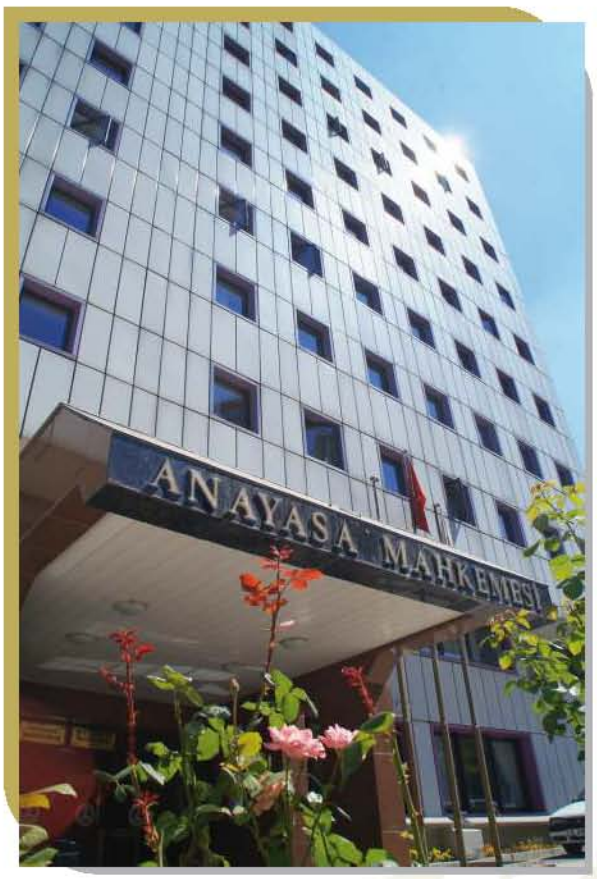
THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY


ANAYASA MAHKEMESİ
44. YIL 1962 - 2006



THE CONSTITUTIONAL COURT OF THE REPUBLIC OF TURKEY

Office of the President

H. Tülay TUĞCU / President

Born in Ankara on 12 June 1942.
Graduated from Ankara University, Faculty of Law in 1965.
Attorney at Law between 1966-1969.
Assistant Councillor at the Council of State in 1969.
Diploma obtained from the Institution of Public Administration for Turkey and the Middle East (TODAİE) in 1974.
Senior Judge Rapporteur at the 1st Division of the Council of State in 1982.
Judge at the 6th Division of the Council of State between 1992-1995 and at the 10th Division between 1995-1999.
Judge of the Constitutional Court in 1999.
President of the Court of Jurisdictional Disputes in 2004.
President of the Constitutional Court in 2005.
Married with two children.

Haşim KILIÇ / Vice-President

Born in Çiçekdağ (Province of Kırşehir) on 13 March 1950.
Graduated from Eskişehir Economic and Commercial Sciences Academy in 1972.
Assistant Auditor at the Court of Accounts in 1974.
Auditor and senior auditor at the Court of Accounts between 1976-1985.
Member of the Court of Accounts in 1985.
Judge of the Constitutional Court in 1991.
Vice-President of the Constitutional Court in 1999 (re-elected in 2003).
Married with four children.

Sacit ADALI / Judge

Born in Eğirdir (Province of Isparta) on 5 March 1945.

Graduated from Ankara University, Faculty of Political Sciences in 1965.

Worked at Istanbul Governorship of the Ministry of Interior Affairs in 1966.

Awarded Ph.D degree obtained from Rennes University in the field of Administrative Sciences in 1971.

Expert at General Directorate of Higher Education in the Ministry of National Education in 1971.

Lecturer at Ataturk University, Faculty of Management, Department of Public Administration in 1971.

Associate Professor in 1976.

Thought at the Sakarya State Academy of Architecture between 1978-1981, at the Kocaeli State Academy of Architecture and Engineering between 1981-1982.

Professor in 1983.

Thought at Marmara University, Faculty of Economics & Management in 1985.

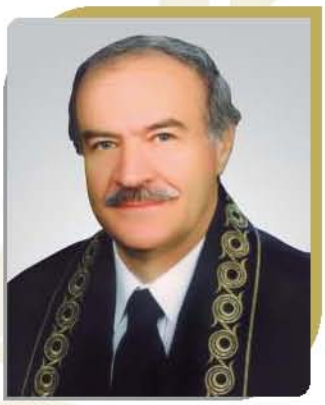
Dean of the Faculty of Management for Turkic World in 1992.

Judge of the Constitutional Court in 1993.

Fulya KANTARCIOĞLU / Judge

Born in Ankara on 17 February 1948.
Graduated from Ankara University, Faculty of Law in 1969.
Assistant Councillor at the Council of State in 1970.
Rapporteur-Judge at the Constitutional Court in 1979.
Deputy Undersecretary at the Ministry of Justice in 1992.
Judge of the Council of State in 1994.
Judge of the Constitutional Court in 1995.
Married with two children.

Ahmet AKYALÇIN / Judge- President of the Court of Jurisdictional Disputes



Born in Afyon on 4 March 1949.
Graduated from Ankara University, Faculty of Law in 1972.
Served as Public Prosecutor, Inspector and Chief Public Prosecutor at the Ministry of Justice between 1976-1996.
Deputy Undersecretary at the Ministry of Justice in 1996.
Judge at the 9th and 7th Criminal Divisions of the Court of Cassation between 1997-2000.
Judge of the Constitutional Court in 2000.
President of the Court of Jurisdictional Disputes in 2005.
Married with two children.

Mehmet ERTEN / Judge

Born in Elbistan (Province of K.Maraş) on 9 February 1949.

Graduated from Istanbul University, Faculty of Law in 1974.

Served as Judge, Magistrate and Chief Judge at criminal courts between 1978-1989.

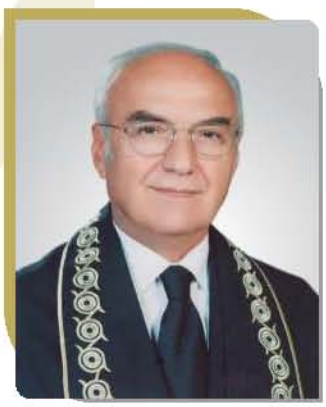
Rapporteur-Judge at the Court of Cassation in 1989.

Public Prosecutor at the Court of Cassation in 1990.

Judge of the 1st Criminal Division the Court of Cassation in 1997.

Judge of the Constitutional Court in 2002.

Married.



Mustafa YILDIRIM / Judge

Born in Artvin in 1945.

Graduated from Ankara University, Faculty of Political Sciences in 1967.

Candidate local (sub-) governor, local governor in various sub-provinces between 1968-1986.

Served as the Governor of Bitlis Province between 1986-1988, of Kırşehir between 1988-1992, of Çorum between 1992 -1997, of Kayseri between 1997-1999, of Malatya between 1999-2003.

Substitute Judge of the Constitutional Court in 2003.

Married with two children.

Cafer ŞAT / Judge- Vice-President of the Court of Jurisdictional Disputes

Born in Divriği (Province of Sivas) on 3 January 1945.
Graduated from Ankara University, Faculty of Law in 1967.
Attorney at Law between 1968-1971.
Judge at various sub-provinces, inspector and later chief inspector at the Ministry of Justice between 1971-1992..
President of the Inspection Committee of the Ministry of Justice in 1992.
Judge of the Court of Cassation in 1994.
Substitute Judge of the Constitutional Court in 2003.
Married with three children.

Abdullah Necmi ÖZLER / Judge

Born in Karaman (Province of Konya) on 1 April 1945.
Graduated from Istanbul University, Faculty of Law in 1969.
Military Judge at the Military Court of the 2nd Tactical Air Force Command in 1971.
Deputy Legal Consultant at the Turkish General Staff in 1986.
Judge of the Military Court of Cassation in 1990.
Judge of the Constitutional Court in 2004.
Married with two children.

Ali GÜZEL / Judge

Born in Ergani (Province of Diyarbakır) on 15 October 1943.

Graduated from Ankara University, Faculty of Law in 1965.

Judge, Public Prosecutor and Chief Judge at various courts.

Rapporteur Judge at the Ministry of Justice.

Chief Judge of the Antalya Criminal Assize Court; Criminal Judge of Istanbul; Chief Judge of Bakırköy.

Diploma obtained from the Institution of Public Administration for Turkey and the Middle East (TODAİE) in 1974.

Judge at the 2nd Criminal Division of the Court of Cassation in 2002.

Substitute Judge of the Constitutional Court in 2004.

Married with two children.

Fettah OTO / Judge

Born in Bitlis on 1 December 1946.

Graduated from Istanbul University, Faculty of Law in 1969.

Assistant Councillor at the Council of State in 1970.

Diploma from the Institution of Public Administration for Turkey and the Middle East (TODAİE) in 1974.

Chief Judge at the Administrative Court of Bursa in 1982.

Chief Judge at the District Administrative Courts of Trabzon, Adana and Antalya between 1986-2000.

Judge at the 5th Division of the Council of State in 2000.

Member of the Higher Board of Judges and Prosecutors as substitute member in 2003.

Substitute Judge of the Constitutional Court in 2004.

Married with two children.

Serdar ÖZGÜLDÜR / Judge

Born in Istanbul in 1955.
Graduated from the Turkish Military Academy in 1976.
Served as naval officer between 1977-1981.
Graduated from Istanbul University, Faculty of Law in 1981.
Awarded M.A. Degree in 1986.
Military Judge and Prosecutor between 1982-1995.
Awarded Ph.D Degree in 1994.
Judge of the High Military Administrative Court of Appeals in 1995.
Secretary General (as well as Judge Colonel) of the High Military Administrative Court of Appeals in 2002.
Served as a member of the Court of Jurisdictional Disputes between 2000-2003.
Judge of the Constitutional Court in 2004.
Married with a son.

Şevket APALAK / Judge

Born in Ankara on 2 November 1945
Graduated from Ankara University, Faculty of Law in 1970.
Assistant Councillor (later Rapporteur Judge) at the Council of State in 1973.
Chief Judge at the Administrative Court of Gaziantep in 1982.
Inspector at the Ministry of Justice in 1987.
Chief Judge at the 7th Administrative Court of Ankara in 1992.
Judge of the 8th Division of the Council of State in 1999.
Member of the Higher Board of Election between 1999-2001.
Judge of the Constitutional Court in 2005.
Married with two children.

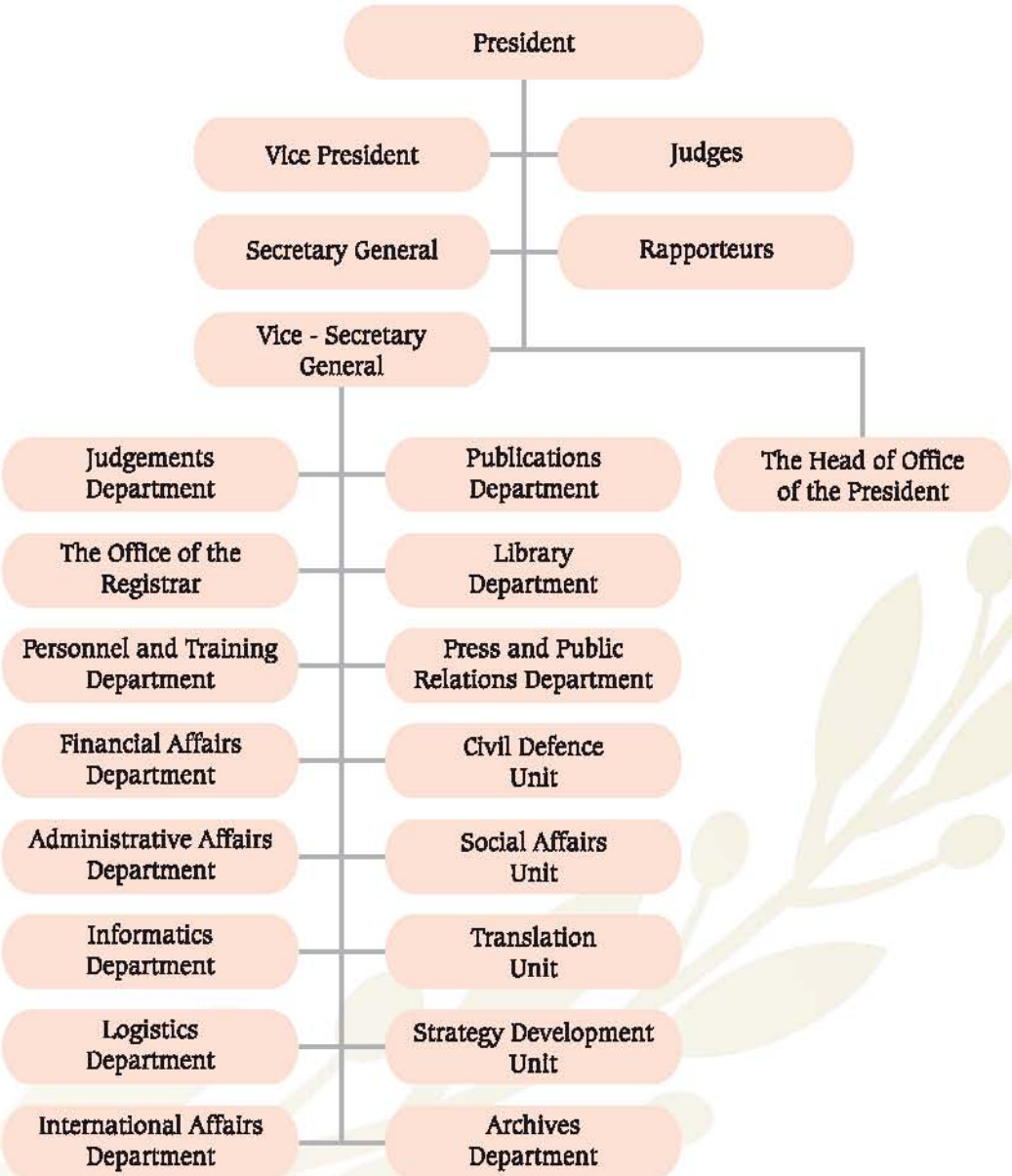
Serruh KALELİ / Judge

Born in Samsun on 3 May 1954.
Graduated from Ankara University, Faculty of Law in 1977.
Attorney at Law between 1978-2005.
Accountant of the Executive Board of Ankara Bar between 1996-1998.
Member and Accountant of the Executive Board of Turkish Law Institution in two consecutive terms between 2000-2004.
Member, accountant and supervisor of the Turkish Bar Associations between 2001-2005.
Served at various commissions of the Turkish Bar Associations.
Vice-President of the Discipline Committee of the Turkish Federation of the League of Basketball during the 2004 – 2005 season.
Judge of the Constitutional Court in 2005.
Married with two children.

Osman Alifeyyaz PAKSÜT / Judge

Born in Ankara on 3 November 1953.
Graduated from Ankara University, Faculty of Law in 1974.
Attorney at Law at the Ankara Bar in 1975.
Diplomatic career at the Ministry of Foreign Affairs in 1977.
Worked as secretary, first secretary, counsellor and deputy permanent representative in Turkish embassies in Tokyo, Nicosia (Turkish Republic of Northern Cyprus) and Permanent Missions of Turkey to OSCE and NATO between 1978-2002.
Ambassador to Baghdad in 2002.
Ambassador to Helsinki in 2004.
Judge of the Constitutional Court in 2005.
Married with two children.

Organogram of the Constitutional Court



The Establishment of the Constitutional Court

After the multi-party system was ushered in Turkey in 1946, the first democratic election was held in 1950, which culminated in the victory of the then the opposition Democratic Party. However, the practices of the ruling Democratic Party created tension between the ruling and the opposition parties as well as the armed forces, civil society and universities, which resulted in the necessity to review the acts of the Parliament. The need for the presence of constitutional justice was first put forward by intellectuals and academics and later supported by the opposition parties.

The founders of the 1961 Constitution agreed on the necessity of a special high court to review the constitutionality of laws. Despite the debates over the structure, composition, function and organization of the Court and over the review of constitutionality, there was widespread conviction on the need for constitutional justice. Some, examining the Turkish political system tend to interpret the establishment of the Constitutional Court as the most radical characteristic of the 1961 Constitution.

The Turkish Constitutional Court was modelled on the European (to be more precise, the "Austrian/German") constitutional justice practice. The functions and organisational structure of the German, Italian, Yugoslavian and the Austrian Constitutional Courts were taken into account in giving the final shape to the Court. Like most European Constitutional Courts, it exercises post-promulgation control of the consistency of the laws with the Constitution.

The Turkish Constitutional Court began to carry out its activities upon the promulgation of the Law on the Establishment and Judgement Procedures of the Constitutional Court (no 44, 22 April 1962). The power to resolve the claim of unconstitutionality by ordinary courts was transferred by the new Constitution solely and completely to the Constitutional Court.

A new constitution was adopted and approved by the Turkish people by way of a referendum in 1982. The system of constitutional review established by the 1961 Constitution was preserved in the 1982 Constitution with a few changes. In the 1982 Constitution, the Constitutional Court, being one of the highest constitutional organs, is on a par with the Grand National Assembly and the Executive and placed as the first judicial organ among "the High Courts". Articles 146-153 of the Constitution lay down in detail the composition, duties, working methods of the Constitutional Court and other issues concerning the

Pictures of the President and Judges since 1962

constitutional review. The new Law on the Establishment and Judgement Procedures of the Constitutional Court (no 2949, 10 November 1983), spelling out the provisions of the Constitution, stipulates its organization, independence, proceedings at the Court, disciplinary infractions and disciplinary proceedings. The Law no 2949 vested in the Plenary of the Court the authority to regulate its internal organisation and work by its own decisions. The more detailed rules on the organisation and procedure of the Constitutional Court are established by the Rules of Procedure of the Court.

The Turkish Constitutional Court's task is to ensure that all institutions of the state abide by the Constitution. As from its foundation in 1962, the Court has helped to secure respect to and effectiveness for the democracy, the rule of law and fundamental rights and freedoms. With the strict and consistent abidance by the Constitution, the Constitutional Court guarantees the irreversibility of the fundamental principles of the Turkish Republic.

The Composition of the Constitutional Court

According to Article 146 of the Constitution, the Constitutional Court is composed of eleven full and four substitute members. Although nomination of the judges is performed by different institutions, their election has been exclusively vested in the President of the Republic. However, the President of the Republic has no right to recall the Judges. The mandate of a judge expires at the age of 65.

Judges of the Court come from different professions (judges, auditors, university professors, governors, lawyers, ambassadors), from different institutions and different socio-political fields. The judges represent a diversity of experience based on different backgrounds and professions, as well as varying standpoints and conceptions of society.

The President of the Republic selects two regular and two substitute members from the Court of Cassation, two regular and one substitute member from the Council of State, and one member each from the Military Court of Cassation, the High Military Administrative Court of Appeals and the Court of Accounts, from among three candidates nominated for each vacant office by the plenary assemblies of each court amongst their respective presidents and members, by an absolute majority of their total number of members. The President of the Republic also selects one member from a list of three candidates nominated by the Higher Education Council from among members of the teaching staff of institutions of higher education who are not members of the Council, and three members and one substitute member from among senior public officials and attorneys at law.

To qualify for election as regular or substitute members of the Constitutional Court, members of the academic staff of institutions of higher education, senior public officials and lawyers should be over the age of 40 and to have completed their higher education, or to have served at least 15 years as a member of the academic staff of institutions of higher education or have actually worked at least 15 years in public service or have practiced as a lawyer for at least 15 years.

Article 3 of the Law on the Establishment and Judgement Procedures of the Constitutional Court spells out additional qualifications for the candidates to be nominated by the Higher Education Council and for the members to be appointed directly by the President of the Republic. According to this, candidates to be selected from among the members of the higher education institutions should be a lecturer in the field of law, economics or political sciences and candidates to be selected from among senior administrative staff should practice as a "chairman or

member of the Higher Education Council, or rector or dean of a higher education institution, or undersecretary, deputy undersecretary, general, admiral, ambassador, regional governor or governor".

The persons to be selected as a judge of the Constitutional Court should fulfil the qualifications stated above and shall neither be convicted of a criminal act, nor be subject to prosecution due to such crimes or shall not be in any condition preventing them to work as a judge. Three regular members and one substitute member are elected by the President of the Republic on his own discretion from among senior public officials and attorneys at law who have practiced at least for 15 years.

The majority of the members of the Constitutional Court, that is, seven out of eleven regular members and three out of four substitute members are appointed from among the presidents and members of the high courts. However, contrary to the 1961 Constitution, where the high courts used to choose their members on their own, the 1982 Constitution stipulates that the President of the Republic has to choose one of each three candidates nominated by the High Courts.

Judges of the Constitutional Court

Competencies of the Constitutional Court

On the basis of the 1982 Constitution and the Law no 2949, competencies of the Constitutional Court are as follows:

1. to decide on the annulment actions brought before the Court with the claim of unconstitutionality of laws, decrees having the force of law and Rules of Procedure of Turkish Grand National Assembly (TGNA) or provisions thereof,

2. to decide on the contention of unconstitutionality of laws and decrees having the force of law asserted by the general courts,

3. to try, sitting as the High Court, the President of the Republic, the Prime Minister and members of the Council of Ministers, as well as the presidents and prosecutors of the high courts on criminal cases related to their official duties.

4. to decide on the applications related to the dissolution or closure of political parties,

5. to audit the finances and expenditures of the political parties,

6. to decide on the applications by a Member of Parliament for annulment of the decisions of Parliament to waive the parliamentary immunity of a member or disqualify from membership or to waive the immunity of a minister who is not a member of Parliament on the grounds that it is unconstitutional or contrary to the provisions of the Rules of Procedure of the Parliament.

7. to appoint one of its members to the Office of the President of the Court of Jurisdictional Disputes.

It is worth reminding that the function of settling disputes among the State organs has not been vested in the Constitutional Court, when compared with the Constitutional Courts in other countries. The Turkish Constitution does not grant any power to the Constitutional Court to express opinion or to conduct a preventive review with regard to the constitutionality of laws in the process of their preparation. Last but not least, the competency of the Turkish Constitution does not include the procedure of "constitutional complaint", to be lodged under certain circumstances by individuals whose fundamental rights have been violated by means of legislative acts.

Access to the Constitutional Court

The Constitutional Court does not act ex officio. It has to work on the basis of relevant applications filed in the Court. The Constitution defines a strictly limited range of bodies that are authorized to access to the Constitutional Court. Under the Constitution, access to the Constitutional Court can be made in the following ways:

1. Action for Annulment (abstract review of norms)

The constitutionality of laws, decrees having the force of law and the Rules of Procedure of Turkish Grand National Assembly or the provisions thereof may be challenged directly before the Constitutional Court through an annulment action by persons and organs empowered by the Constitution. The President of the Republic, parliamentary groups of the party in power and of the main opposition party and a minimum of one-fifth of the total number of members of the Turkish Grand National Assembly have the right to apply for an annulment action to the Constitutional Court. If more than one political party is in power, the party having the greatest number of members exercises the right of the parties in power to apply for an annulment action. Often, applications are filed in person by the member of the Parliament.

The right to apply for annulment directly to the Constitutional Court lapses sixty days after publication in the Official Gazette of the contested law, the decree having the force of law, or the Rules of Procedure of Parliament.

2. Contention of Unconstitutionality (concrete review of norms)

Unlike the abstract control of norms, contention of unconstitutionality can be initiated any time by the general, administrative and military courts and any party involved in a case that is under scrutiny before a court a quo. Applications are made by correspondence.

According to Article 152 of the Constitution, if a court a quo, finds that the law or the decree having the force of law or a provision thereof to be applied in order to decide on a pending case is unconstitutional, or if it is convinced of the seriousness of a claim of unconstitutionality that may be submitted by one of the parties, it postpones the proceeding of the case until the Constitutional Court decides on the issue. The Constitutional Court shall decide on the matter within five months of receiving the contention. If no decision is reached within this period, the court a quo concludes the case under existing legal provisions. No

allegation of unconstitutionality may be made with regard to the same legal provision unless ten years elapse after publication in the Official Gazette of the decision of the Constitutional Court dismissing the application on its merits.

The Judges of Constitutional Court, while seized of proceedings of a case pending before them in relation to the dissolution of political parties or trials at the High Court, may also initiate a posterior review of legal norms, as if a court a quo, if they would have to apply a statute they deem unconstitutional.

3. Application for the Dissolution of Political Parties

According to Article 69/3 of the Constitution, the dissolution of political parties shall be decided finally by the Constitutional Court, following the filing of a suit to that effect by the Office of the Chief Public Prosecutor of the Republic.

- An application for the closure of a political party is made to the Constitutional Court with the assertion of the Chief Public Prosecutor of the Republic. The Constitutional Court examines the case and gives its verdict on the basis of verbal hearings including the defence made by the defendant party and assertions made by the Chief Public Prosecutor; and on the basis of the report prepared in respect of merits by the appointed rapporteur-judge. Without prejudice to the provisions of the Criminal Procedural Law, the dissolution of political parties is decided on the basis of written defence and evidence.
- The Turkish Constitution enumerates certain prohibitions that could lead to the dissolution of political parties in the event that:
- The statutes and program of a political party is contrary to Article 68/4 of the Constitution.
- A political party becomes a focal point of actions contrary to Article 68/4 of the Constitution.
- A political party receives financial aid from foreign countries, international institutions and from real persons and legal entities not belonging to Turkish nationality.
- A permanently closed political party re-establishes itself under a new name.

Besides these, it is regulated in the Law on Political Parties that a political party may be dissolved if it fails to comply with the decision of warning taken by the Constitutional Court upon the assertion of the Chief Public Prosecutor of the Republic. Terms and methods of the dissolution of political parties are regulated in the Law on Political Parties.

Instead of dissolving them permanently, the Constitutional Court may rule that the concerned party be deprived of State fiscal aid wholly or in part, in accordance with the severity of the actions brought before the Court.

4. Application for Warning of Political Parties

According to Article 104 of the Political Parties Law (no: 2820), the Office of the Chief Public Prosecutor of the Republic applies to the Constitutional Court if a party fails to abide by the provisions of the Political Parties Act (other than Article 101) and other compulsory rules of other laws. If the Constitutional Court identifies a breach of these provisions, it makes a decision to notify the relevant political party for this breach to be redressed. If the breach is not redressed within six months of the communication of this notification, the Chief Prosecutor's Office may, ex officio, file a case at the Constitutional Court requesting that the political party in question is partially or fully deprived of State fiscal aid.

5. Application for the Trial of Statesmen before the High Court of Justice

The Constitutional Court, sitting as the High Court, tries the President of the Republic, members of the Council of Ministers, presidents and members of the Constitutional Court, of the Court of Cassation, of the Council of State, of the Military Court of Cassation, of the High Military Administrative Court of Appeals, their Chief Public Prosecutors, Deputy Public Prosecutors of the Republic, and the Presidents and Members of the Higher Board of Judges and Public Prosecutors, and of the Court of Accounts for offences relating to their official functions. The prosecution in matters concerning the High Court is exercised by the Chief Public Prosecutor or his deputy. One or several of the assistants to the Chief Public Prosecutor may also participate in the trials together with the Chief Public Prosecutor and his deputy.

A Work of Art Donated to the Court

The Norms Subject to Constitutional Review

As far as Article 148/1 of the Constitution is concerned, *"the Constitutional Court shall examine the constitutionality, in respect of both form and substance, of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency, martial law or in time of war."*

According to this provision, the norms that are subject to constitutional review are as follows.

1. Laws

The main function of the Constitutional Court is to review the constitutionality of laws. The term "law" is used not in respect of substance, but in form. In other words, laws which do not create general norms, like budget laws, are within the scope of the review of the Constitutional Court.

The verification of laws as to form is restricted to consideration of whether the quorum was obtained in the last ballot; the verification of constitutional amendments is restricted to consideration of whether the quorum was obtained for the proposal and in the ballot, and whether the prohibition on debates under urgent procedure were complied with.

The jurisdiction of the Constitutional Court comprises all laws except the Reform Laws (of the Republic) enlisted in Article 174 of the Constitution.

2. Decrees having the Force of Law

As a rule, all decrees having the force of law are subject to the review of the Constitutional Court in respect of constitutionality. However, the decrees having the force of law issued during a state of emergency, martial law or in time of war in accordance with Article 148 of the Constitution are exempted from constitutional review. That the decrees having the force of law issued during a state of emergency and martial law could not be reviewed in respect of constitutionality, is nevertheless, regarded as objectionable in the doctrine in terms of the principle of the rule of law.

3. Constitutional Amendments

The scope of judicial review on the constitutional amendments is restricted to review of constitutionality only in respect of form. The competence of the Constitutional Court does not include any review of the Constitution itself. The Constitutional Court examines whether a constitutional amendment was enacted in accordance with the provisions of the Constitution stipulating quorum for the proposal and the vote, and whether the prohibition on debates under urgent procedure was observed. In this context, a proposal for the amendment of Constitution should be submitted by at least one-third of the members of Parliament (which amounts to 184 out of 550), and accepted by a three-fifth majority of votes (which amounts to 330).

4. The Decisions of Parliament

Despite that the Rules of Procedure of the Turkish Grand National Assembly is not a law, but a parliamentary decision in respect of its legal status, it is subject to constitutional review by the Constitutional Court owing to the its peculiar political importance in terms of the democratic participation of the party in power and the opposition parties in the works of the Turkish Grand National Assembly.

The decision with regard to the annulment of the parliamentary immunity or disqualification from membership is also subject to constitutional review.

5. Status of International Agreements

According to Article 90/5 of the Constitution, "International treaties duly put into effect have the force of law. No appeal to the Constitutional Court can be made with regard to these treaties, on the ground that they are unconstitutional". For almost four decades, there has been deep disagreement over the status of international treaties per se and the European Convention on Human Rights in particular due to the ambiguous nature of "having the force of law" phrase.

With the constitutional amendment made in May 2004, a new sentence was added to the last paragraph of Article 90 of the Constitution. According to this;

"In the case of a conflict between the provisions of international treaties in the area of fundamental rights and freedoms duly put into effect and the provisions of domestic laws on the same matter, the provisions of international agreements shall prevail."

Thanks to this provision, the disputes over the status of human rights treaties have finally come to an end. The courts of general jurisdiction are now obliged to rely on the Convention provisions while rendering judgements. Recent

judgements of the Court of Cassation and the Council of State point out direct application of the provisions of the European Convention and the other international treaties on human rights.

Lower courts are not entitled to take the issue to the Constitutional Court claiming that domestic laws that appear to contradict the European Convention be declared unconstitutional. Individuals also need not petition the Constitutional Court against the constitutionality of a court ruling before submitting a claim to the Strasbourg Court. This is because the Constitution does not empower the Constitutional Court to review the constitutionality of national laws vis-à-vis the European Convention. In case of contradiction between the domestic laws and the Convention, the court a quo should implement the provisions of the Convention directly by virtue of the supremacy of international human rights treaties.

Even though the Constitution stipulates that duly ratified international treaties cannot be subject to constitutional review, the Constitutional Court declared in 1997 (E.1996/55, K.1997/33, 27 February 1997) that it can review the legality of laws enacted by Parliament approving of ratification. Therefore, all treaties requiring an act of approval of ratification may be subject to the scrutiny of the Court.

The Deliberation Room

Behind the horseshoe-shaped bench sit the judges with the President at the centre with the most senior members near the centre and the less senior ones towards the wings. At a table just in front of the bench sits the rapporteur-judge of the case who also takes part in the session.

Adjudication Proceedings

According to Article 149 of the Constitution, the Constitutional Court convenes with its president and ten regular members and takes decisions by absolute majority. Decisions of annulment of the constitutional amendments and dissolution of political parties are taken by three-fifth majority. Decisions with regard to the applications for annulment on the ground of defect in form are taken with priority.

The Constitutional Court examines cases on the basis of files, except where it acts as the High Court. Hearings of the Court are confidential. However, when it deems necessary, it may call on those concerned and those having knowledge relevant to the case, to present oral explanations. In lawsuits on the dissolution of a political party, it hears the defence of the chairman of the party concerned or his representative, after listening the viewpoint of the Chief Public Prosecutor of the Republic. The cases related to the dissolution of political parties, in which the Criminal Procedural Law applies mutatis mutandis, arises as a unique sort of case where the parties and those concerned with the case are heard and deliberations are made on the basis of written documents and then a decision is taken.

1. Action for Annulment

An annulment case is deemed to be brought before the Court when the petition, including the application for annulment on the ground of unconstitutionality of laws, decrees having the force of law and Rules of Procedure of TGNA, is transferred to the Registry Office by the General Secretariat of the Constitutional Court. The Secretary General submits a document to the applicants to verify that the case concerned has been brought before the Court.

Petitions and their annexes related to the annulment case are examined within five days as of the registry date by a rapporteur-judge appointed by the President. The Rapporteur judge submits the report after completing his preliminary examination. Where the Constitutional Court finds that the case is not in the scope of its duties and powers or the case is not brought by competent persons or in duly period, it rejects the case before considering it on its merits. If the Court finds irregularities or ambiguities in the petition, it takes a decision towards the completion of those defects. In case the defects are not completed, the case concerned is deemed not brought before the Court. When the Court finds at the end of the preliminary review that the subject of case is within its competency, it takes a decision towards the examination on merits.

2. Contention of Unconstitutionality

Contention of unconstitutionality is the review carried out by the Constitutional Court when a court a quo finds that the norm to be applied in a pending case appears to be unconstitutional and it is convinced of the seriousness of a claim of unconstitutionality submitted by one of the parties, or if the law or provision thereof is found unconstitutional ex officio. After the Secretary General receives an application from the court a quo, the President appoints a rapporteur-judge to submit a preliminary report within five days as of the date of registration in respect of whether required formalities have been fulfilled.

The Constitutional Court performs a preliminary screening within five days (totally ten days at most as of the date of registration) as from the submission of the report prepared by the rapporteur-judge. If the Constitutional Court, in its analysis, finds defects in the file, it decides to return the application to the court a quo. If it establishes that the court was not authorized to apply, it refuses the application. If the Constitutional Court does not find, at the end of its preliminary review, any defect in the application and decides that the court a quo is authorized, it decides to examine the case on merits. The appointed rapporteur-judge begins to prepare his report on the merits of the case.

Judges of the Constitutional Court sit at the hearings in accordance with their seniority. Rapporteur-judges attend also the hearing with regard to the case they deal and make necessary explanations if required. The hearing is presided over by the President who arranges the sequence of assertion of views.

The Constitutional Court makes its deliberations in camera. However, whenever a case is of high public interest, Ministers and bureaucrats may be summoned, should the Court decide that their oral statements would clarify the matter in question. Hearing the cases in camera does not mean that the media is kept away from the activities of the Court. The Court maintains a close contact with the media by informing them about the agenda, and decisions on the admitted cases.

The members who would like to talk about procedure are given priority. The hearing commences when the report is completely read. If one of the members asserts that he could not fully examine the case,

A View from the Court's Garden

then hearing of that case is postponed to another day.

The members express and assert their views without any restriction. However, the President may prevent the assertion of views out of the content of the hearing. The Court settles any dispute arising from the content of the views or speeches. One member may take the floor for three times to explain and extend his views. If a Judge wants to take the floor more than three times, then the President puts this demand to vote.

No suggestion can be made with regard to the sufficiency of the deliberations and this issue could not be regulated under a decision. If no more requests to speak are left, the President announces that the debate is over and passes to voting. Voting starts from the least senior member. No member can abstain from voting. The members who use dissenting votes in respect of procedure are obliged to participate in the hearing and voting on merits.

Decisions are signed by the President and members who have taken part in the examination and Judgement processes. Dissenting members explain the grounds for their opinions by a decision prepared by other dissenting judges or separately.

3. Trial Procedure at the High Court

The Chief Public Prosecutor of the Republic or Deputy Chief Public Prosecutor acts as public prosecutor in the High Court of Justice. The Council for the defence may always be present at the trials. The judgements of the High Court are final.

The Constitutional Court uses the judicative power and it is a criminal adjudication as it acts as the High Court. Forasmuch as, while an act of a person or entity is being examined whether it is a crime or not, the public prosecutor prepares the indictment, the accused and his defender make the defence and the judge makes a judgement, the practice is a trial.

The Constitutional Court, as it acts in the capacity of High Court, conducts and concludes the trial in accordance with the existing law. The provisions of the Law on the Criminal Procedures are completely implemented, since there is not any other special provision in the Law of the Organisation and Trial Procedures of the Constitutional Court. The realization of the fair trial before an independent and impartial court as required by the rules and principles of the criminal judgement is therefore fully achieved.

A Trial at the High Court

4. Trial Procedure at the Dissolution of Political Parties

The Constitutional Court has competence for adjudication on the dissolution of political parties. If the objectives and activities of a political party impinge on the basic order of democracy, the Constitutional Court may order the dissolution of such a party, upon the application of the Office of the Chief Public Prosecutor.

Even though the Constitutional Court examines cases in camera, the Office of the Chief Public Prosecutor and the party leaders are summoned to present their charges and defence orally. In this case, the public is not allowed to listen to the hearing.

5. Financial Audit of Political Parties

The Constitutional Court is tasked by the Constitution to carry out the financial audit of political parties. The Constitutional Court may require assistance from the Court of Accounts with regard to auditing the income and expenditure of political parties. At the end of the review, the Constitutional Court may decide that the incomes and expenditures of a political party are in compliance with the laws, or it may decide on the transfer of the income obtained unduly to the Treasury, and when necessary, apply for the prosecution of the responsible persons. Publication of the decisions taken by the Constitutional Court in the Official Gazette allows the financial transparency of political parties.

Nature and Features of the Decisions

1. Binding Character of Decisions

The decisions of the Constitutional Court are final and binding not only on the parties in a given case (inter partes), but also on the legislative, executive and judicial organs, on the administrative authorities, and on real and legal persons (erga omnes effect). Due to the fact that the decisions are final, no legal allegation (appeal or correction of decision) can be lodged against them. For the same reason, the dispute settled by that decision cannot be dealt with as another case subject by the same parties on the same grounds. Neither the legislative nor the executive has the power to amend or delay the decisions of the Constitutional Court.

In the course of annulling the whole or a provision of laws or decrees having the force of law, the Constitutional Court may not act as the law-maker and pass any judgment leading to new implementation. All Judgements adopted by the Constitutional Court are published in the Official Gazette and in a Yearbook, named as "The Decisions of the Constitutional Court".

Publications of the Court

2. Effectiveness of Decisions

Laws, decrees having the force of law or the Rules of Procedure of the Turkish Grand National Assembly or provisions thereof cease to have effect from the date of publication in the Official Gazette of the annulment decision. Where necessary taking into account the public order, the Constitutional Court may also decide on

the date on which the annulment decision will come into effect. That date may not be more than one year from the date of publication of the decision in the Official Gazette. In the event of the postponement of the date on which an annulment decision is to come into effect, the Turkish Grand National Assembly debate and decides with priority on the draft bill or law proposal, designed to fill the legal void arising from the annulment decision.

3. Annulment Decisions are not Retroactive

As a rule, the Constitution stipulates that annulment decisions are not applied retroactively. Such a rule means that the annulled law remains valid until the annulment decision of the Constitutional Court comes into effect. The Constitution does not regulate the effect of the annulled decisions on the verdicts of definite condemnation issued on the grounds of the annulled law. On the other hand, it is obvious that execution of criminal convictions which became final prior to the annulment decision would be unjust and contrary to the principles of criminal law. The same should apply for the necessity of the application of a law, which requires a lighter punishment as a result of the annulment decision.

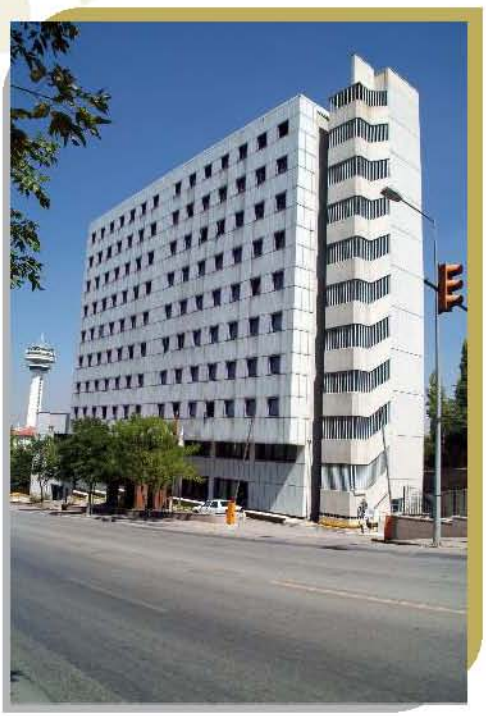
4. The Power to Suspend the Operation of a Norm

There is provision in the Constitution empowering the Constitutional Court to suspend the operation of a statue or law. However, in a decision numbered K.1993/40-42, the Court established a very important precedent and decided that it could be competent and authorized, under certain circumstances to suspend the implementation of a norm, pending its final decision about its constitutionality. As to the grounds for such a decision, the Court regarded that such a power was a stage within the decision-taking process and "a means existing in the essence of the effectiveness of judicial review", and where such a power was not given, individuals and the public order would be deprived of constitutional protection; and as neither the Constitution nor the law stipulated any provision on such a power, nor did they contain prohibitive provisions, this legal lacuna should be filled with the case-law of the Court.

Ever since 1994, more and more annulment petitions are coupled with a demand on the suspension of operation of the law or provision concerned. For example, all annulment actions registered in 2005 and 2006 request the suspension of operation of the norms that have been claimed to be unconstitutional.

Another major problem underlying the workload is the processing of numerous unmeritorious and repetitive cases. When an application is filed with the Constitutional Court, the Court is obliged to make a decision as it does not have the authority to declare an application inadmissible.

A rapid increase in the number of applications over recent years due to the evolving Turkish legislative landscape has placed a heavy burden on the capacity of the Court. Due to ever increasing workload and backlog problems, a thorough review of the workings of the Court and possibly an amendment of the Constitution system may be required. To overcome the burden of the workload, the Plenary Court already drafted a proposal on constitutional amendments with regard to the organisational and procedural restructuring of the Court in 2004. The proposed amendment increases the number of judges and eliminates the distinction between nominal and substitute members. In order to effectively manage the increasing workload, the draft proposal divides the Court into two sections, reserving certain jurisdiction to the Plenary of the Court. The draft proposal also introduces an individual constitutional complaint mechanism for civil and political rights in order to reduce the number of files against Turkey taken to the Strasbourg Court. It is hoped that in the years to come, the required constitutional amendments are enacted.



The Court Building

The building that accommodates the Court is situated in Çankaya, the centre of Ankara. The present Constitutional Court building, which was built in 1989, covering an area of 5.000 square meters, does not meet the future demands of the Court. In anticipation of future challenges, the Court planned the construction of a new building. The purpose-built complex, featuring world-class facilities, is to be built on a plot of some 64.000 square meters and is scheduled to be completed by the end of 2009.

The Workload of the Constitutional Court

The caseload of the Constitutional Court as from its establishment until 15 August 2006 is as below.

In all categories 262 cases are pending as of August 2006. Among 41 cases in relation to the dissolution of political parties, six are pending. The Court functioned as the High Court in 16 cases ever since its establishment. The Court started sitting as the High Court in 2004 in five cases as a result of indictments against seven former ministers and a prime minister. The High Court resolved three of them; two cases are still pending.

The average number of cases of abstract and concrete norm reviews brought before the Court between 1981 and 2000 has been 62. The caseload of the Turkish Constitutional Court tripled after the year 2000 as a result of certain amendments made in the Constitution and the radical legal reforms which were largely inspired by the case law of the Strasbourg Court and undertaken for the alignment with the EU Acquis.

YEARS	Annulment Actions	Applications by General Courts	Waiving of Parliamentary Immunity	Dissolution of Political Parties	High Court trials	Warning to Political Parties
1962	6	29	-	-	-	-
1963	149	30	-	-	1	-
1964	15	20	-	-	-	-
1965	13	21	-	2	-	-
1966	7	19	-	1	-	-
1967	15	24	5	-	-	-
1968	7	48	12	-	-	-
1969	19	31	-	-	-	-
1970	23	32		-	-	-
1971	17	29	2	-	-	-
1972	13	38	-	-	-	-
1973	16	22	-	-	-	-
1974	9	39	1	-	-	-
1975	5	187	-	-	-	-
1976	22	30	-	-	-	-
1977	11	119	-	-	-	-
1978	20	49	-	-	-	-
1979	10	29	-	-	-	-
1980	3	73	-	-	-	-
1981	-	18	-	-	2	-
1982	-	6	-	-	2	-
1983	-	11	-	6	-	-
1984	8	8	-	2	-	-
1985	12	19	-	1	1	-
1986	10	14	-	-	-	1
1987	13	22	-	1	-	2
1988	10	52	-	1	-	-
1989	8	23	-	1	-	4
1990	13	27	-	1	-	3
1991	7	54	-	3	-	6
1992	5	43	-	2	-	4
1993	20	33	-	3	2	1
1994	19	34	39	3	-	5
1995	13	43	-	1	-	1
1996	16	61	-	1	-	-
1997	4	73	2	3	-	7
1998	2	56	1	1	-	1
1999	12	39	-	1	-	-
2000	29	57	-	-	-	-
2001	23	472	-	2	-	1
2002	11	160	-		-	9
2003	18	95	-	3	-	2
2004	28	90	-	7	8	1
2005	35	134	-	-	-	4
2006	21	121	-	-	-	-

International Relations

The Turkish Constitutional Court attaches great importance to co-operation not only among constitutional courts and other high courts but also with the European Court of Human Rights. In realization of this cooperation, the Court actively takes part in numerous international and regional conferences. Until recently, the international relations of the Court were managed by the Office of the President. With a view to intensifying international, regional and bilateral relations, the Court, by amending its Rules of Procedure, set up, inter alia, Department of International Affairs on 26 May 2006.

The President Tülay Tuğcu in Vilnius on 7-8 September 2006

The Court became the seventh member of the Conference of European Constitutional Courts at the Lisbon Conference in 1987. The VIIIth Congress of the Conference was held in Ankara in 1990. The Court takes parts in triannual meetings. At the Preparatory Meeting of the XIVth Congress, which was held in Vilnius on 7-8 September 2006, President Tülay Tuğcu and Secretary General Kemal Başlar represented the Court.

A delegation composed of judges and rapporteurs visits other Constitutional Courts and equivalent bodies every year to have information about the composition and structure of other courts. Two delegations visited the Scandinavian countries in 2003-2004; one delegation visited Italy and Switzerland in 2005. In November 2006, another delegation will be in Chile,

The President at the Eurepean Court of Human Rights

Argentine and Brazil to observe the Latin American constitutional justice system.

Turkey is a member of the European Commission for Democracy through Law, better known as the Venice Commission. In 2004, the Commission experts gave their opinions on the proposed amendments on the new structure of the Court. The Commission has been represented in some events organised by the Court. Gianni Buquicchio, Secretary of the Commission, for example, participated in the last symposium organised by the Court in April 2006. The most significant decisions of the Court are available in the CODICES database of the Commission.

The Court cooperates with the Strasbourg Court as well. All judges of the Court have visited the European Court of Human Rights at different times. President Tülay Tuğcu delivered the opening address on the occasion of the new judicial year of the European Court of Human Rights on 20 January 2006. In line with this close cooperation, a group of Strasbourg Judges invited by the President visited the Court on 22-24 September 2006.

The President Tülay Tuğcu, while Delivering the Opening Address

On the occasion of the anniversaries of the establishment of the Constitutional Court, symposiums are organised on 25th of April every year. Judges of other Constitutional Courts are invited to this occasion. For example, in the last symposium held on the occasion of the 44th anniversary of the Constitutional Court on 25-26 April 2006, the constitutional problems of the Turkic Republic were discussed. Several judges from Azerbaijan, Bulgaria, Turkish Republic of Northern Cyprus, Kazakhstan, Kyrgyzstan and Tajikistan participated in the Symposium.

New Court Building

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