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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**TURKEY**

**LAW ON THE  
DRAFT AMENDMENTS  
TO THE LAW  
ON THE COURT OF CASSATION,  
TO THE LAW  
ON THE COUNCIL OF STATE  
AND TO SOME OTHER LAWS**

*[English version provided by the authorities]*

**DRAFT LAW ON AMENDING THE COUNCIL OF STATE LAW AND CERTAIN LAWS**

**ARTICLE 1-** The following paragraphs, to come after paragraph two, Article 9 of the Council of State Law dated 6/1/1982 and numbered 2575, have been added and other paragraphs have continued accordingly.

“3. Members of the Council of State shall be elected for a non-renewable term of twelve years.

4. Those, who are elected by the High Council of Judges and Prosecutors (HCJP) as the members of the Council of State and whose term of office has expired, shall be appointed by the Plenary of the HCJP to a position which is in conformity with their category and ranking in the administrative judiciary.

5. Those, who are elected by the President of the Republic as the members of the Council of State and who wish to be appointed to a position in the administrative judiciary, shall make a request to be appointed to a position in the administrative judiciary until one month prior to the end of their term. Those who make such request shall be appointed to a position which is in conformity with their category and ranking in the administrative judiciary. Those who do not make such request shall be communicated by the Presidency of the Council of State to the Office of the Prime Minister to be appointed to another position.

6. Those who are appointed pursuant to paragraph four and five shall continue to receive any kind of monthly salary, payment, salary increase, compensation as well as other financial and social rights accorded to the members of the Council of State. Connection with the Council of State shall cease to exist for the members at the end of their term of office, yet their personnel rights shall continue to be met by the Council of State until their appointments take place.”

**ARTICLE 2-** The term "four" as stipulated in paragraph two, Article 10 of the Law no 2575 has been replaced by "six".

**ARTICLE 3-** The term "fifteen" as stipulated in paragraph one, Article 13 of the Law no 2575 is replaced by "nine"; the term "two" shall be replaced by "one" and "seventeen" shall be replaced by "ten".

**ARTICLE 4-** The following paragraph, to come after paragraph two, Article 15 of the Law no 2575, has been added and the existing paragraph three has continued accordingly.

“3. In the elections to be made according to this law or other laws, when calculating the total number of members of the Plenary of the Council of State, the memberships falling vacant as a result of expiry of term of office, death, retirement or resignation shall not be taken into account.”

**ARTICLE 5-** The first sentence of paragraph one, Article 16 of the Law no 2575 has been replaced by the following and the term "fifteen" in paragraph three has been replaced by "nine" and the following sentence has been added to paragraph four of the same article.

“The Board of Administrative Affairs shall be composed of the president of the administrative division and two members elected from the administrative division by the Presidency Board and one member elected from the president and members of each judicial division at the beginning of each calendar year.”

“The quorum of meetings and deliberations shall be seven.”

**ARTICLE 6-** The term "twenty five" as stipulated in paragraph three, Article 17 of the Law no 2575 has been replaced by "fifteen" and the term "thirteen" has been replaced by "seven".

**ARTICLE 7-** The following sentence has been added to sup paragraph (a), paragraph one, Article 23 of the Law no 2575.

“The duty of the Council of State as the authority for appeal shall be limited to reviewing illegalities emerging in the form of non-implementation or wrong implementation of a rule.”

**ARTICLE 8-** The terms "Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth" as stipulated in paragraph one, Article 26 of the Law no 2575 have been replaced by "Ninth and Tenth".

**ARTICLE 9-** The terms "with the First and Seventeenth divisions" as stipulated in paragraph one, Article 41 of the Law no 2575 have been replaced by "First division and".

**ARTICLE 10-** The title of Article 42 of the Law no 2575 has been replaced by "Duties of the First Division" and the terms "First and Seventeenth divisions" as stipulated in paragraph one has been replaced by "First Division".

**ARTICLE 11-** Second paragraph of Article 52/A of the Law no 2575 which was annulled by the Constitutional Court has been rearranged in the following way.

“2. Decisions of the Presidency Board can be contested to the Board of Presidents by the relevant parties within seven days. The Board of Presidents can approve the decisions of the Presidency Board as they are or approve them after amendment. Decisions rendered upon objection are final and no other remedy can be applied to.”

**ARTICLE 12-** The term “31/12/2016” as stipulated in paragraph one, provisional Article 24 of the law no 2575 has been replaced by “31/12/2018” and the term "twenty" as stipulated in the sub-paragraph (a) of the same article has been replaced by "fourteen" and the term "fifteen" as stipulated in sub-paragraph (c) has been replaced by "eleven".

**ARTICLE 13-** The following sentence has been added to the Law no2575.

“PROVISIONAL ARTICLE 27- 1. The memberships of the members of the Council of State shall be terminated on the date of entry into force of this law. However, memberships of the President, Chief Public Prosecutor, Deputy President and Heads of Division shall continue as of the date of entry into force of this law.

2. Among those whose memberships are terminated as per paragraph one; the following authorities shall elect members of the Council of State within five days following the date of entry into force of this law by taking into account the cadres as stipulated by paragraph three of this article;

- a) The members elected by the HCJP shall be elected by the HCJP,
- b) The members elected by the President shall be elected by the President.

3. The cadre number of the Council of State staff is one hundred and sixteen as of the dated of entry into force of this law. Those whose membership continues according to the second sentence of paragraph one shall be taken into consideration in determining the cadre numbers.

4. The membership cadres exceeding the number of cadres as stipulated in paragraph three as of the date of entry into force of this law shall be deemed as cancelled without a need for any procedure.

5. Those falling under the scope of sub-paragraph (a) of paragraph two but who are not elected as members of the Council of State, shall be appointed by the Plenary of the HCJP to a position which is in conformity with their category and ranking in the administrative judiciary within ten days following the date of entry into force of this law.

6. Those falling under the scope of sub-paragraph (b) of paragraph two but who are not elected as members of the Council of State, and who make a request to be appointed to a position in the administrative judiciary within five days following the election made pursuant to paragraph two, shall be appointed by the Plenary of the HCJP to a position which is in conformity with their category and ranking in the administrative judiciary. Those who do not make such request shall be communicated to the Office of the Prime Minister to be appointed to another position.

7. Those who are appointed pursuant to paragraph five and six, shall continue to receive any kind of monthly salary, payment, salary increase, compensation as well as other financial and social rights accorded to the members of the Council of State. Personnel rights of those whose membership has expired shall continue to be met by the Council of State until their appointments take place shall continue to be met by the Council of State until the election or their appointment take place.

8. From among the members of the Council of State, those who are elected as members of the HCJP and whose membership to HCJP continues as of the date of entry into force of this law, may be reelected as members of the Council of State until three months before the expiry of their term, by the HCJP or the President of the Republic accordingly. Those who are reelected shall serve for twelve years following the expiry of their membership to the HCJP. For those who are not reelected, provisions of paragraph five and six shall apply accordingly following the expiry of their membership to the HCJP. However, for those to be appointed to a position in the administrative judiciary, sub paragraph (b) of paragraph three, Article 28 of the Law on the HCJP numbered 6087 and dated 11/12/2010. Those who are appointed pursuant to this Article shall continue to receive any kind of monthly salary, payment, salary increase, compensation as well as other financial and social rights accorded to the members of the Council of State.

9. The members whose membership continues as per the second sentence of paragraph one and those who are elected as per paragraph two, shall be serving for twelve years as of the date of entry into force of this law. The duties of these members carried out for the purpose of appointment or election shall continue until the expiry of their term. However, if the number of members actively serving in the division for administrative cases exceeds fourteen, the Presidency Board shall decide as to which members are to continue serving their duties.

10. The duties conducted by unelected members due to assignment or election shall end as per the date when this Law enters into force. Assignment or election for these duties is conducted within ten days following the completion of the elections that are held pursuant to second paragraph.

11. Pursuant to the second sentence of the first paragraph, terms of employment of the members whose membership continues and the terms of employment of the members who have been elected pursuant to second paragraph, previously as the member of Council of State, shall be taken into consideration in membership seniority.

12. Taking the work condition and the needs of the chambers into consideration, the Board of Presidency shall once again determine at which offices the members of the Council of

State will take charge within ten days following the completion of the elections which have been held pursuant to second paragraph.

13. Taking the work condition and the needs of the chambers into consideration, the Board of Presidency shall reduce the number of chambers to the level set forth in the article 13, within three years at the latest beginning from the date of the enforcement of the Law. However, these chambers shall continue their duties until they are closed by the Board of Presidency.

14. Taking the work condition and the needs into consideration, Board of Presidency shall once again determine the work division between the chambers, after each chamber closure procedure pursuant to the paragraph thirteen.

15. Taking the work condition and the needs of the chambers into consideration, the Board of Presidency shall determine at which offices the head of department, member and rapporteur judges charged in the closed chambers will take charge, within ten days following the publication of the decision regarding work division in the Official Gazette. Head of departments, who are not charged in the chambers, shall take office under the Presidency of the Council of State until the end of the presidency period. The vacant positions allocated for the head of departments of the officials whose term of presidency ends before the Presidency of the Council of State or the officials assigned to another chamber as chief, shall be converted to positions for members without any other procedure.

16. Case files shall be transferred to the concerning department in their current status by being attached to list without expecting any other decision, within ten days following the publication of the decision regarding work division in the Official Gazette.

17. One membership election shall be held for two vacant membership positions until the number of vacant positions for Council of State profession members drops to ninety. Membership positions, for which elections have not been held, shall be assumed to have been cancelled without needing any other procedure.”

**ARTICLE 14-** The statement prescribed in the seventh paragraph of the article 27 of the Administrative Procedure of Justice Act dated 6/1/1982 and numbered 2577: “during the judicial recess period, regarding the decisions of the tax and administrative courts to the nearest on duty court or to the on duty court in which the judge who gave the decision does not participate,” has been abrogated.

**ARTICLE 15-** The statement “administrative and tax courts” at the second sentence of the first paragraph of the article 61 of the Act numbered 2577 has been amended as “administrative judicial authorities at the places where there is only one administrative or tax court”, and its second paragraph has been amended as follows:

“2. During the recess period; an on duty court composed of sufficient number of judges appointed among the presidents and members of administrative and tax courts shall be established in places having more than one administrative judicial authority by the High Council of Judges and Public Prosecutors, upon the request of the president of the regional administrative court. Sufficient number of on duty courts shall be established with all presidents and members of the chamber assigned by the High Council of Judges and Public Prosecutors.”

**ARTICLE 16-** The statement “twenty three” has been amended as “twelve” in the article 5 of the Court of Cassation Law dated 4/2/1983 and numbered 2797.

**ARTICLE 17-** Coming after the first paragraph of the article 8 of the Law numbered 2797, the following paragraph has been added.

“In the elections to be held according to this Law and other laws, the positions being vacant due to reasons such as the end of the term of office, death, retirement or resignation shall not be taken into consideration in the calculation of total member number of the Grand General Assembly of the Court of Cassation.”

**ARTICLE 18-** Below mentioned paragraph has been added to the article 13 of the Law numbered 2797.

“The duty of the Court of Cassation as an authority of appeals, is limited to conducting the supervision of judicial discrepancies that arise in a manner of failure in applying a judicial rule or misapplication.”

**ARTICLE 19-** Coming after the first paragraph of the article 29 of the Law numbered 2797, the following paragraphs have been added.

“Members of the Court of Cassation shall be elected for twelve years. One person cannot be elected as the Member of the Court of Cassation for two times.

The officials, whose term of office ends, shall be assigned by the High Council of Judges and Public Prosecutors to a position appropriate for their rank and degree in civil jurisdiction.

The officials who have been assigned pursuant to third paragraph shall continue receiving all kind of monthly, allowance, raise and compensations and other financial and social rights provided for the members of the Court of Cassation. The members whose term of office ends shall be dismissed; however, their personal rights shall continue to be met by the Court of Cassation until their assignment.”

**ARTICLE 20-** The statement “ten” has been amended as “six” in the first paragraph of the article 30 of the Law numbered 2797.

**ARTICLE 21-** The statement “those who have served as member to the Court of Cassation for minimum five year” has been amended as “members of the Court of Cassation” in the first paragraph of the article 30/A of the Law numbered 2797.

**ARTICLE 22-** The statement “for fifty billion liras” has been amended as “for ten million Turkish Liras” in the first paragraph of the article 55 of the Law numbered 2797 and below mentioned paragraph has been added to the same article.

“The expenses for national and international symposium, seminar and other scientific meetings and the activities for physical or electronic books, magazines and all kind of publications, and the costs for all kind of periodicals and non-periodicals to be purchased for the library can be met by the circulating capital.”

**ARTICLE 23-** Third paragraph of the article 60 of the Law numbered 2797 has been amended as follows:

“Provided that the concerning civil chamber to which the file has been sent pursuant to the first paragraph, does not consider its office competent in terms of division of labor, following preliminary examination it shall conduct within a month, it shall send the file with its justification to the legal chamber it considers competent. Referral decision cannot be given after the end of one month period or regarding the file issued on the date of trial. Having received the file upon the referral decision, the legal chamber shall send it to Civil Law Work Division Examination

Board if it considers after two weeks of preliminary assessment period that it is not competent by further giving decision on requests regarding provisional legal protection measures if there is any. Referral decision cannot be given after the end of two weeks period. The decision ordered at the end of preliminary examination by the Board regarding the division of work is final.”

**ARTICLE 24-** Below mentioned article has been added to the Law numbered 2797.

“PROVISIONAL ARTICLE 15- Membership of the members of the Court of Cassation shall end on the date when this law enters into force. However, Court of Cassation memberships of the officials having office as per this date as the First President of the Court of Cassation, Chief Public Prosecutor, First Deputy President, Deputy Chief Public Prosecutor and Head of Department, shall continue.

Election for the membership to the Court of Cassation shall be held among the members of the Court of Cassation whose memberships expire pursuant to the first paragraph, by the High Council of Judges and Public Prosecutors, by considering the number of vacant positions set forth in third paragraph, within five days beginning from the enforcement of this Law.

As per the enforcement date of this Law, number of vacant positions for the profession members in the Court of Cassation (First President of the Court of Cassation, Chief Public Prosecutor, First Deputy President, Deputy Chief Public Prosecutor and Head of Departments and members) is three hundred. According to the second sentence of the first paragraph, the officials whose membership continues shall be taken into consideration in the number of positions.

As per the enforcement date of this Law, the membership positions which exceed the number of positions indicated in the third paragraph shall be assumed to have been cancelled.

Those who have not been elected as member to the Court of Cassation shall be assigned by the High Council of Judges and Public Prosecutors to a position appropriate for their rank and degree within ten days following the enforcement of this Law.

The officials who have been assigned pursuant to fifth paragraph shall continue receiving all kind of monthly, allowance, raise and compensations and other financial and social rights provided for the members of the Court of Cassation. Personal rights of the members whose membership expires shall continue to be met by the Court of Cassation until the execution of their election or assignment.

Those who are designated from among the members of the Court of Cassation to the High Council of Judges and Public Prosecutors and who continue to perform duties as a member of the High Council of Judges and Public Prosecutors as of the date of the entry into force of this Law might be re-elected by the High Council of Judges and Public Prosecutors to serve as members of the Court of Cassation three months prior to the expiration of their duties as such. Those who are re-elected hold office for twelve years upon the termination of their membership of the High Council of Judges and Public Prosecutors. Those who are not re-elected are assigned by the Plenary Session of the High Council of Judges and Public Prosecutors to appropriate posts in accordance with their degrees and categories following the termination of their membership of the High Council of Judges and Public Prosecutors. However, Article 28/3(b) of the Law dated 11/12/2000 and numbered 6087 on the High Council of Judges and Public Prosecutors applies with regard to the persons in question. Those who are assigned under this Article remain entitled to all salaries, allowances, salary rises, indemnities as well as other financial and social rights afforded to the members of the Court of Cassation.

The members who continue to perform duties in accordance with subparagraph two of paragraph one and the members elected under paragraph two serve for twelve years starting from the date of entry into force of this Law. Duties performed by these members as a result of their assignment or election continue until the end of their term of office.

Duties performed by non-elected members as a result of their assignment or election, on

the other hand, end as of the date of the entry into force of this Law. New members are either assigned or elected for these duties within ten days from the date of election to be held under paragraph two.

The periods during which the members who continue to perform duties under subparagraph two of paragraph one and the members who have been elected under paragraph two previously worked in their capacity as members of the Court of Cassation are taken into account in the assessment of their seniority.

The Council of the First Presidency of the Court of Cassation, within ten days from the election to be held under paragraph two and having regard to the work state and requirements of the chambers, re-determines the chambers in which the members of the Court of Cassation will perform duties.

The Council of the First Presidency of the Court of Cassation, having regard to the work state and the requirements, decreases the number of the chambers to the number of chambers prescribed in Article 5 within three years at the latest from the date of the entry into force of this Law. Nevertheless, these chambers continue to function until their closure by the Council of the First Presidency of the Court of Cassation.

Any time it closes a chamber under paragraph twelve, the Council of the First Presidency of the Court of Cassation, having regard to the work state and the requirements, re-determines the division of labour among the chambers. The decision taken in this regard shall be immediately published in the Official Gazette and put into effect within ten days from the date of its publication.

The Council of the First Presidency of the Court of Cassation, within ten days from the date on which the decision related to the division of labour has been published in the Official Gazette and having regard to the work state and requirements of the chambers, determines the chambers in which the presidents, members and rapporteur judges of the closed chambers shall serve. Those presidents of chamber who are not assigned to posts in other chambers shall serve under the First Presidency of the Court of Cassation until the end of their term of office as presidents. The cadres held by those whose terms of office as presidents under the First Presidency of the Court of Cassation have ended or those who have been designated to another chamber as a president shall be converted into cadres of membership without any necessity for another procedure.

Within ten days from the publication of the decision on division of labour in the Official Gazette, case files are added into the list of cases and are transferred as such to relevant chambers without any necessity for another decision to be taken.

Until the number of the professional cadres under the Court of Cassation (First President, Chief Public Prosecutor, Vice First Presidents, Vice Chief Public Prosecutor, presidents of chamber and members) declines to two hundred, a member is elected for every two posts which have become vacant. Posts for which no election is held are considered to have been cancelled without any necessity for another procedure.

**ARTICLE 25-** The term “in the written exam” as stipulated in sub-paragraph one of Article 13 of the Law dated 24/02/1983 and numbered 2802 on Judges and Prosecutors has been amended as “as a result of the written exams and interviews held”.

**ARTICLE 26-** The term “assessment forms for legal remedies” has been introduced in subparagraph (c) of paragraph one of Article 21 of the Law no. 2802, which shall be placed after the term “the works which undergo”.

**ARTICLE 27-** Repealed Article 28 of the Law no. 2802 as well as its title have been reformulated as follows.

“Assessment Forms for Legal Remedies:

ARTICLE 28: Following the review of legal remedies by the Chambers and Plenary



Sessions of the Court of Cassation and the Council of State, assessment forms for legal remedies are issued in respect of:

a) The members and the president of the Chamber, the Chief Public Prosecutor and prosecutors who have participated in the review by the regional court of appeal;

b) The judges who, at the first instance, participate in the hearings held, the decision or the judgment rendered at the first instance, who issue the decision or the judgment, or who takes part in the investigation phase;

c) The public prosecutors who, at the first instance, take part in the investigation phase, file the bill of indictment, participate in the hearing, give opinion or resort to appeal.

Assessment forms for legal remedies are drawn up in a manner to include ratings as very good, good, average and poor with regard being had to the points such as the nature of the investigation; the lawfulness and the precision of the bill of indictment, the decision or the judgment; conclusion of the investigation, the prosecution or the trial within a reasonable time; bringing unnecessary expenses; making necessary preparations before the hearings or causing delays with making no preparation; communication of the files to the relevant chambers or units in such a manner as to preclude the files from being returned for lack of information; lawful assignment of experts; accurate and timely conduct of the investigation, prosecution or the proceedings in accordance with the procedural provisions; achievement in ensuring the comprehension and the referral of the subject matters of the cases and in the drawing up, the analysis and the conclusion of the opinions, the reasoned decisions and the letters of notification. Where no favourable or unfavourable opinion has been reached, the assessment form shall be issued with this point being explained.

The sole fact that the judgment has been upheld or quashed does not necessitate a favourable or unfavourable assessment to be made. Furthermore, an unfavourable assessment cannot be made where a dissenting opinion is expressed in respect of the decision being examined.

On the basis of the criteria stated in the afore-mentioned paragraphs, assessment forms for legal remedies are drawn up following the review of remedies by the chambers of the regional courts of appeal in civil jurisdiction or the regional administrative courts. In the event of any contradiction between the assessment forms issued following the review by the regional courts of appeal and the appeal courts, the assessment form issued by the appellate authorities is referred to.

Assessment forms are issued by the president of the review committee. Those in respect of whom assessment forms have been prepared may request, coupled with relevant justification, re-examination of the forms at stake within one month from the date on which they have been uploaded to the National Judiciary Informatics System (UYAP). A decision is delivered, by a majority vote, on the request for re-examination by the president and the members of the review committee within one month from the date of application.

The procedures and principles on the implementation of the aforementioned paragraphs are governed under the bylaws to be put into effect by the High Council of Judges and Prosecutors with the opinions of the Court of Cassation and the Council of State being taken into consideration.

The reasonable time frames prescribed for the conclusion of the investigation, prosecution or the trial are established by the Ministry of Justice with regard being had to the opinion of the High Council of Judges and Prosecutors.”

**ARTICLE 28-** The term “assessment forms for legal remedies” has been introduced in paragraph one of Article 33 of the Law no. 2802, which shall be placed after the term “the works which undergo”.

**ARTICLE 29** – The following paragraphs shall be inserted after paragraph seven of Article 28 of the Law on the Justice Academy of Turkey No. 4954, dated 23.07.2003 and paragraphs eight and nine have been amended to read as follows.

“The written examination shall be held by the Board for Written Exams, composed of four permanent and two associated members, elected by the Executive Board from among the lecturers of the Academy.

The exams shall be assessed over 100-point scale. Candidates scoring 70 and over are considered successful in the exams and are allowed to the written exams. Those who fail the written exams are given another right to enter the exams within two months as of the first exams.

The oral exams shall be held by the Board for Oral Exams, composed of two permanent and one associated member, elected by the Supervisory Board from among the lecturers of the Academy and presided by the Chair.

The oral exams shall assess the candidate for the following:

- a) Knowledge level on training subjects, legislation and case law knowledge,
- b) Professional proficiency, ability to comprehend, solve and express legal matters,
- c) Self-confidence, representation skills and professional conduct.

The oral exam point is the arithmetical point average, given by the members by assessing the requirements, listed in parag.11, graded over 100 point scale.

To be considered successful at the end of the training, the sum of the 60% of the written exam and 40% of the oral exam must equal to minimum 70.

Accepting into profession and appointments of the successful candidates shall be made according to the provisions of the Law on Judges and Prosecutors, dated 24.02.1983, number 2802. Candidates, who have failed the exams held at the end of the training, may be appointed to a post in general executive services by the Ministry in its Central and Rural unit, provided that they file an application for this, otherwise the candidatures of those candidates shall be terminated.

Other matters, related to the written and oral exams are provided for in the regulations.

**ARTICLE 30** – The following article has been added to Law No.4954.

“PROVISIONAL ARTICLE 14 – The provisions of Article 28, amended herewith, shall be applicable for candidate judges and prosecutors, who as of the date of entry of this Law into force have not been yet accepted into the profession.

Candidate- judges and prosecutors, who have completed an internship of one year, shall be entitled for being appointed as judges and prosecutors for a term of five years as of the date of enactment of this Law, by the proposal of the Ministry and the decision of the High Council of Judges and Prosecutors, provided that they are accepted into the profession by the High Council of Judges and Prosecutors. Matters, concerning the enforcement of this paragraph, are regulated in the regulations, enacted by the Ministry, upon the approval of the Academy.”

**ARTICLE 31** – The following paragraph has been added to Law on Establishment, Tasks and Jurisdiction of Courts of Appeal and First Instance Civil and Criminal Courts (Law No.5235, dated 26.09.2004).

“Cases, filed for crimes, defined in the Criminal Code of Turkey, Book Two, Part Four, Chapters Four, Five, Six and Seven (excluding Articles 318, 319, 324, 325 and 332) and crimes, falling under Law No.3713, shall be under the jurisdiction of the court for serious crimes of the place of commission of the crime.”

**ARTICLE 32** – Law No.5235, Article 21, repealed paragraph 4, has been reformulated as follows.

“Investigation, initiated for crimes, defined in the Criminal Code of Turkey, Book Two, Part Four, Chapters Four, Five, Six and Seven (excluding Articles 318, 319, 324, 325 and 332) and crimes, falling under Law No.3713, shall be conducted by the Public Prosecutor’s Office of the city (region) where the crime has been committed. The Regional Prosecutor’s Office may require from the Prosecutor’s Office of the place of crime a partial or whole investigation. In cases that may not tolerate postponement, the Prosecutor’s Office of the place of crime shall collect the mandatory evidence and whenever necessary, shall request the Court of Peace of the place to collect the required evidence.”

**ARTICLE 33** – The following articles have been added to Law No. 5235.

“PROVISIONAL ARTICLE 6 – “Decision of lack of jurisdiction may not be rendered in cases, filed before the date of entering of this Law into force, for crimes, defined in the Criminal Code of Turkey, Book Two, Part Four, Chapters Four, Five, Six and Seven (excluding Articles 318, 319, 324, 325 and 332) and crimes, falling under Law No.3713, of 12.04.1991, pursuant to the provision, added by this Law to Article 15; these courts shall continue the proceedings until a final decision is reached. Similarly, decision of lack of jurisdiction may not be rendered in investigations initiated before the entry into force of this Law, for crimes falling under this paragraph, pursuant to Article 21, added hereto.”

**ARTICLE 34** – Code of Criminal Procedure No.5271, dated 04.12.2004, Article 133, paragraph 1, was added the phrase “... or authorisations to manage partnership shares or securities”, following the word “powers”. The following sub-paragraphs were added after par. 4 (a)(1), changing the places of the other sub-paragraphs accordingly. Sub-paragraph 8 was amended as sub-paragraphs 10 as follows, the following sub-paragraph was added to the same paragraph and the following paragraph was added to the same paragraph.

“2. Abuse of trust (Article 155, par.2),

3. Aggravated fraud (Article 158),”

“10. Crimes against Constitutional Order and the Functioning of the Order (Articles 309, 311, 312, 313, 314, 315, 316)”

“f) Crimes, defined in Article 110 of the Capital Market Law No. 6362, dated 06.12.2012.

(5) Actions for compensation of trustees, appointed pursuant to this article, arising out of actions and transactions related to their posts, shall be filed pursuant to Articles 144 and 144, against the State. The State shall revoke within a year the compensation it has effected on a trustee, who has been proven to had been abusing his authority by violating the requirements of his position.

**ARTICLE 35** – Law No.5320, of 23.05.2005 on the Enforcement and Application Procedure of the Criminal Procedure Code, Article 8, par. 1, the phrase “appealed against”, has been amended as “granted/rendered” and the following statement was added after the first statement of the same paragraph.

“Case files of these decisions may not be sent to regional courts of justice.”

**ARTICLE 36** – The phrase “...against which an appeal was filed”, taking place in Law on Criminal Procedure No.6100, of 12.01.2011, Provisional Article 3, paragraph 2, was amended as “granted/rendered” and the following statement has been added to the same paragraph.

“Case files of these decisions may not be sent to regional courts of justice.”

**ARTICLE 37** – This Law shall enter into force as of the day of its promulgation.

**ARTICLE 38** – The provisions of this Law shall be regulated by the Council of Ministers.

## **GENERAL GROUNDS**

In accordance with the principle of "rule of law" which is one of the fundamental characteristics of the Republic, the judicial system should not only be fair but also effective, efficient and fast. One of the most important functions of the judiciary is to ensure that the right to a fair trial and the right to be tried within a reasonable time which is an indivisible part of the former are guaranteed in accordance with article 36 of the Constitution and the provisions of the European Convention on Human Rights.

There are higher courts, in the countries where regional courts of appeal are not available, which review the judgments rendered by first instance courts with regard to the compliance with the legislation and the law. All of the judgments which may be appealed in our country are still brought before the higher courts and these courts review the judgments not only with regard to the compliance with the legislation and the law, but also with regard to the evaluation of the evidence and the compliance of this to the concrete incident. This situation causes the higher courts to experience an extraordinary work load and accordingly, not to function as the court for case law as much as expected.

In the countries where both regional courts of appeal and appeal courts are available, the regional courts of appeal review the judgments rendered by the first instance courts with regard to the compliance with the law, legislation and concrete incident and most of the judgments are finalized before the regional courts of appeal. In parallel with this, higher courts which are the authorities of appeal review only concerning the law and legislation as the actual court for case law.

The Law of 26/09/2004 and No. 5235 On Establishment, Duties And Capacities Of First Instance Courts And Regional Courts Of Appeal In Civil Jurisdiction was drafted in order to ensure that the cases are concluded in a short time, the review of concrete incident is carried out by the authorities of regional courts of appeal and the higher courts perform their principal duty and act as the "court for case law" and therefore the legal substructure was established for the regional courts of appeal. By the Law of 18/06/2014 and No. 6545, the Law No. 2576 on Establishment and Duties of Regional Administrative Courts, Administrative Courts and Tax Courts and Code No. 2577 of Administrative Procedure were amended and the regional administrative courts are restructured as the regional courts of appeal.

Even though the legal basis for the regional courts of appeal is established by the mentioned laws, the regional courts of appeal have not been able to be carried into effect because of reasons such as the insufficient number of judges, prosecutors and personnel and failure to complete the substructure works and the current system have been applied. However, during the lapsed time, the lacks in the substructure have been completed and the assignments of the members of the judiciary and the auxiliary personnel have been conducted. As is published on the Official Gazette dated 07/11/2015 and numbered 29525, the regional courts of appeals in civil jurisdiction and the regional administrative courts which will conduct the appeal review will function on 20/07/2016. It is estimated that about ninety percent of the judgments rendered by civil jurisdiction and about eighty percent of the judgments rendered by administrative jurisdiction will be finalized by the regional courts of appeal. As a natural result of this, the workload of the Court of Cassation and the Council of State will decrease in the same proportion. Therefore, the need to redefine the numbers of the chambers and the members of the Court of Cassation and the Council of State have arisen.

The last paragraph of Article 154 of the Constitution governs that "The organization and the functioning of the Court of Cassation, the qualifications and procedures of the election of its president, deputy presidents, heads of departments, members, Chief Public Prosecutor and Deputy Chief Public Prosecutor shall be regulated by law in accordance with the principles of the independence of courts and the security of tenure of judges" and also the last paragraph of Article 155 states that " The organization and functioning of the Council of State, the qualifications and procedures of election of its President, Chief Public Prosecutor, deputy presidents, heads of departments, and members, shall be regulated by law in accordance with the principles of specific nature of the administrative jurisdiction, and of the independence of the courts and the security of tenure of judges." Accordingly, the Constitution provides for that the numbers of the chambers and the members and duration of their duty of the Court of Cassation and the Council of State shall be governed by the Law. Therefore, it is not contrary to the Constitution to increase or decrease the numbers of the chambers and the members of the higher courts or to define the duration of duty of the members of the higher courts. Thus, new chambers at the Court of Cassation and the Council of State were established and the numbers of the members of these courts were increased by the Law No. 6110 in 2011 and the Law No. 6572 in 2014 because the regional courts of appeal in civil jurisdiction and regional administrative courts could not be carried into effect and the process of appeal extended the reasonable time owing to the increased workload of the higher courts.

As a result of the functioning of the regional court of appeal in civil jurisdiction and the regional administrative courts which will conduct the appeal review, it is considered that the workload will decrease significantly and the numbers of the chambers and the members of the Court of Cassation and the Council of State are decreased by the Bill.

One of the most important regulations under the Bill is that the members of the Court of Cassation and the Council of State are elected for twelve years, as the members of the Constitutional Court, and they cannot be elected as a member of the higher court when their duration of duties is over. Article 139 of the Constitution titled "Security of tenure of judges and public prosecutors" and Article 140 of the Constitution titled "The profession of Judges and public prosecutors" provide for some constitutional guarantees for the judges and prosecutors to perform their duties without being affected. These guarantees are that judges and public prosecutors shall perform their duties until the age of sixty five, shall not be dismissed, or unless they request, shall not be retired before the age stipulated in the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a position.

While articles 154 and 155 of the Constitution governs the membership of the Court of Cassation and the Council of State, they do not provide for any guarantee for these members, nor any regulation concerning their duration of duty; these articles govern that the qualifications required to be a member and the procedure of election shall be regulated by the Law in accordance with principles on the independency of the courts and tenure of judges and prosecutors. According to this, the tenure for the members of the Court of Cassation and the Council of State is governed under the Constitution in the same way as the tenure for all the judges and prosecutors. As is seen, the main tenure for the members of the higher courts is the tenure for the judges and prosecutors and it is sufficient to keep the bond with the profession of judges and prosecutors for providing this tenure. Therefore, the facts that the membership of the Court of Cassation and the Council of State is restricted with twelve years and the current

members cannot be re-elected and their memberships end do not violate the tenure for judges and prosecutors in any aspect.

Change of the members of the higher courts will enable the case laws to be evaluated in new perspective and to be improved constantly and to fulfil the needs of the society more efficiently; the members to improve and develop themselves; the members of the higher courts to convey their knowledge and experiences to the regional court of appeal and the first instance courts.

On the other hand, if the members of the higher courts of which the numbers of the members have decreased significantly continue serving as the members until their retirements without any restrictions on the duration of duty, it will decrease, significantly, the opportunities of the judges and prosecutors discharging their duties at the first instance courts and the regional courts of appeal to be member of the higher courts. By this amendment, it is aimed to keep the expectations of the judges and prosecutors who fulfil the requirements to be a member alive and to increase their motivation and to ensure their improvement more.

By the Bill, the number of the chamber of the Council of State which is currently seventeen is decreased to ten and the number of the members which is hundred and ninety five is decreased to ninety and the number of the chamber of the Court of Cassation which is currently forty six is decreased to twenty four and the number of the members which is five hundred and sixteen is decreased to two hundred. However, taking into account the workload before the Court of Cassation and the Council of State, a gradual transition is provided for decreasing the numbers of the chambers and the members to the defined number under the Bill. Therefore, as of the date of the entry into force of the Bill, the number of the members of the Court of Cassation is defined as three hundred and the number of the members of the Council of State is defined as hundred and sixteen. The Council of the First Presidency in the Court of Cassation and Council of Presidency in the Council of State will gradually decrease the numbers of the chambers to the provided number in three years. The numbers of the members will be decreased gradually to the defined numbers under the Law by electing one member for two memberships vacated.

One of the important regulations under the Bill is that the provision of verbal examination to the candidate judges and prosecutors in addition to the written examination at the end of the training before the profession. Human resources takes an important place for the functioning of the judiciary in a reliable way and judges and prosecutors constitute the basis for this resources. Therefore, it is required to train the judges and prosecutors through the best way available for effective, just and trustworthy judiciary which is an inseparable part of the rule of law. The prevocational training is required to train the judges and prosecutors who have the knowledge and information required for the performance of the profession, whose sense of impartiality and professional honour and sense of justice have developed, who comply with the ethical principles of the profession, who have acquired the competence of research and review and understood the fundamental law principles and who can interpret and resettle the legal disputes. In order to carry out a more reliable evaluation concerning the knowledge on the training, information on legislation and case law, professional competence, the competence of perception, resettlement and expression on the legal issues, self confidence, the ability to represent and the compliance of the behaviours with the profession, the verbal examination is provided in addition to the written examination.

Another regulation under the Bill is the assessment form for legal remedies which is to be issued concerning judges and prosecutors participating in the trial process. The chambers

and the general councils of the Council of State will issue assessment form for legal remedies concerning the judges and prosecutors performing duty at the first instance courts and the regional courts of appeal at the end of the remedy reviews. Moreover it is provided for that the authorities of the regional courts of appeal will issue assessment form for legal remedies concerning the judges and prosecutors performing duty at the first instance courts under the same principles and procedures.