

“TURKISH JUDICIAL SYSTEM”

Generally speaking, the principle of separation of powers exist in Turkey. In line with, this principle, judicial power is exercised by the independent courts on behalf of Turkish nation.

- Independence of courts,
 - Security of tenure of judges and prosecutors,
 - Organization of courts,
 - Profession of judge and prosecutors,
 - Military courts and their organization,
 - Powers and duties of high courts
- are outlined in the constitution of Turkish Republic.

According to the article of 142 of the constitution, the organization, duties and jurisdiction of the courts, their functioning and trial procedures shall be regulated by law.

Basically, according to this article of the constitution and related laws, the court system in Turkey can be classified under five main titles. These are:

- 1- Constitutional Court
- 2- Court of Jurisdictional Disputes
- 3- Civil and Criminal Courts
- 4- Administrative Courts
- 5- Military Courts

1-CONSTITUTIONAL COURT

The Constitutional Court examines laws, decrees having the force of law and the Rules of Procedure of the Turkish Grand National Assembly the constitutionality; in terms of both form and substance of laws. Constitutional amendments are subject to constitutional review only in respect of form.

The Constitutional Court tries the President of Republic, ministers, the members of High Courts, Chief and deputy chief public prosecutors of these courts for offences relating to their functions under the capacity of Supreme Tribunal. Its decisions are final.

Constitutional court consists of eleven regular members and four substitute members. All of members are appointed by the President of the Republic.

2- COURT OF JURISDICTIONAL DISPUTES

The Court of Jurisdictional Disputes is empowered to deliver final judgements in disputes between civil, administrative and military judiciary branches concerning their jurisdiction and decisions.

Its president is appointed from among the members of Constitutional Court. 12 regular and 12 substitute members exist in addition to the president of the court in this court.

3- CIVIL AND CRIMINAL COURTS

Currently a two-tier system, namely courts of first instance and the Court of Cassation exists in Turkey. However, regional appeal courts will be introduced by 1 June 2007 to the judicial system as a third tier.

A-COURT OF CASSATION

The Court of Cassation is the last instance court for reviewing decisions and judgments given by civil and criminal courts and which are not referred by law to other judicial authority. It shall also be the first and last instance court for dealing with specific cases prescribed by law. (Article 154 of the Constitution)

Members of the Court of Cassation shall be appointed by the High Council of Judges and Public Prosecutors from among first class judges and public prosecutors, by secret ballot and by an absolute majority of the total number of members. (Article 154 of the Constitution)

The Court of Cassation reviews the decisions of first instance courts under 21 Civil and 11 Criminal Chambers. A president and sufficient number of members work together in each chamber. Rapporteur judges are given tasks of examining case files and preparing reports to be submitted to the general councils or chambers.

The Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the Court of Cassation shall be appointed by the President among five candidates who are nominated by the Grand General Council of the Court of Cassation.

B) REGIONAL COURTS OF APPEAL

The existing two-tier system will be replaced by three-tier system after the start of functioning of the regional courts of appeal. The starting date for functioning of the regional courts of appeal has been decided as 1 June 2007 since this system requires some preparations as regards physical and technical infrastructure, appointment of judges, public prosecutors and auxiliary personnel and their training on the new system.

Regional Courts of Appeal will have at least 3 civil and 2 criminal divisions. Each Regional Court of Appeal will have a Chief Public Prosecutor's Office.

They will have authority to examine files coming from the courts of first instances from the form and substance point of view. Regional Courts of Appeal may either approve the decision of the courts of first instance or reverse it. In the second case, it may either send the case file to the first instance court or retry the case on its own (Article 280 of the Criminal Procedure Code)

C) FIRST INSTANCE COURTS

Both for civil and criminal cases, the general courts of first instance are basic judicial authorities to settle disputes.

Establishment and competences of the public prosecution authorities in Turkey are also arranged by law. A public prosecutor's office is set up in each province or sub-province where a court organization exists. (Article 16 of the Law No. 5235)

a) Civil courts of First Instance

General Civil Courts are the basic trial courts with general and residual jurisdiction covering everything not specifically assigned to other tribunals.

Specialized courts have been established to deal with cases which require expertise and special knowledge. If such specialized courts does not exist in a province or sub-province, cases fall under the scope of specialized courts are dealt with by general civil courts.

b) Criminal courts of first instance

Crimes which have a sentence of below 2 years or only fine or a security measure are dealt with by Peace Criminal Courts.

They are composed of one judge. Public prosecutors do not attend these courts.

Crimes which are out of competences of peace criminal courts or heavy criminal courts, shall be handled by the General Criminal Courts of First Instance.

They are composed of one judge. Juveniles under the age of 18 are tried by specialized juvenile courts.

Heavy criminal courts are composed of 3 judges. In addition to crimes counted in the laws, those that require 10 years of imprisonment are tried by the heavy criminal courts. Juveniles under the age of 18 are tried for same crimes in specialized juvenile heavy criminal courts composed of 3 judges.

4-ADMINISTRATIVE COURTS

A-COUNCIL OF STATE

The Council of State is the last instance court for reviewing decisions and judgments given by administrative courts and which are not referred by law to other administrative courts.

It is also the first and last instance court for dealing with specific cases prescribed by law.

The Council of State;

- tries administrative cases,
- gives its opinion within two months on draft legislation, the conditions and the contracts under which concessions are granted concerning public services which are submitted by the Prime Minister and the Council of Ministers,
- examines draft regulations,
- settles administrative disputes and
- discharges other duties as prescribed by law.

Three-fourths of the members of the Council of State shall be appointed by the High Council of Judges and Public Prosecutors from among the first category administrative judges and public prosecutors.

Remaining quarter shall be appointed by the President of the Republic from among officials meeting the requirements designated by law.

B-REGIONAL ADMINISTRATIVE COURTS

It is composed of one presiding judge and two members. Appointments to these posts are made by the High Council for Judges and Prosecutors

Duties of this court :

- Examine all of the decisions delivered by one judge at the tax courts
- Examine all of the decisions delivered by one judge and specified decisions delivered by panel of judges at the administrative courts upon an appeal raised by one of the parties.

Decisions of the Regional Administrative Court in this procedure are definite.

Solve disputes on competence and jurisdiction among administrative and tax courts in its jurisdictional territory.

C-ADMINISTRATIVE AND TAX COURTS

Both administrative and tax courts are composed of one presiding judge and sufficient number of members.

Court panels are composed of one presiding judge and two members.

Administrative courts deal with cases which are brought against the administrative organs because of the implementation of the administrative legislation.

Tax courts deal with tax disputes

5- MILITARY COURTS

Military justice is exercised by military courts and disciplinary courts. These courts have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties. (Article 145 of the Constitution)

The organization of military judicial organs, their functions, matters relating to the status of the military judges, relations between military judges acting as military prosecutors and office of commander under which they serve, shall be regulated by law in accordance with the principles of the independence of courts, the security of tenure of judges and the requirements of military service. Besides, relations between military judges and the office of commander under which they serve regarding the requirements of military service apart from judicial functions, shall also be prescribed by law. (Article 145 of the Constitution)

Military Courts have jurisdiction over the cases related with;

- The military crimes committed by the military personnel,
- The crimes committed by the military personnel against military persons or at military locations, or related with the military services and duties.

Disciplinary Courts in charge of handling the cases of disciplinary offences committed by the military persons.(Law No.477, Art.No.7)

Disciplinary Courts are formed of three commissioned officers during the trial. In the trials of non-commissioned officers and the enlisted, one of the members is selected among the non-commissioned officers. (Law No.477, Art.No.2)