) and the judicial fines. Criminal peace courts are also assigned to make judgment on implementation of any preventive measures during the investigation stage if it is requested by a public prosecutor.

- *Civil courts* are the primary courts in terms of the civil law jurisdiction. Therefore, civil courts of first instance deal with any type of cases and proceedings that remain outside the jurisdiction of civil peace courts or other specialized courts and that stem from special law relations.
- *Commercial courts*: These courts deal with the commercial cases. Commercial cases are defined as cases in which one of the parties is merchant and cases related to the issues arranged in commercial law.
- *Specialised Courts for Maritime*: These courts are assigned to deal with commercial cases on maritime issues.
- *Civil courts of enforcement* deal with cases on issues related to the requests of the parties during the collection of debts, which are secured or not secured by a court judgment.
- *Land registry courts* deal with land cadastre disputes.
- *Labour courts* deal with the cases stemming from the disagreements, based on the Labour Law, between the employers and the employees.
- *Family Courts* deal with the cases stemming from the disputes on family law.
- *Consumer courts* deal with any types of disputes that occur as a result of the implementation of the Law on the Protection of the Consumer.
- *Civil courts for intellectual and industrial property rights*: These courts are established based on the Law on Intellectual and Industrial Works and hear the cases with regard to the pecuniary claims on intellectual and industrial property.
- *Civil peace courts* deal with the civil cases at which the total amount of claim is lesser than a certain level. This level is determined by law, but could be changed every year on the basis of inflation. These courts also hear the cases prescribed in law, for example; elimination of joint ownership, issuance of certificate of inheritance and etc.
- *The office of enforcement judges*; These offices are not considered as a court, rather they are institutions established to make decisions on the issues related with the rights of convicts and detainees in prisons and detention houses. However, judges serve in these offices and the decisions are taken by them.



One should bear in mind, in cities where specialized courts do not exist, courts of general jurisdiction, with which they are at equal level, may deal with the cases they are authorized to.

### **3. Officials**

Judges, prosecutors and auxiliary personnel serve in the first instance civilian judiciary courts. Turkish judicial system does not have non-professional judges (lay judges) or prosecutors. The HCoJP appoints all judges and prosecutors and determines the courts and benches they will serve in. However, in the case of the absence of a judge because of sick leave or annual leave, the judges who serve in the same courthouse could be assigned by the president of the justice commission to serve in the other court. The chief public prosecutors have a similar authority on the prosecutors.

The auxiliary personnel are also employed in the courts and offices of prosecutors to carry out the office services and other administrative tasks. They serve as civil servants and work under the supervision of a judge or prosecutor.

### **B. First Instance Courts of Administrative Jurisdiction**

First Instance Courts of Administrative Jurisdiction are assigned to deal with the administrative cases. Administrative cases are the cases in which the defendant is, with some exceptions, a public institution.

#### **1. Types and Structures**

Administrative courts are split into two categories as administrative and tax courts. Tax courts deal with the tax disputes and administrative courts deal with the other administrative disputes.

The territorial limits of the jurisdiction of these courts are identified by the HCoJP based on the borders of the provinces to a large extent. However, these courts are not established in each province and city. In the places where these courts do not exist, the courts of a nearby province deal with the cases with the decree of HCoJP.

In administrative judiciary, office of prosecutor does not exist in the district and first instance courts. Moreover, justice commissions are established only in the district administrative courts and jurisdiction of these commissions includes the first instance administrative and tax courts.

- *Administrative courts:* Administrative courts are the courts of general jurisdiction in administrative judiciary branch; therefore, they deal with all administrative cases that remain outside the jurisdiction of the Council of State and tax courts. A president and members from administrative jurisdiction judges serve in these courts. The board to hear the case (for the majority of cases) must consist of the president and at least two members. The president of the court determines which members will deal with a case and the boards are chaired by the president or a senior member. The territorial limits of their jurisdiction are determined by the HCoJP.

- *Tax courts:* Tax courts deal with tax cases. A president and members from administrative jurisdiction judges serve in these courts. The board to hear the case (for the majority of cases) must consist of the president and at least two members. The president of the court determines which members will deal with a case and the boards are chaired by the president or a senior member. The territorial limits of their jurisdiction are determined by the HCoJP and they may be different from of the administrative court in the same province.

## **2. Jurisdiction**

Administrative cases may be basically split into two categories as tax cases and other administrative cases. Tax cases are the cases that are filed on the basis of tax claims of the State. Administrative cases are split into three categories:

- To demand for the cancellation of an administrative proceeding,
- To claim for compensation of damages caused by an administrative proceeding or action,
- Disputes that occur as a result of the contracts signed to carry out a public service.

Administrative cases are finalized by the first instance administrative courts or the Council of State in accordance with their types of being conducted or the institution that conducted it. As a general rule, operations and actions conducted by higher-level institutions is heard by the Council of State, not by the first instance courts.

### **3. Officials**

Administrative judges serve in the first instance administrative courts. It is not possible for the non-professionals to serve as a judge in these courts. The HCoJP appoints all judges and determines the courts they will serve in. However, in the case of the absence of a judge because of sick leave or annual leave, the judges who serve in the same courthouse could be assigned by the president of the justice commission to serve in the other court.

Also, the auxiliary personnel are employed in these courts to carry out the office services and other administrative tasks. They serve as civil servants and work as affiliated to the judges.

### **C. First Instance Courts of Military Jurisdiction**

In Turkey, military criminal courts deal with the criminal cases of the military persons. These courts are associated with the Ministry of National Defence in terms of budgetary and personnel issues.

#### **1. Types and Structures**

There are two types of courts serving at the level of first instance in the military judiciary; military courts and disciplinary courts. Both courts are established based on the military system. Also, the territorial limits of their jurisdiction are identified in accordance with the commands they are established in. Offices of military prosecutors are also established in the places where military courts are found. The legal limits of their jurisdiction as follows;

- *Military courts:* These courts deal with crimes committed by a military person. Military judges serve in these courts. Military courts are trial courts and also have the authority for objections against the judgments of the disciplinary courts.

- *Disciplinary courts:* Disciplinary courts deal with cases involving the actions defined as disciplinary action by law. They consist of three military officers or military judges; one president and two members. In disciplinary courts, those who will conduct the jurisdiction must be superior to those who will be tried, as a rule.

- *Offices of military prosecutors:* These are established under the command, where the court is found, to carry out investigation for the cases to be dealt with by the military courts and to follow the cases. There is only one office of prosecutor under the same command, even if there is more than one military court. Prosecutors and deputy prosecutors are appointed from among the military judges.

## **2. Jurisdiction**

The jurisdiction of military courts and disciplinary courts is determined by the law according to the types of crimes. Military courts try military persons' actions that have been defined as crime by the law and disciplinary courts try actions that have been defined as disciplinary actions by the law.

## **3. Officials**

Military judges, prosecutors and civil and military personnel serve at these courts.

- *Military judges:* Military judges are appointed within the framework of the military rules from among the military officers who are graduated from law faculties. Those who are in the decision-making position in military courts must be elected from among the military judges, except for the ones in disciplinary courts.

- *Military prosecutors:* Military prosecutors and deputy prosecutors serve under the offices of military prosecutors. They are also appointed from among military officers who are graduated from law faculties.

- *Other military officers:* It is principally adopted that military judges serve in the disciplinary courts. However, other military officers may also be assigned in these courts in cases when there is not sufficient number of military judges.

- *Auxiliary personnel:* Civil and military auxiliary personnel are employed in the military courts to carry out the office services and other administrative tasks.

## VI. ELECTION BOARDS

Turkish Constitution ensures that elections will be carried out under the general management and inspection of the judicial bodies. However, the Constitution does not authorize courts in this regard and it has regulated a separate organisation, namely election boards. In election boards, judges serve in decision-making positions, however these boards are completely independent from the courts in terms of both their structure and decisions.

Election boards are structured in three levels; the Supreme Election Board as a central organization for all country, provincial election boards at provincial level and city election boards at city level are established.

### A. Supreme Election Board

The Supreme Election Board is established as the final decision-making authority with regard to the issues on elections. However, it is not regarded among the supreme courts in the Constitution.

#### 1. Structure

The SEB consists of the Board and the administrative units;

- *Board:* It is the decision-making body in the SEB. The Board consists of 7 regular and 4 substitute members together with the President and the Deputy President. It decides on cases with regard the issues on elections. There is no contention of unconstitutionality or appeal against its decisions. Therefore, it serves as a supreme authority on the issues of elections.

- *President and Deputy President:* The President and the Deputy President are elected by the regular and substitute members from among themselves. The President or the Deputy President in the absence of the President chairs the Board.

- *Directorate General for Electoral Registers (the DGER)*: The SEB is a decision-making authority for elections and the proceedings on the elections are carried out by the DGER. The establishment purpose of the DGER is to carry out the tasks, particularly IT services related with elections

- *Department of Administrative and Financial Affairs*: This department was established to carry out the secretarial tasks, administrative and financial management of the SEB.

## **2. Duties**

Almost in all situations that include the fact of “election” in laws or other regulations, there are duties assigned to the SEB. The primary duties include tasks and operations related to the elections of the President of the Republic, members of the GNAT and local governments. Its duties are as follows;

- *The SEB* serves as the final decision-making authority in terms of the objections against the decisions of the provincial and district election boards; decisions on the admissibility of a candidate and validity of an election are examples of decisions rendered within this scope.

- *The SEB* carries out the tasks related to the elections across the country through the DGER; identification of the election districts and electorate, keeping up with the election calendar are the duties within this scope.

- *The SEB* is also assigned to answer the questions about the elections asked by the provincial and district election boards.

## **3. Officials**

Members and administrative personnel serve under the SEB:

- *Members*: The SEB consists of 7 regular and 4 substitute members in total together with the President and the Deputy President. 6 of the members are elected by the Grand Plenary Assembly of the Court of Cassation and

5 of the members are elected by the Plenary Assembly of Council of State from among their own members. Elected members are settled as regular and substitute members by lot. Substitute members participate in the meetings to achieve the quorum only in the absence of the regular members.

- *Auxiliary personnel:* Auxiliary personnel serve in the DGER and the Department of Administrative and Financial Affairs. Their duties include ensuring the coordination of the election works across the country in line with the decisions of the SEB. Among them, senior managers are appointed with the decision of the SEB and the rest by the President.

## **B. Provincial Election Boards**

Provincial election boards are electoral institutions established in provinces to make decisions on elections.

### **1. Structure**

These boards consist of a president, two members and two substitute members appointed from among the judges. They serve for two years after their appointment.

The offices for provincial electoral registers are established to carry out the administrative works with regard to the elections. The offices, in which auxiliary personnel serve, act in accordance with the decisions of the provincial election boards.

### **2. Duties**

Provincial election boards are established to carry out the electoral works at provincial level. These boards are the decision-making authorities on the electoral issues in provinces in line with the principles identified and the decisions taken by the SEB. They are also responsible to review the appeals filed against the decisions of city election boards.

Offices for provincial electoral registers carry out the office services and other administrative tasks related with elections in their provinces.

### **3. Officials**

Judges serve in the provincial election boards. The most senior judge serving in the province becomes the president of the board and the following two senior judges are the members of the board.

Auxiliary personnel serve in the offices for provincial electoral registers affiliated to the provincial election boards. They hold the position of civil servants and are appointed by the President of the SEB.

### **C. City Election Boards**

These are electoral institutions established in each city center, including the minor cities, to make decisions on elections in their cities.

#### **1. Structure**

Unlike provincial election boards, city election boards have a mixed structure. The most senior judge in the city chairs the board. 6 regular and 6 substitute members of the board are elected from among the representatives of political parties and the public officials serving in the city. 4 regular and 4 substitute members are elected from among the representatives of the political parties, 2 regular and 2 substitute members and other regular or substitute members that are absent for any reason are settled by lot from among the public officials serving in the city and having the conditions prescribed in the law.

As a rule, each city has a city election board. However, more than one city election board may be established in the cities with the population exceeding 200.000. City election board other than the provincial election board is also established in the central city of the province.



## **2. Duties**

City election boards make decisions on the issues related to the elections at city level. These boards are assigned to carry out the proceedings on elections in the cities and to make the required decisions. They make decisions by evaluating the applications filed by politicians, political parties and citizens.

Office services and other administrative tasks are carried out through the offices for city electoral registers. These offices serve under the inspection of the head of the city election board.

As a rule, the decisions are taken by the city election board. However, it is regulated by the law that, in certain cases, the head of the board makes decision.

## **3. Officials**

City election boards are chaired by judges. The most senior judge in the city carries out this duty. If he/she is appointed to other location by the HCoJP, the duty of chairing the board will change accordingly.

Members are the representatives of the political parties and the public officials serving in the city. The officials except from the judges are not permanent officials. They serve during the electoral process and are paid for the period they serve.



## VII. JUSTICE INSTITUTIONS FOR ENFORCEMENT OF JUDGEMENTS

Two different types of justice institutions have been established to enforce the judgements of courts; prisons and detention houses in terms of criminal law judgements and directorates of enforcement and bankruptcy in terms of civil law judgements.

### **A. Directorates of Enforcement and Bankruptcy**

The directorates of enforcement and the directorates of bankruptcy are the justice institutions established to ensure the collection of the claims of the persons and to carry out the required proceedings in cases when the companies go bankrupt respectively.

#### **1. Structure**

These two directorates are established in places where the courts are found and carry out their duties under the supervision of the judges and prosecutors.

Both the duty of enforcement and the duty of bankruptcy proceedings may be gathered under a single roof in places with lesser workload and, in this case, the directorate may be called as “enforcement directorate”. There is enforcement or bankruptcy director at the top and deputy directors and other auxiliary personnel are assigned. It is possible to establish more than one directorate in places where the workload is intense.

#### **2. Duties**

The main function of the enforcement and bankruptcy offices is to ensure the collection of the claims of the persons. This claim may depend on the judgement of a court or may be based on an economic relation. The enforcement directorates are responsible to take action on the application of an individual or a company and they complete the required procedures and confiscate the properties of the debtors and collect the claims.

As per the Turkish Commercial Code, if the debtor is a company and cannot pay the debts, a decision on the bankruptcy of the company may be taken by a commercial court. Under these circumstances, it is the duty of bankruptcy directorates (or of enforcement directorate in the case of that they are gathered under a single roof) to carry out the proceedings on bankruptcy and to ensure the collection of the claims of the creditors.

All types of proceedings of the directorates of enforcement and bankruptcy are under the supervision of civil courts. The courts finalize the applications against the actions and proceedings of these directorates.

### **3. Officials**

Directors, deputy directors and civil servants are assigned in directorates of enforcement and bankruptcy. Directors and deputy directors are appointed by the Ministry of Justice through oral and written exams. Other public officials are also appointed by the Ministry of Justice through ordinary methods.

## **B. Prisons and Detention Houses**

Prisons and detention houses are the institutions where the punishments restricting the freedom of individuals, namely imprisonments, are fulfilled and where suspects and accused, against whom an arrest warrant is issued, are kept as measure.

### **1. Structure**

Prisons and detention houses are established in connection with the offices of prosecutors. There are different types of prisons and detention houses in line with their duties and their status; for example, women's prisons, juvenile prisons, adult prisons, open prisons and closed prisons.

These institutions are managed by the director and deputy directors. Directors and deputy directors carry out their duties under the supervision of the relevant public prosecutor. These institutions are affiliated to the Directorate General for Prisons and Detention Houses of the Ministry of Justice. The Directorate General for Prisons and Detention Houses allocates their budgets and decides on the issues related with the management of these institutions such as civil servant status of the personnel.

## **2. Duties**

The main duty of the prisons and the detention houses is to ensure the fulfilment of the punishments for restricting the freedom and the arrest as a safety measure. These functions are fulfilled under the management of the managers of the institutions in line with the Law on Criminal Execution. However, the actual decision-making mechanism in this regard is the offices of public prosecutors and the offices of enforcement judges. In cases of an objection or a complaint, the final decision is made by the offices of enforcement judges.

These institutions also have the duty to protect and develop the professional and craftsmanship skills of detainees and convicts or to ensure that they learn a profession or craftsmanship. Accordingly, eager detainees and convicts may be trained or employed in the workplaces established with that purpose.

## **3. Officials**

Management of the prisons and the detention houses are carried out by the directors and the deputy directors appointed by the Ministry of Justice. The institutions are managed under the supervision of the relevant prosecutor and enforcement judge. However, prosecutors and the judges do not serve in these institutions. Besides their ordinary judicial duties, they carry out the supervision of these institutions.

Also, public officials are assigned in the institution to carry out the office services and other administrative tasks.

Guards are assigned in the institutions to conduct the safety services of the institution. The issues related with their appointment, transfer and discipline are carried out by the justice commissions and the Ministry of Justice.

