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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT LAW
ON THE ESTABLISHMENT AND RULES OF PROCEDURE
OF THE CONSTITUTIONAL COURT
OF TURKEY

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Part One
General Provisions

CHAPTER ONE
Purpose, Scope and Definitions

Purpose and Scope

ARTICLE 1- (1) The purpose and scope of this present Law is to regulate principles relating to the structure, duties and rules of procedure of the Constitutional Court; election and disciplinary and personal matters of the President, deputy presidents and members and qualifications, appointment, duties and responsibilities and disciplinary and personal matters of the rapporteurs, assistant rapporteurs and staff of the Court.

Definitions

ARTICLE 2- (1) For the purposes of this present Law;

- a) *President* is the President of the Constitutional Court,
- b) *Presidential Office* is the Presidential Office of the Constitutional Court,
- c) *Deputy President* refers to members elected by the General Assembly for a term of four years in order to preside over the Chambers and act as proxy to the President,
- ç) *Chamber* is the board which consists of seven members and is presided over by a deputy president, which convenes with four members under the chair of the related deputy president and which is authorized to render decisions on individual applications,
- d) *General Assembly* is the board consisting of seventeen members,
- e) *Regulation* is the Regulation of the Constitutional Court,
- f) *Seniority* refers to longer span of service since election to membership of the Constitutional Court or to being older than other members elected at the same date,
- g) *Commission* refers to any of the boards set up in order to conduct the examination of admissibility of individual applications,
- ğ) *The Court* is the Constitutional Court,
- h) *Member* refers to all members including the President and deputy presidents,
- i) *Supreme Court* is the General Assembly of the Court tasked with trial of persons set forth in paragraphs six and seven of Article 148 of the Constitution due to offenses related to their duties.

CHAPTER TWO
Duties, Powers and Court Budget

Duties and powers of the Court

ARTICLE 3- (1) Duties and powers of the Court:

- a) To deal with annulment cases filed on the grounds that laws, decree-laws and the Regulation on the Grand National Assembly of Turkey or certain articles or provisions thereof are against

the Constitution as to the form and merits and that amendments to the Constitution contradict with the Constitution in terms of the form

b) To conclude contested matters referred by courts to the Constitutional Court pursuant to Article 152 of the Constitution.

c) To conclude individual applications filed pursuant to Article 148 of the Constitution.

ç) To try, in its capacity as the Supreme Court, the President of the Republic, Speaker of the Grand National Assembly of Turkey, members of the Council of Ministers; the presidents, members and chief prosecutors of the Constitutional Court, Court of Cassation, Council of State, Military Court of Cassation, Military Supreme Administrative Court, Deputy Chief Public Prosecutors, the president and members of the High Council for Judges and Prosecutors and the Court of Accounts, the Chief of General Staff, Chiefs of Land, Naval and Air and Gendarmerie General Commander due to offenses relating to their duties.

d) To conclude cases concerning dissolution and deprivation of political parties of state aid, warning applications and demands for determination of the status of dissolution.

e) To review or have reviewed lawfulness of property acquisitions by the political parties and their revenues and expenditures.

f) In case the Grand National Assembly of Turkey resolves to remove parliamentary immunity or revoke membership of the parliamentary deputies or remove the immunity of the non-deputy ministers, to conclude annulment demands of the concerned or other deputies alleging repugnance to the provisions of the Constitution, law or the Regulation on the Grand National Assembly of Turkey.

g) To elect the President and deputy presidents of the Constitutional Court and the President and deputy president of the Court of Disputes amongst members of the Court.

ğ) To carry out other duties set forth in the Constitution.

Court budget

ARTICLE 4- (1) The Court is administered by its own budget allocated from the general budget.

(2) In determination of the budget, no restrictions which may hamper the Court from carrying out its duties independently and completely can be imposed.

(3) The Secretary General is the spending authority of the Court budget.

(4) The Secretary General attends the budget deliberations at the Grand National Assembly of Turkey.

Regulation

ARTICLE 5- (1) Within the mainframe of this present Law, matters relating to the following are regulated by a Regulation to be adopted by the General Assembly:

a) The internal order, functioning, organization and working procedures of the Court, books and records to be kept, document flow including the electronic media, document archiving, Court library, the Office of the Secretary General and its administrative organization and duties and responsibilities of administrative staff,

b) Keeping the records of the President, members, rapporteurs and assistant rapporteurs; disciplinary matters, leaves and health status, type of judicial attire they will use and time and place of using such attire, and

c) Procedures and principles of working and proceedings, and management and recording of deliberations and hearings

(2) The Regulation is promulgated in the Official Gazette.

PART TWO
Membership of the Constitutional Court

CHAPTER ONE
Qualifications, Election and Appointment of Members

Composition of the Court and eligibility of members

ARTICLE 6- (1) The Court consists of seventeen members.

(2) Persons who hold one of the qualifications listed in the following paragraphs may become eligible for Court membership:

a) Presidents or members of the Court of Cassation, Council of State, Military Court of Cassation, Military Supreme Administrative Court or the Court of Accounts,

b) Persons who have been in active duty as rapporteurs at the Court for a minimum of five years,

c) Persons who have completed forty-five years of age, who hold a degree in higher education, who are eligible to be admitted to the profession of a judge and who fulfill the following requirements;

1) Persons who are conferred the title of a professor or assistant professor in the fields of law, economics or political sciences of higher education institutions,

2) Persons who have worked as a private lawyer effectively for at least twenty years,

3) President or members of the Council of Higher Education, rectors or deans of higher education institutions, undersecretaries, deputy undersecretaries or provincial governors as regards the member to be elected amongst senior managers who have effectively worked in the public sector for at least twenty years,

4) First class judges and prosecutors who have a work experience of at least twenty years including the probationary period.

Election of members

ARTICLE 7- (1) The Grand National Assembly of Turkey elects, by secret ballot, two members from among three candidates nominated for each vacancy by the General Assembly of the Court of Accounts amongst their presidents and members and one member from among three candidates to be nominated by the Chairmen of Bar Associations amongst private lawyers. During the election in the Grand National Assembly of Turkey, an absolute two-thirds majority of the total number of its members is sought at the first round voting for each membership and an absolute majority is needed at the second round. In case an absolute majority cannot be reached at the second round, a third round of voting is conducted for the two candidates with the highest number of votes and the candidate with the highest vote as a result of the third round is elected as a member. In case of equal division of votes among candidates at the second and third rounds, voting is repeated until the tie is broken.

(2) The President of the Republic elects three members from among three candidates nominated for each vacancy by the General Assembly of the Court of Cassation amongst its presidents and members, two members from among three candidates nominated for each vacancy by the General Assembly of the Council of State amongst its presidents and members, one member from among three candidates nominated for each vacancy by the General Assembly of the Military Court of Cassation amongst its presidents and members, one member from among three candidates nominated for each vacancy by the General Assembly of the Military Supreme Administrative Court amongst its presidents and members, three members from candidates (at least two of these candidates must be from the field of law) nominated for each vacancy by the Council of Higher Education amongst lecturers who work in the fields of

law, economics and political sciences of higher education institutions and who are not members of the Council itself, four members from among senior managers, private lawyers, first class judges and prosecutors and rapporteurs of the Constitutional Court who have worked as a rapporteur for at least five years.

(3) During the elections held by the general assemblies of the Court of Cassation, Council of State, Military Court of Cassation, Military Supreme Administrative Court and Court of Accounts; the Higher Education Council and chairmen of the bar associations, the three candidates with highest votes are deemed nominated. Elections pursuant to this paragraph are held at a single round and every member may vote for three candidates for each vacancy. In case of equal division of votes among candidates, voting is repeated until the tie is broken.

Notice to elected members and refusal to accept the duty

ARTICLE 8- (1) The Presidential Office of the Republic and the Grand National Assembly of Turkey notify the Court in written of the members the President and the Assembly have elected. The Presidential Office of the Constitutional Court notifies electees in written.

(2) Names and family names of electees are promulgated in the Official Gazette.

(3) In case an electee refuses to accept the duty, the President of the Constitutional Court notifies the matter in written to the Presidential Office of the Republic in case the member was elected by the President, to the Grand National Assembly of Turkey in case the member was elected by the Assembly or to the relevant institution or general assembly which elected the member.

(4) A new member is elected in accordance with the procedure laid down in Article 7 herein within one month after notification. In case the nominating assemblies are in recess, this period starts after ending of the recess.

Taking oath

ARTICLE 9- (1) Before the members take up duty, they take the following oath in the presence of President of the Republic, Speaker of the Grand National Assembly of Turkey, Prime Minister, presidents and chief prosecutors of high judicial bodies, the Minister of Justice, other senior officials in the State protocol and retired members who are invited by the President and before the President and members of the Constitutional Court:

“I do solemnly swear by my honor and dignity that I will defend and observe the Constitution of the Republic of Turkey, perform my duty honestly, impartially and respecting the truth and abide by the understanding of the law in accordance with the fundamental principles upon which the Constitution is based to the best of my conscience and without being prejudiced by any influence and concern whatsoever.”

Tenure of membership and tenure security

ARTICLE 10- (1) Court members are elected for twelve years. Members cannot be re-elected for a second term.

(2) The President and the members cannot be removed from office and they cannot be retired unless they so request themselves or before sixty-five years of age.

(3) The term of office of the President and members ends only in cases laid down in the Constitution and in this present Law.

Vacation and termination of membership

ARTICLE 11- (1) The President notifies in written the bodies authorized to elect and nominate members two months before the term of office of a member expires or forthwith in case the reason of vacation is other than the end of tenure and a new election is held within two months after the date of notification by the respective body in lieu of the vacated membership in accordance with the procedure set forth in Article 7 herein.

(2) The President and the members may apply in written for retirement or withdraw regardless of the term of office or approval. Their term of office ends after twelve after the date they were elected. In any event, they are retired after completing sixty-five years of age.

(3) The term of office of the President and a member terminates *ipso facto* in case of a final conviction for an offense which requires dismissal from the profession of a judge or prosecutor pursuant to the Law on Judges and Prosecutors dated 24/2/1983 and numbered 2802; it is terminated by decision of an absolute majority of the total number of the Court members in case it is ascertained with the report of a health committee that the President or the member is unable to continue to function due to health reasons. In case a withdrawal punishment is pronounced against a member pursuant to Article 19 herein, the term of office terminates when the member withdraws or is deemed resigned.

(4) The President and members who complete term of office but are not entitled to retirement are paid two-thirds of their latest net salary out of the Court budget as compensation until they meet the minimum age and tenure conditions for retirement as set forth in the Law on Social Insurance and Universal Health Insurance dated 31/5/2006 and numbered 5510 on condition that they do not engage in any income generating activity. Changes in salaries are taken into account in the estimation of such payment. Such members pay pension premiums for themselves pursuant to repealed Article 76 of the Law on the Pension Fund of the Republic of Turkey dated 8/6/1949 and numbered 5434. No compensation payment is due to those who fail to fulfill this obligation.

(5) All pension rights of the members who are elected from among the candidates nominated by the Military Court of Cassation and Military Supreme Administrative Court and who are on military payroll are reserved.

Election of the President and deputy presidents of the Court and the President and Deputy President of the Court of Disputes

ARTICLE 12- (1) The President and deputy presidents of the Court and the President and Deputy President of the Court of Disputes are elected by secret ballot from among the members by an absolute majority of the total number of members.

(2) Those whose terms of office expire may be re-elected. Elections are concluded within two months before the expiry of term of office.

(3) Other matters relating to elections are regulated by the Regulation.

Duties of the President

ARTICLE 13- (1) Duties and powers of the President:

a) To determine the agenda of the General Assembly and, when necessary, the agenda of the Chambers,

b) To preside over the General Assembly and the Supreme Court; to assign, when s/he deems so necessary, one of the deputy presidents to discharge these duties on her/his behalf.

c) To appoint and remove the Secretary General and deputies of the Secretary General.

ç) To represent the Court.

d) To ratify Court by-laws.

e) To audit conformity of expenditures with the Court budget.

f) To ensure coordination across Chambers and among members.

g) To assign members from another Chamber in case a Chamber fails to convene due to a factual or legal impossibility.

ğ) To appoint Court staff.

h) To ensure efficient and smooth operation of the Court and to take relevant measures to that effect.

i) To inform and deliver statements to the press and the public about the Court as s/he deems necessary or to assign a deputy president, member or a rapporteur for this purpose.

i) To carry out other duties set forth in the Constitution.

Duties of deputy presidents

ARTICLE 14- (1) The duties and powers of the President are discharged by the senior deputy president in case the presidential post is vacant or by the deputy president designated by the President in case the latter is on leave of excuse or leave of absence. The most senior member presides over the Court in the absence of deputy presidents.

(2) Duties and powers of deputy presidents;

a) To preside over Chambers and, when deemed necessary by the President, the General Assembly or the Supreme Court,

b) To determine the agendas of the Chambers they chair,

c) To make sure that members work in turns in commissions to be set up from among the members of the Chamber,

ç) To carry out other duties set forth in the Constitution and assigned by the President.

Obligations of the members

ARTICLE 15- (1) The members;

a) must act in concordance with the dignity and honor of the profession of a judge; they may not engage in any activity which does not agree with their functions,

b) attend sessions unless they have a valid excuse not to,

c) may not express their opinions and views concerning matters deliberated at the Court,

ç) preserve confidentiality of sessions and ballots,

d) may not cast abstention votes at ballots,

e) may not assume any official or private duties other than their functions; they must obtain permission from the President in order to attend to invitations for national and international congresses, conferences and similar scientific meetings.

(2) On condition that they not assume any duty at executive and inspection boards, membership to sportive, social and cultural associations cannot be considered as a duty.

CHAPTER TWO

Provisions on Disciplinary Proceedings, Offenses and Sanctions

Examination and investigation of the President and members

ARTICLE 16- (1) The authorization to launch an investigation for the offenses allegedly committed by the President or members due to or during performance of their duties, personal offenses and disciplinary offenses is granted by the General Assembly. In *flagrante delicto* cases which fall into the jurisdiction of the heavy criminal court, however, the investigation is conducted in accordance with general provisions.

(2) The President does not process reports of offense and complaints which lack signature, address or real name or those which do not pertain to specific events or causes and those which do not include evidence and basis for allegations.

(3) When necessary, the President may assign one of the members with the task of preliminary examination before s/he informs this situation to the General Assembly. After the assigned member completes the examination on whether an investigation is necessary, s/he reports the situation to the President.

(4) The matter is included in the agenda and discussed at the General Assembly. The investigated member may not take part in the discussion. In case the General Assembly decides that institution of an investigation is not necessary, the decision is notified to the related member and the parties that have filed the report of offense and complaint.

(5) If a decision to institute an investigation is rendered, the General Assembly elects three persons amongst members to set up an Investigation Committee. The Investigation Committee is chaired by the senior member. The Investigation Committee is vested with all the powers conferred upon the Public Prosecutor by the Criminal Procedure Code dated 4/12/2004 and numbered 5271. The proceedings requested by the Committee concerning the investigation are performed immediately by competent judicial bodies.

(6) Principles relating to institution of preliminary examinations, election of members of the Investigation Committee, conducting of investigations and rendering other necessary decisions are regulated by the Regulation.

(7) In case the aforementioned manners and behaviors pertain to the President, proceedings which are supposed to be carried out by the President are conducted by the senior deputy president.

Judicial investigation and prosecution

ARTICLE 17- (1) With the exception of *flagrante delicto* cases relating to personal offenses under the competence of a high criminal court, no measure of protection decision may be pronounced against the President and members due to alleged offenses due to or during performance of duty and alleged personal offenses.

(2) In *flagrante delicto* cases which fall into the jurisdiction of the heavy criminal court, the investigation is conducted in accordance with general provisions. If an indictment is prepared, prosecution is conducted by the General Penal Board of the Court of Cassation.

(3) In case the Investigation Committee requests measures of protection provided by the Criminal Procedure Code numbered 5271 and other laws in case of alleged offenses due to or during the performance of duty and personal offenses save *flagrante delicto* cases relating to personal offenses under the competence of a high criminal court, the General Assembly renders a decision to that effect.

(4) After completing the investigation, the Investigation Committee decides that there are no grounds for prosecution if it does not deem filing of public charges necessary. If the Committee deems filing of public charges necessary, it prepares an indictment and refers the file to the Court for offenses relating to duties to the Constitution Court in order for the latter to adjudicate in its capacity as the Supreme Court, or to the Presidential Office to be submitted to the General Penal Board of the Court of Cassation in case of personal offenses. Decisions rendered by the Investigation Committee are notified to the suspect and, if available, to the complainant.

(5) Members serving in the Investigation Committee may not assume any function in the Supreme Court proceedings on the file they have investigated. However, if the General Assembly cannot convene due to a factual or legal impossibility, members of the Investigation Committee starting with the most junior members are involved in the General Assembly meetings.

Disciplinary investigation proceedings

ARTICLE 18- (1) A disciplinary investigation is initiated in accordance with the rules laid down in Article 16 herein against the President or members due to manners and behaviors

which are not incompatible with the dignity and honor of the profession of a judge. The General Assembly decides whether or not to institute a disciplinary investigation based on available information and evidence and nature of the alleged manner and behavior.

(2) Criminal investigations and prosecutions are not an impediment for separately initiating and executing disciplinary proceedings. Disciplinary investigations cannot be initiated in case one year has lapsed after the acts calling for a disciplinary investigation have been found out. No disciplinary punishment may be pronounced in case five years have lapsed after the acts calling for a disciplinary sanction. In case an act requiring a disciplinary punishment is also an offense for which a longer period of prescription is provided by the law and if a criminal investigation or prosecution is instituted, the prescription period and not the time-limit set forth in this paragraph shall apply. In cases where the General Assembly decides to wait for the result of the prosecution, the power to punish is barred by prescription one year after the decision of the prosecuting court has become final.

(3) In case the General Assembly decides to initiate a disciplinary investigation, the Investigation Committee collects information and conclusive evidence relevant to the matter, hears necessary persons under oath, declares the attributed manner and behavior and invites the concerned party to present defense within a set period of time no less than fifteen days. The concerned party is authorized to examine the investigation documentation from the moment s/he is requested to present defense.

(4) Public administrations, public officials, other real persons and legal persons including banks are amenable to respond to the questions raised and demands made by the Investigation Committee.

(5) After the examination, the Investigation Committee develops a report which includes the information and evidence it has obtained and its considerations about whether a disciplinary punishment is necessary in the light of such information and evidence, and submits the report and appendices to the Presidential Office to be presented to the General Assembly.

(6) The President notifies the result of the investigation in written to the concerned party and invites the concerned party to present oral or written defense before the General Assembly within a set period of time no less than five days.

(7) Depending on the result of the disciplinary investigation, the General Assembly decides to extend the investigation if it deems so necessary, to revoke the file if it establishes that the attributed manner and behavior is not substantiated or renders a decision on a disciplinary punishment consistent with the act if it deems the attributed manner or behavior has occurred.

(8) The investigated members of the members of the Investigation Committee may not take part in these proceedings and meetings of the General Assembly. However, if the General Assembly cannot convene due to a factual or legal impossibility, members of the Investigation Committee starting with the most junior members are involved in the General Assembly meetings.

Disciplinary punishments and execution

ARTICLE 19- (1) In case the President and the members are engaged in official or private duties other than their main functions or if it is determined that their manners and behaviors are in contrast with their oath or the dignity and honor of membership and lead to interruption of service, a warning, reprimand or invitation to withdraw is pronounced depending on the nature of the act.

(2) The decision of invitation to withdraw is rendered by a two-thirds majority of the General Assembly.

(3) The concerned party may request re-examination of the decision of disciplinary punishment of the General Assembly within ten days after date of notification. The decision as a result of re-examination of the General Assembly is final. The General Assembly decision is notified to the concerned party and executed by the President.

(4) After a decision of withdrawal is rendered, in case the concerned party fails to withdraw from membership within one month after the date of notification, s/he is deemed resigned and on leave within the said period.

PART THREE **Organization**

CHAPTER ONE **Court Organization**

Organization

ARTICLE 20- (1) The organization of the Constitutional Court consists of the Presidential Office, General Assembly, Office of the Secretary General and administrative units.

General Assembly

ARTICLE 21- (1) The General Assembly consists of seventeen members of the Court. The General Assembly convenes under the Chair of the President or a deputy president to be designated by the President.

(2) Duties of the General Assembly:

- a) To deal with annulment and objection cases and cases which it will proceed in its capacity as the Supreme Court,
- b) To conduct financial audits on political parties and conclude cases and applications,
- c) To adopt or amend the Regulation,
- ç) To elect the President and deputy presidents as well as the President and the Deputy President of the Court of Disputes,
- d) To divide work among Chambers; in case the workload of a Chamber increases within the year to an extent that the Chamber is unable to cope with in the normal course of operation, to convene at the beginning of the calendar year and allocate part of such workload to another Chamber,
- e) To resolve disputes arising from division of workload among Chambers definitively; to assign the other Chamber if a Chamber is unable to deal with a task in its competence due to a factual or legal impossibility.
- f) To decide on whether to institute disciplinary and criminal investigations against members, examination and prosecution measures and, when necessary, on disciplinary punishments to be pronounced or termination of membership,
- g) To examine objections.

Chambers and Commissions

ARTICLE 22- (1) The Court consists of two Chambers each presided by a deputy president and each with seven members in order to resolve individual applications. Each Chamber convenes with four members under the chair of a deputy president.

(2) The President, upon consulting the deputy presidents, determines the Chamber each member will work at considering the institution they come from and their specialty.

(3) The composition and division of work of the Chambers and commissions are regulated by the Regulation.

CHAPTER TWO

Office of the Secretary General, Rapporteurs and Assistant Rapporteurs

Appointment and duties of the Secretary General and deputies of the secretary general

ARTICLE 23- (1) An office of the Secretary General attached to the Presidential Office is established. Working principles of the units attached to the Office of the Secretary General are regulated by the By-Law.

(2) The Secretary General is appointed by the President from among the rapporteurs. The decision of appointment is promulgated in the Official Gazette. The deputy secretary general designated by the Secretary General will act as proxy when the latter is absent from duty.

(3) Under the supervision and oversight of the President, the Secretary General has the following duties and powers;

- a) Recording and management of applications,
- b) Carrying out administrative tasks relating to the meetings of the General Assembly and Chambers,
- c) Ensuring automation and archival of decisions and reports,
- ç) Carrying out Court correspondence,
- d) Following up and informing the General Assembly of the execution of decisions of the Court,
- e) Spending of budget and briefing the President on expenditures,
- f) Carrying out institutional, scientific, administrative, financial and technical tasks of the Court,
- g) Arranging protocol matters,
- ğ) Management and administration of staff,
- h) Carrying out other tasks assigned by the President in accordance with the provisions of the Law, Regulation and the By-Law.

(4) The President appoints three secretary general deputies from among rapporteurs. Duties of and division of labor among the secretary general deputies are laid down by the By-Law.

Rapporteurs

ARTICLE 24- (1) Rapporteurs in sufficient number are assigned or appointed in order to assist judicial and administrative tasks of the Court.

(2) Rapporteur candidates must hold one of the qualifications specified below:

- a) Successful experience of at least five years as a judicial or administrative judge or prosecutor or auditor, chief auditor or expert auditor of the Court of Accounts,
- b) Associate professor, assistant professor or doctoral degree as a research fellow at higher education institutions in the field of law, economics or political sciences,
- c) Successful professional experience as an assistant rapporteur for at least five years excluding the probationary period.

(3) Candidates with at least (C) degree at the Foreign Language Examination for Public Servants and with a postgraduate degree are preferable for assignment or appointment as a rapporteur.

(4) Rapporteurs are attached to the President administratively and are entitled to judicial immunity in the discharge of their duties.

Assignment and personal rights of rapporteurs and disciplinary matters

ARTICLE 25- (1) Candidates submit their wish to work as a rapporteur in written to the President.

(2) In case the President assents, candidates are assigned as rapporteurs by authorized bodies of their respective institutions.

(3) Unless otherwise provided in this present Law, the provisions pertaining to their professions are applicable to the personal matters of assigned rapporteurs and the term they serve as rapporteurs at the Court will be deemed served in their profession. Written information by the President is taken as a basis for their promotion and advancement.

(4) Advancement period of rapporteurs assigned to the Court is two years.

(5) Salaries and other financial benefits of rapporteurs including those who are assigned are paid out of the Court budget.

(6) Procedures concerning the legal leave rights and health matters of assigned rapporteurs are carried out by the Presidential Office and notified to their respective institutions in order to be registered in their personal records.

(7) Rapporteurs assigned pursuant to sub-paragraphs (a) and (b) of Article 24(2) are subject to the assignment procedure when they resign from duty. Their grade and seniority, term of office at the Court and their demands are taken into consideration when they are reappointed in accordance with the laws they are subject to after resignation from duty.

(8) Rapporteurs assigned pursuant to sub-paragraphs (a) and (b) of Article 24(2) are appointed as Court rapporteurs in case they request so and if the President deems appropriate. Rapporteurs so appointed are discharged from their respective institutions.

(9) The retirement rights and securities of persons appointed as Court rapporteurs are subject to the provisions pertaining to first class judges and prosecutors and second and third class judges and prosecutors categorized as first class of their own seniority, class and grade. As regards additional indicators, the prerequisite to "holding eligibility qualifications for membership to the Court of Cassation and Council of State" for judges and prosecutors categorized as first class is applicable to rapporteurs as the prerequisite to "holding qualifications for classification as first class".

(10) Relevant provisions of the Law numbered 2802 are applicable in case no provision is laid down in this present Law pertaining to the salaries, benefits; financial, social and retirement rights and other rights of rapporteurs and investigation and prosecution proceedings relating to their judicial offenses.

(11) In case rapporteurs assigned pursuant to sub-paragraphs (a) and (b) of Article 24(2) commit offenses pertaining to or during performance of their duties, personal offenses and disciplinary offenses, their respective institutions, upon notification by the President, institute proceedings in accordance with the provisions of the legislation they are subject to.

Duties of rapporteurs

ARTICLE 26- (1) Rapporteurs prepare the reports of preliminary examination and examination on the merits of the files assigned to them and attend meetings, they also discharge duties relevant to individual applications as provided in the Law and Regulation.

(2) The President may assign rapporteurs other duties such as hearing witnesses or experts and similar duties as necessary.

(3) The President may assign rapporteurs in commissions.

(4) On condition that they obtain permission from the President, rapporteurs may deliver lectures, courses and conferences in the Turkish Justice Academy and similar institutions and agencies.

(5) They carry out other duties set forth in the Law, Regulation, By-Law or duties assigned by the President.

Assistant rapporteurs

ARTICLE 27- (1) Assistant rapporteurs in sufficient numbers are appointed in order to assist with judicial and administrative activities of the Court.

(2) Candidates with a higher education degree of at least four years in law, political sciences, economics, financial and business administration or graduates of equivalent education institutions abroad or those who, after graduating from a law faculty abroad, complete missing courses for compatibility with the curricula of the Turkish law faculties and successfully pass examinations of such courses are entitled to take the admission examination for assistant rapporteurs. Persons who win the exam are appointed as candidate assistant rapporteurs by the President. Only candidates who have completed or postponed military service or are exempted from military service, who are below thirty years of age in case they have completed higher and post-graduate education and below for thirty-five years of age in case they have completed doctoral education as of the last day of the month of January in which the examination is organized and who hold the general qualifications laid down in Article 48 of the Civil Servants Law numbered 657 may take the admission examination.

(3) The admission examination consists of a written examination and an interview.

(4) The interview assesses and scores each of the following separately;

- a) Ability to comprehend and summarize a topic and expression and reasoning skills,
- b) Merit, ability to represent and suitability of behaviors and reactions with the professions,
- c) Self-confidence, ability to persuade and credibility,
- ç) General skills and general culture,
- d) Openness to scientific and technological developments.

Each item above is scored over twenty points for every candidate and the scores are recorded. No other recording system is used for the purpose of the interview.

(5) Assistant rapporteurs are subject to the General Administrative Services class of the Law numbered 657 and not to the class and grades of rapporteurs. They are subject to the provisions of the Law numbered 657 which do not contrast with this present Law.

(6) For eligibility to be appointed as rapporteurs, assistant rapporteurs must effectively work as assistant rapporteurs for at least five years with the exception of the probationary period, the occupational thesis they prepare must be accepted and their personal records must be positive. Candidates who hold these qualifications may, depending on cadre availability, be appointed as rapporteurs with a Presidential approval upon recommendation by the Secretary General.

(7) Procedures and principles of the admission examination for assistant rapporteur candidates, the type and terms of probationary training, procedures and principles of the examination at the end of the probationary period and the type and scope of the theses the assistant rapporteurs will prepare are regulated by the By-Law.

Higher Disciplinary Board

ARTICLE 28- (1) The disciplinary matters of the staff employed at the Court excluding the President, deputy presidents, members and those specified in sub-paragraphs of Article 24(2) herein are addressed by the Higher Disciplinary Committee.

(2) The Board consists of three rapporteurs recommended by the Secretary General and approved by the President. The senior rapporteur chairs the Board.

(3) Provisions of the Law numbered 657 which do not contrast with this present Law are applicable to disciplinary acts and punishments. The working procedures and principles of the Board and other matters are regulated by the By-Law.

CHAPTER THREE Service Units

Service Units

ARTICLE 29- (1) Service units of the Court:

- a) Court Writing Office
- b) Directorate of Administrative and Financial Affairs
- c) Directorate of Personnel
- ç) Directorate of Press and Public Relations
- d) Directorate of Foreign Relations
- e) Directorate of Strategic Development
- f) Directorate of Technical Services
- g) Directorate of Private Secretarial Services
- ğ) Medical Office
- h) Office of the Press Advisor.

(2) The President may set up new units as necessary.

(3) Duties and responsibilities of service units are specified by the By-Law.

Court staff and appointment

ARTICLE 30- (1) The Court employs legal, administrative and financial staff in sufficient numbers in the discharge of its duties. Such staff members are subject to the provisions of the Law numbered 657 which do not contrast with this present Law.

(2) The President appoints staff upon recommendation of the Secretary General.

Temporary assignment of staff of public institutions and agencies

ARTICLE 31- (1) If needed by the Court in the discharge of its duties as laid down in the Constitution and this present Law judges, prosecutors, auditors of the Court of Accounts and other public servants and other public employees may be temporarily assigned to the Court and their salaries, benefits, compensations of all types and other acquired financial and social aids and benefits are paid by their respective institutions. The duration of such a temporary assignment may not exceed one year. However, this duration may be extended in 6-month periods if deemed necessary.

(2) The request for temporary assignment by the President is executed by respective institutions and agencies within ten days. The duration of temporary assignment served is taken into account for the promotion and retirement of the concerned parties and their personal rights are sustained.

(3) The President notifies respective institutions and agencies in written of the status of temporary staff so that this serves as a basis in the promotion and advancement of such staff.

(4) Staff on temporary assignment are paid, in addition to net salaries they are entitled to in their own institutions, the amounts arising from the difference between their salaries and the salaries their peers working at the Court: within this scope, the salaries of judges, prosecutors and professionals from the Court of Auditors on temporary assignment are comparable with the salaries of the Court rapporteurs and the salaries of public servants and other public employees are comparable to the salaries of their peers working at the Court. The payments due under this paragraph are subject to provisions relating to salaries and exempt from all taxes save the stamp tax and they cannot be taken into account in the calculation of any other payment.

Contracted staff

ARTICLE 32- (1) The Presidential Office of the Court may contract press advisors and translators indicating their cadres and independent from the provisions of the Law numbered 657 and other laws relating to contracting staff.

(2) The contract procedures and principles of staff to be contracted and gross contract price payable to them which should not exceed the gross average salary of an assistant rapporteur are determined by the Presidential Office.

Service procurement

ARTICLE 33- (1) When needed for the Court, the President is authorized to commission local and international experts through service procurement for works which renders professional expertise and specialty mandatory and essential the development, execution, implementation and operability of the projects necessary for such work.

(2) Service procurements pursuant to this Article are not subject to the monetary limits set forth in the Public Procurement Law dated 4/1/2002 and numbered 4734 and are considered to fall into the scope of sub-paragraph (b) of Article 22(1) of the said Law.

Appointment of administrative staff to the Justice Ministry cadres

ARTICLE 34- (1) With the exception of those appointed in accordance with Article 27(1) herein, staff members subject to the Law numbered 657 who work in the service units of the Court may, upon recommendation of the Secretary General and approval by the President, be appointed by the Ministry of Justice to the central and local cadres of the Ministry in observance of their acquired rights.

PART FOUR

EXAMINATION AND TRIAL PROCEDURES

CHAPTER ONE Annulment Cases

Parties authorized to lodge an annulment case

ARTICLE 35- (1) The following parties are authorized to lodge an annulment case directly on the grounds that the laws, decree-laws, the Regulation on the Grand National Assembly of Turkey or certain articles or provisions therein are in contrast with the Constitution on the merits:

- a) President of the Republic,
- b) Parliamentary groups of the ruling and the main opposition party,

c) At least one-fifth of the total number of members of the Grand National Assembly of Turkey,

(2) In case the government is composed of a coalition of political parties, the right to lodge a case is used by the party with the highest number of members.

(3) The President of the Republic or at least one-fifth of the total number of members of the Grand National Assembly of Turkey are authorized to lodge an annulment case on the grounds that the amendments to the Constitution, laws, decree-laws and the Regulation on the Grand National Assembly of Turkey are in contrast with the Constitution as to the form.

Annulment cases as to the form and limits

ARTICLE 36- (1) Formal review is limited to the examination of whether motion majority and voting majority were observed and the condition of non-expeditious deliberations was fulfilled in Constitutional amendments, whether the last voting for the laws and the Regulation on the Grand National Assembly of Turkey observed the foreseen majority, whether the decree-laws were enacted within periods provided in the empowering law and whether they carry the signatures of the President of the Republic and members of the Council of Ministers.

(2) Annulment cases against Constitutional amendments may be filed solely on the grounds of formal inconsistency.

(3) Priority is given to the review and resolving of annulment cases lodged on the basis of formal unsuitability.

(4) Courts may not file a claim of unconstitutionality on the basis of formal unsuitability.

Term of lodging an annulment case

ARTICLE 37- (1) The term for authorized parties to lodge an annulment case on the merits is no longer than sixty days starting from the date when the laws, decree-laws or the Regulation on the Grand National Assembly of Turkey are promulgated in the Official Gazette; the term for authorized bodies to lodge an annulment case as to the form is no longer than ten days starting from the date when the Constitutional amendments, laws, decree-laws or the Regulation on the Grand National Assembly of Turkey are promulgated in the Official Gazette.

(2) In case the date of expiry is a weekend or official holiday, the said deadline is deemed to be the next working day following the holiday.

Representation in the institution of annulment cases and principles to follow

ARTICLE 38- (1) An annulment case on the grounds of unconstitutionality of the laws, decree-laws and the Regulation on the Grand National Assembly of Turkey or certain articles or provisions therein may be lodged with a decision of a majority of total number of members of the general assemblies of the political party groups specified in sub-paragraph (b) of Article 35(1) herein.

(2) In case the case is lodged by members of the Grand National Assembly of Turkey as laid down in sub-paragraph (c) of Article 35(1), the names of two of the members must be identified in the petition so that the Court can communicate notifications to them.

(3) An annulment case is deemed lodged when the petition for annulment on the grounds of unconstitutionality of Constitutional amendments, laws, decree-laws, the Regulation on the Grand National Assembly of Turkey or certain articles or provisions therein is referred to the Court Writing Office by the Office of the Secretary General. The Office of the Secretary General provides the petitioner with a document indicating that the application is registered.

(4) If the case is lodged by at least one-fifth of the total number of members of the Grand National Assembly of Turkey, the petition which includes names and family names,

registration numbers, electoral regions and signatures of petitioners must be submitted to the Office of the Secretary General. The Speaker of the Grand National Assembly or an official s/he assigns must attest by stamp and signature the authenticity of each deputy name and signature in each page of the petition bearing signatures.

(5) If the case is lodged by political party groups, the petition together with the attested copies of the decision of the general assembly group as well as attested copies of documents indicating the signature holders are group chairpersons or deputy chairpersons must be submitted to the Office of the Secretary General.

(6) Articles of the Constitution which the provisions are claimed to contrast the Constitution and justified reason of allegations must be explained in the annulment petition.

Completion of missing items and delivering opinion

ARTICLE 39- (1) The Court examines, within ten days after the date of registration, whether the case petition fulfils conditions laid down in Article 39 herein. Missing items in the petition, if any, are determined by a decision and notified to the concerned for completion.

(2) If the case is lodged by one-fifth of the total number of deputies of the Grand National Assembly of Turkey, the notification for completion of missing items will be communicated to deputies who are designated in the petition as contact persons for notification. If no deputy is designated as contact person in the petition, such notification is made to two deputies on top of the list in the petition.

(3) In case the missing items are not completed within the period specified in paragraph one, the General Assembly deems the case not lodged. This decision is notified to the concerned.

(4) If, in annulment cases, the Court holds a decision to review the merits, the petition and its appendices are sent to the Office of the Speaker of the Grand National Assembly of Turkey and Office of the President. These offices may submit their written opinions to the Court for consideration.

CHAPTER TWO Objection Procedure

Contention for unconstitutionality by courts

ARTICLE 40- (1) If a court dealing with a case holds that provisions of a law or decree-law applicable to the case are unconstitutional or determines that the contention of unconstitutionality claimed by one of the parties is meritorious, it appends the following to the list of documentation and sends to the Constitutional Court:

- a) The original of the justified application decision indicating the Articles of the Constitution which the provisions are alleged to contrast with,
- b) An attested copy of the minutes of the session the decision was rendered at,
- c) Attested copies of the petition, indictment or litigation documents and related sections of the file.

(2) If the court addressing the case holds that the contention of unconstitutionality claimed by the parties is not meritorious, the claim is dismissed by indicating the reasons. This, together with the main judgment, may be appealed.

(3) The Office of the Secretary General refers the incoming documentation to the private secretarial office and notifies the situation the claimant court in written.

(4) Procedural examination of the application is conducted within ten days after the documentation is registered. Applications of objection which are explicitly devoid of basis and which are not in compliance with the procedure are dismissed with a reasoned decision.

(5) The Constitutional Court renders and pronounces a decision within five months after receiving the case in complete form. In case a decision is not rendered within the said term, the related court concludes the case in accordance with the provisions in force. However, the trial court must comply with the decision of the Constitutional Court if the decision of the latter is rendered before the decision on the merits becomes final.

Circumstances impeding filing of an application

ARTICLE 41- (1) In case the trial court deals with the merits and renders a decision of dismissal, the provisions of the same law may not be contested on the grounds of unconstitutionality unless ten years have passed after the promulgation of the decision of dismissal in the Official Gazette.

(2) The application of objection is deemed as a prejudicial issue in case there are other case files before the trial court to which the rule subject to the objection shall apply.

CHAPTER THREE

Common Provisions Relation to Annulment and Objection Cases

Regulations which may not be contested on the grounds of unconstitutionality

ARTICLE 42- (1) No annulment case may be lodged against international treaties set into effect in compliance with the procedure and, in cases of state of emergency, marshal law and war, against decree-laws issued pursuant to Articles 121 and 122 of the Constitution on the merits or as to the form; courts may not file objection on the grounds of unconstitutionality of such treaties and decree-laws.

(2) Moreover, provisions of the following laws in effect as 7 November 1982 may not be contested on the grounds of unconstitutionality:

- a) The Law on Unification of Education dated 3 March 1340 and numbered 430;
- b) The Law on Wearing of the Hat numbered 25 November 1925 and numbered 671,
- c) The Law on Closure of Religious Lodges, Convents and Tombs and Prohibition and Abolition of Tomb Keepers and Certain Titles dated 30 November 1925 and numbered 677,
- ç) The provision of conclusion of marriage contracts before marriage registrars adopted by the Turkish Civil Code dated 17 February 1926 and numbered 743 and the provision of Article 100 of the same Law,
- d) The Law on the Adoption of International Numbers dated 20 May 1928 and numbered 1288,
- e) The Law on Adoption and Application of the Turkish Alphabet dated 1 November 1928 and numbered 1353,
- f) The Law on the Abolition of Titles and Appeals such as *Efendi, Bey, Pasha* dated 26 November 1934 and dated 2590,
- g) The Law on the Prohibition of Wearing Certain Garments dated 3 December 1934 and numbered 2596.

Examination on the basis of the file and non-binding nature of the statement of reasons

ARTICLE 43- (1) Examination is conducted on the basis the file in annulment cases and applications for objection. If it seems so necessary, the Court may summon the concerned parties or those with information on the subject in order to present oral explanations.

(2) An official assigned by the President of the Republic delivers oral explanations on behalf of the President of the Republic.

(3) The Court is not obligated to rely on alleged reasons for unconstitutionality of the laws, decree-laws and the Regulation on the Grand National Assembly of Turkey. The Court may render a decision of unconstitutionality based on other reasons on condition that it observes the initial claim.

(4) In case the application is filed against certain articles or provisions of a law, decree-law or the Regulation on the Grand National Assembly of Turkey and if the annulment of such articles or provisions will lead to the unenforceability of certain other or all of the provisions the law, decree-law or the Regulation on the Grand National Assembly of Turkey, the Court may, by indicating the matter in its statement of reasons, render a decision to annul such other or all of the provisions of the law, decree-law or the Regulation on the Grand National Assembly of Turkey which are no more enforceable.

Deliberation of files on the agenda

ARTICLE 44- (1) Deliberations of the Court are held in camera and may be recorded with technical means the President assents. Principles relating to the storage and use of such records are regulated by the By-Law.

(2) The President or, in his/her absence, the deputy president assigned by the President manages and ensures the order of deliberations. The members take the floor in order of request.

CHAPTER FOUR Individual Application

Right of individual application

ARTICLE 45- (1) Every person may apply to the Constitutional Court alleging that the public power has violated any one of his/her fundamental rights and freedoms secured under the Constitution which falls into the scope of the European Convention on Human Rights and supplementary protocols thereto, which Turkey is a party to.

(2) All administrative or judicial remedies provided by the law relating to the proceeding, act or negligence which is alleged to have caused violation must be exhausted prior to individual application.

(3) Direct individual applications may not be petitioned against legislative proceedings and regulatory administrative proceedings; proceedings excluded from judicial review by the Constitution pursuant to Constitutional Court judgments are not subject to individual application.

Persons entitled to individual application

ARTICLE 46- (1) Individual applications may only filed by those whose actual and personal rights are directly affected by the alleged proceeding, act or negligence which has caused the violation.

(2) Public legal persons may not petition individual applications. Private-law legal persons may apply solely on the grounds that their rights concerning legal personality have been violated.

(3) Foreigners may not petition individual applications concerning rights exclusive to Turkish citizens.

Individual application procedure

ARTICLE 47- (1) Individual applications may be filed directly or through courts or representations abroad in accordance with the terms and conditions laid down in this present Law and the Regulation. Procedures and principles for admissibility of applications through other modes shall be regulated by the Regulation.

(2) A fee is payable for individual applications.

(3) The petition of application must include identification and address information of the applicant and, if available, his/her representative (if available); the Constitutional provisions upon which the right and freedom allegedly violated due to a proceeding, act or negligence are based, reasons for violation, stages of exhaustion of available legal remedies, date of notice of the resulting final proceeding and damages sustained, if any. In addition, the substantiating evidence, the original or a copy of the proceeding or decisions alleged to have caused violation and the receipt of deposited fee must be appended to the petition of application.

(4) In the event that the applicant is represented by an attorney, the power of attorney must also be presented.

(5) The application must be filed within thirty days after the final proceeding which exhausts legal remedies is notified to the applicant or, in case no legal remedy is provided for, within thirty days after the violation is found out. Those who fail to apply within due time as a consequence of a warranted excuse may apply within fifteen days after the excuse ceases to exist and must present evidence proving the excuse. The court examines validity of the excuse first and then either admits or dismisses the claim.

(6) In case any document is missing in the application file, the Court writing office grants up to fifteen days of time to the applicant or his/her attorney in order to present such missing document; the applicant or his/her attorney is also informed that the application will be dismissed in case such missing document is not presented within the set period of time without a warranted excuse.

Admissibility and examination of individual applications

ARTICLE 48- (1) The requirements laid down in Articles 45 to 47 must be fulfilled for admissibility of individual applications.

(2) The Court may dismiss applications which do not bear significance for the enforcement and interpretation of the Constitution or for the determination of the scope and limits of fundamental rights, applications which do not require meritorious decisions and which do not involve significant damage sustained by the applicant.

(3) Examination for admissibility is conducted by the commissions. In case the commission decides by unanimous vote that an application does not fulfill requirements for admissibility, the application is declared non-admissible. Application files for which unanimous vote cannot be reached are referred to the Chambers.

(4) Non-admission decisions are final and are notified to concerned parties.

(5) Other matters relating to the procedures and principles of admissibility conditions and examination are regulated by the Regulation.

Examination on the merits

ARTICLE 49- (1) Examination of admissible individual applications on the merits is conducted by the Chambers. The President takes necessary measures to balance distribution of workload evenly among Chambers.

- (2) In case an individual application is declared admissible, a copy of the application is notified to the Ministry of Justice. Information, documents and evidence deemed necessary are requested from the concerned parties.
- (3) When examining individual applications, the Commissions and Chambers may carry out all types of examinations and investigations or decide for an expert witness examination or on-site inspection.
- (4) Although it carries out the examination based on the file, the Court may decide to hold a hearing if it deems necessary to do so.
- (5) The Chambers may, *ex officio* or upon request of the applicant, decide for measures they deem necessary for the protection of the applicant's fundamental rights. In case a decision of measures is rendered, the decision on the merits must be promulgated in the Official Gazette within six months at the latest. Otherwise, the decision on measures is revoked *ipso facto*.
- (6) In the course of the examination, in case the Chambers consider that the violation of the fundamental right has arisen from the provision(s) of a law or decree-law, they lodge with the General Assembly for annulment of such provision(s).
- (7) In individual applications, no examination may be conducted on matters which need to be dealt with at the stage of legal remedies.
- (8) In the examination of individual applications, provisions of relevant procedural laws which relate to the individual application are applied in cases for which no provisions are laid down in this present Law and the Regulation.
- (9) Other matters relating to the procedures and principles of examination on the merits are regulated by the Regulation.

Judgments

- ARTICLE 50-** (1) After examination on the merits, a decision on violation or non-violation of the applicant's right is rendered. In case of a decision on violation, a judgment may be rendered on the actions to be taken in order to abolish the violation and its consequences.
- (2) In case the violation has been caused by a court decision or an administrative proceeding, a decision is rendered on the cancellation of the court decision or administrative proceeding. In case the cancellation of the decision does not abolish the violation *ipso facto*, a judgment of retrial is given.
 - (3) In case the violation has arisen from the failure of a public power to carry out a proceeding it legally had to, the Court may determine the authority to enforce its decision and, in special cases, the manner of enforcement.
 - (4) The judgment may also require remedying the damage sustained as a consequence of violation of the applicant's fundamental rights. The Chambers may render these decisions by themselves or refer to general courts for litigation.
 - (5) The judgments of the Chambers on the merits together with their reasons are notified to the concerned parties and the Ministry of Justice. These judgments are published on the Court website and those which are deemed appropriate are promulgated in the Official Gazette.
 - (6) The judgments of Chambers on the merits are final and binding on the legislative, executive and judiciary bodies and real and legal persons.
 - (7) Differences of judgments among the Commissions are resolved by the Chambers and differences of judgments among the Chambers are resolved by the General Assembly. Matters relating to this are regulated by the Regulation.
 - (8) If the case is waived, the case is dropped.

Abuse of the right of application

ARTICLE 51-(1) Applicants who are established to have clearly abused the right of individual application are required to pay the cost of proceedings.

CHAPTER FIVE

Cases of Dissolution of Political Parties and Waving Parliamentary Immunities

Cases of Dissolution of Political Parties

ARTICLE 52- (1) In cases concerning the dissolution of political parties being investigated by the Chief Public Prosecutor of the Court of Cassation, the case shall be decided by a two-thirds majority of the attending members to dissolve a political party or deprive it from the state aid partially or fully depending on the severity of the contested actions, because of its actions listed in Article 69 of the Constitution.

(2) The cases concerning the dissolution of political parties shall be investigated and decided upon files by the General Assembly in accordance with the applicable provisions of the Criminal Procedure Code numbered 5271.

(3) The President appoints a rapporteur for the examination of the application. The rapporteur prepares a preliminary examination report and submit it to the Presidential Office. In case the indictment is accepted after the preliminary examination, the indictment and its annexes are sent to the political party concerned so that it prepares its defense concerning the procedures and merits. In case the respondent party submits a written defense, such defense will be sent to the Office of the Chief Public Prosecutor of the Court of Cassation. In addition, after the Chief Public Prosecutor of the Court of Cassation is heard, the oral defense by the office of the chairman of the respondent party or any proxy appointed by that party is also heard. The political party members whom the Chief Public Prosecutor of the Court of Cassation demands to be banned from political activities may submit their defenses in writing.

(4) In case the General Assembly deems it necessary, it may call on those concerned and/or those having knowledge relevant to the case to present their oral explanations.

(5) The judgment passed at the end of a case of dissolution of a political party is notified by the Chief Public Prosecutor of the Court of Cassation to the political party concerned and is promulgated in the Official Gazette.

Issuing a warning to a political party

ARTICLE 53- (1) The Chief Public Prosecutor of the Court of Cassation may apply to the Court, requesting that the Court should issue a warning to a political party alleging that the political party concerned violates the provisions of the Articles other than Article 101 of the Law on Political Parties dated 22/4/1983 and numbered 2820 as well as provisions of other laws that apply to political parties. If, after the defense of the respondent political party is received within a specified period, the Court finds that the political party concerned violates the said provisions, it issues a warning to the political party concerned.

(2) This decision is notified by the Chief Public Prosecutor of the Court of Cassation to the political party concerned and is promulgated in the Official Gazette.

Request of annulment in cases of the waiving of immunity or disqualification from membership

ARTICLE 54- (1) Against the Grand National Assembly of Turkey's resolutions on removal of parliamentary immunity or revoking of membership of deputies, the deputy or non-deputy ministers concerned or any other deputy may apply to the Court within seven days after the said resolution was issued requesting that the Court should cancel it on grounds that it breaches the Constitution, the laws or the Regulation of the Grand National

Assembly of Turkey. The Court makes a final decision about such requests within fifteen days.

(2) As far as cases for annulment are concerned, the Court procures the necessary documents without awaiting their presentation by the parties concerned.

CHAPTER SIX

Financial Audit of Political Parties

Financial Audit of Political Parties

ARTICLE 55- (1) The Court secures assistance from the Court of Accounts in order to review or have reviewed lawfulness of property acquisitions by the political parties and their revenues and expenditures.

(2) Political parties send certified copies of their final accounts which are consolidated upon decision as well as the of the final accounts of their central and provincial and district organizations to the Court of Accounts until the end of June every year pursuant the Law numbered 2820.

(3) The reports prepared by the Court of Accounts concerning the preliminary examination and examination on merits are sent to the Court for final decision.

Preliminary examination and examination on merits in financial audit

ARTICLE 56- (1) During the preliminary examination, whether the final accounts were prepared in compliance with Articles 73 and 74 of the Law numbered 2820 and whether final accounts charts contain any material error or inconsistency is examined. The political party officials at any level are required to submit any document or knowledge requested within the specified period.

(2) The preliminary reports to be prepared by the Court of Accounts are submitted to the Court within two months at the latest. This report lists omissions, errors or inconsistencies, if any, and indicates how to rectify them. The Court grants an appropriate period of time that which does not exceed one month to the concerned political party so that the political party in question rectifies the omissions, errors and/or inconsistencies.

(3) In case it is found that the final accounts do not contain omission, error or inconsistency or in case they are properly rectified, the Court may decide to examine the matter on merits. Such decision is notified to the Court of Accounts and the political party concerned.

(4) Examination on merits is conducted to find out whether income and expenditure of a political party are accurate and in compliance with laws.

(5) The accuracy examination consists of an examination of the books and documents that support the final accounts.

(6) The lawfulness examination aims to check whether income is obtained from the resources listed in Articles 61-69 of the Law numbered 2820 and whether spending is performed in accordance with provisions of Articles 70-72 of the Law numbered 2820.

(7) The Court of Accounts may opt for conducting on-the-spot examinations.

(8) Copies of the Court's decisions concerning the financial audit are sent to the political party concerned, the Court of Accounts, and the Chief Public Prosecutor of the Court of Cassation, who will place it in the records file of the party concerned.

9) The decisions concerning the financial audit are promulgated in the Official Gazette.

CHAPTER SEVEN

Trials before the Supreme Court

Hearings

ARTICLE 57- (1) When the General Assembly hears a case in its capacity as the Supreme Court, hearings shall be held and sentences pronounced according to the laws in force.

(2) The Court sitting as a Supreme Court may decide to return the indictment or the documents that substitute the indictment in case of material breaches of law other than the reasons for returning the indictment as specified in the Criminal Procedure Law numbered 5271.

(3) If the defendant who is questioned by the Court in its capacity as the Supreme Court does not attend the subsequent hearings and if the Court in its capacity as the Supreme Court holds that the defendant's attendance is unnecessary, the trial may be resumed and concluded in the absence of the defendant even if the defendant has not filed any demand for exemption from hearings. The defense lawyer may attend the hearings in any case.

(4) The hearings are recorded using the technical means which the President deems appropriate. Every page of the hearing minutes prepared based on these recordings are signed by the President and those who prepared the minutes.

(5) The Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation acts as a prosecutor for the cases which the Court hears sitting as the Supreme Court. One or more assigned Public Prosecutors of the Court of Cassation may attend the hearings along with the Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation.

Re-examination

ARTICLE 58- (1) Any application for re-examination of any judgment delivered by the Court acting in its capacity as the Supreme Court may be made by the Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation, the defendant, the defense lawyer, the intervening party or his/her attorney.

(2) The re-examination application is made by filing a petition with the Court sitting in its capacity as the Supreme Court within fifteen days after the announcement of the judgment. If the judgment was announced in the absence of those who are eligible for filing a re-examination application, this period starts on the date of notification of the judgment to parties concerned.

(3) The Court in its capacity as the Supreme Court conducts the re-examination on the file. It may also decide to hold a hearing for re-examination purposes upon a request from the Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation, the defendant or the intervening party or on its own initiative.

(4) In case it decides to hold a hearing for re-examination purposes, the date of the hearing is notified to the Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation, the defendant, the intervening party, the defense lawyer and the attorney. The defendant may attend the hearing in person or may be represented by a defense lawyer.

(4) If the Chief Public Prosecutor of the Court of Cassation or the Deputy Chief Prosecutor of the Court of Cassation does not attend the hearing, the defendant, the lawyer, the intervening party and the attorney explain their claims and defenses; the party that has filed the re-examination request will have the first say. The defendant will have the final say in any case.

(6) The re-examination is limited to the points raised in the application. If the application is deemed proper, the Court may issue a decision concerning the subject-matter of the application. The decisions issued in connection with a re-examination request are final.

CHAPTER EIGHT

Other Provisions concerning Trial

Circumstances where cases are not tried by the Court

ARTICLE 59- (1) The President and Members do not sit on trials where:

- a) they themselves are involved in a case or related matters are of personal interest;
- b) cases being tried are of interest to the spouse even if the marriage has been terminated, to the next of kin (offspring, parents), and to relations-at-law up to and including fourth grade (including this grade); to kinship arising out of marriage, even if it has been terminated, up to and including the third grade (collateral line); to adopted persons;
- c) cases involve a member acting as deputy representing a case or a businessman, as trustee or controller of property;
- ç) cases involve a member acting as judge, prosecutor, or arbitrator, or giving explanations as a witness or expert;
- d) cases involve a member expressing his/her opinions or thoughts.

Challenge of the President and Members

ARTICLE 60- (1) If circumstances arise which prove the partiality of the President and Members, the partiality argument may be used to challenge the President and Members.

(2) In such a case, the General Assembly or Chambers shall reach a final decision on the subject of the challenge without the participation of the member challenged.

(3) The challenge is personal. If the challenge of several members is requested which might render impossible the holding of sessions of the General Assembly or Chambers, these requests shall not be granted.

(4) The petition for a challenge must explain the reasons for the challenge together with the required proofs and the means for providing them. Petitions not complying with the afore-mentioned conditions shall be refused. An oath shall not be counted as proof.

(5) If the request for a challenge is found to be made in bad faith and if it is found unacceptable on merits, each of those who filed the request are fined TL 500 to TL 5,000.

Abstention

ARTICLE 61- (1) In case the President and members refrain from addressing a case or a matter on the grounds of reasons specified in Articles 59 and 60, the General Assembly renders its decision on the issue with the participation of the President or member who requests abstention. However, the member who requests abstention may not vote.

Obligation to provide information and documents and information classified as State secret

ARTICLE 62- (1) In the discharge of its duties, the Court is authorized to directly correspond with public administrations, public officials, banks and other real and legal persons, request information and documents, examine any type of documentation, record and proceeding it deems necessary, summon public officials of all degrees and grades and concerned parties to obtain information and request representatives from administrations and other legal entities. Direct investigation is instituted in accordance with general

provisions against those who fail to satisfy such demands of the Court within the specified period.

(2) Information relevant to the cases and matters addressed by the Court may not be kept from the Court on the grounds of State secrets.

(3) In case the information to be disclosed in the testimony of a witness is of the nature of State secret, the witness is heard after even the stenographer and the court clerk are asked out. Later, the President records only parts of such information relevant to the merits of the addressed case. Information the disclosure of which may damage foreign relations, national defense and national security of the State and jeopardize the constitutional order and foreign relations are deemed State secret.

(4) These provisions apply also to persons who are requested to provide oral explanations and expert witnesses.

Utilization of vehicles, equipment and personnel

ARTICLE 63- (1) When required by the hearing at Supreme Court Cases, cases of dissolution of political parties and oral explanations, the President may wish to utilize governmental vehicles, equipment, stenographers and technical staff. Such requests are fulfilled immediately by relevant authorities.

Exemption from fees, taxes and duties

ARTICLE 64- (1) With the exception of individual applications, applications filed before the Court, decisions rendered and proceedings to be carried out are exempt from fees, taxes and duties.

CHAPTER NINE Decisions

Mode of voting and quorum

ARTICLE 65- (1) The General Assembly and Chambers render decisions by an absolute majority of participants. In case of equal division of votes, the President will have the casting vote.

(2) A two-thirds majority is sought for decisions on annulment of Constitutional amendments, dissolution of political parties or deprivation of political parties of state aid.

(3) Voting starts with the most junior member.

Court decisions

ARTICLE 66- (1) Decisions of the Court are final. Decisions of the Court are binding on the legislative, executive and judicial bodies and administrative authorities of the State as well as real and legal persons.

(2) Annulment decisions have no retroactive effect.

(3) A law, decree-law, or the Regulation on the Grand National Assembly of Turkey or certain articles or provisions thereof annulled by the Court are repealed upon the date of promulgation of the Court decision in the Official Gazette. If it deems so necessary, the Court may render a separate decision on the date of coming into force of the annulment decision provided that such date is no longer than one year.

(4) When the Court annuls the whole or certain provisions of a law, decree-law or the Regulation on the Grand National Assembly of Turkey, it may not act as the legislator by establishing a judgment which may lead to a new practice.

(5) When Court decisions are written, they must include justified reasons. Annulment decisions which lack written justified reasons may not be pronounced.

(6) Principles relating to drafting and deliberation of decisions are provided by the Regulation.

(7) Decisions are signed by the President and members involved in the review or examination. Those who dissent submit their reasons for dissenting in written within the term provided in the Regulation. Decisions are thus notified to the concerned.

(8) Reasoned judgments pronounced as a result of applications annulment and objection are promulgated forthwith in the Official Gazette.

Retrial

ARTICLE 67- (1) Retrial may, in accordance with the provisions of the Code of Criminal Procedure numbered 5271, be requested against decisions of the Court on dissolution of political parties or against decisions of the Court rendered in its capacity as the Supreme Court.

(2) In case the European Court of Human Rights rules that a decision of the Court on dissolution of political parties and or a decision of the Court in its capacity as the Supreme Court has been rendered by violating the European Convention on Human Rights and its supplementary protocols, an application of retrial may be lodged with the Constitutional Court within one year after the decision of the European Court of Human Rights becomes final.

(3) The Court rules in favor of a retrial if it deems that the request for retrial has merits and is admissible. The request is concluded in accordance with the general provisions.

PART FIVE

Financial Provisions, Personnel and Personal Matters

PART ONE

Financial, Social and Other Rights

Financial Rights

ARTICLE 68- (1) The salaries and benefits of and other financial social rights and aids concerning the President, deputy presidents, members, rapporteurs, assistant rapporteurs and assistant rapporteur candidates of the of the Constitutional Court are governed by the provisions of this present Law.

(2) For the purposes of this Law:

a) *Reference salary* means the gross amount of all types of payments effectively made to the most senior civil servant under financial rights,

b) *Allowance of individual application* is the gross salary ratio which is calculated as specified in Article 70 payable as required by the nature of duty.

Salary Table

ARTICLE 69- (1) Each position below is paid a monthly salary corresponding to the rates below. These are the rates of each payment component which constitutes the reference salary.

a) President of the Constitutional Court: 100%,

b) Deputy Presidents of the Constitutional Court: 90%,

c) Members of the Constitutional Court: 86%,

ç) Rapporteurs of first class: 79%,

- d) Rapporteurs classified as first class: 65%,
- e) Other rapporteurs of first degree: 55%,
- f) Rapporteurs of second degree: 53%,
- g) Rapporteurs of third degree: 51%,
- ğ) Rapporteurs of fourth degree: 49%,
- h) Rapporteurs of fifth degree: 47%,
- i) Rapporteurs of sixth degree: 45%,
- ı) Rapporteurs of seventh degree: 43%,
- j) Rapporteurs of eighth degree: 41%,
- k) Assistant rapporteurs of first degree: 65%,
- l) Assistant rapporteurs of second degree: 56%,
- m) Assistant rapporteurs of third degree: 54%,
- n) Assistant rapporteurs of fourth degree: 52%,
- o) Assistant rapporteurs of fifth degree: 50%,
- ö) Assistant rapporteurs of sixth degree: 47%,
- p) Assistant rapporteurs of seventh degree: 46%,
- r) Assistant rapporteurs of eighth degree: 44%,
- s) Assistant rapporteur assistants: 42%.

For the calculation of bonuses as part of the payment components under this Article, one-twelfth of the total amount of annual (i.e. fiscal year) of the bonus within the reference salary is taken into account.

(2) A Rapporteur or an assistant rapporteur of the Constitutional Court who advances to a higher degree becomes entitled to the salary of the new degree after the fifteenth day of the month following the applicable date of advancement.

(3) Every three years, two points are added to the monthly salary rates of first class rapporteurs on condition that the payment rate not exceed the rate specified in paragraph 1(c) and that the rapporteurs retain qualification for classification as first class.

(4) Payment components which constituting the reference salary which are exempt from taxes shall similarly be exempted from taxes for payments due pursuant to this Article.

(5) Of the titles specified in paragraph 1 the President, deputy presidents and members of the Constitutional Court, the President of the Court of Disputes and rapporteurs are paid a judicial allowance of 10% of their salaries due pursuant to the same Article.

(6) Rapporteurs coming from higher education institutions or the Court of Accounts are paid based on the salaries and benefits due to judge and prosecutor rapporteurs of the same degree, grade and seniority.

(7) Those who are paid in accordance with this Article may not receive any payments under the Decree-Law numbered 375 and the compensations for representation, judicial office and high judicial office or payments under Article 152 of the Law numbered 657.

(8) The additional indicators for the President and members of the Constitutional Court are 9.000 and 8.000 respectively and the compensation indicator for high judicial office is 17.000.

Allowance of individual application

ARTICLE 70- (1) In addition to their salaries and benefits, an allowance of individual application which is calculated by the multiplication of the respective indicator value by the monthly coefficient applied to the salaries of civil servants is payable to the President and members of the Constitutional Court and rapporteurs assigned in accordance with sub-paragraphs (a) and (b) of Article 24(2). The indicator value is 40.000 for the President and members of the Constitutional Court and 10.000 for rapporteurs assigned in accordance with sub-paragraphs (a) and (b) of Article 24(2).

(2) The payments due under this Article are subject to provisions relating to salaries and exempt from all taxes save the stamp tax.

(3) The allowance of individual application can in no manner be taken into account in the calculation of any other payment.

Leaves

ARTICLE 71- (1) The President and members are entitled to thirty-five days of annual leave provided that the leaves do not impede proceedings which are addressed by the Court in its capacity as the Supreme Court or which are time-bound pursuant to the Constitution.

(2) Sick and excused leaves are subject to general provisions. Annual and excused leaves are granted by the President.

Health matters and treatment

ARTICLE 72- (1) Health expenditures of the President, members and retired of the same and rapporteurs and their dependants are paid out of the Court budget regardless of the restrictions in other laws. Procedures and principles relating to this matter are regulated by the Regulation. Spouses of the President, members and retired of the same and rapporteurs who work and who are covered by the social security scheme are considered within this scope.

Travel expenses, compensations and per diems

ARTICLE 73- (1) In case the President, deputy presidents, members, rapporteurs and assistant rapporteurs are commissioned with on-site inspection, expert examination or similar examination duties, the President and members are allowed, addition to actual travel expenses, an allowance of one-twentieth of their gross salary including the respective additional indicator, and the rapporteurs and staff members are entitled, in addition to actual travel expenses, an allowance of one-thirtieth of the same. In case such allowances fail to cover the necessary expenses, the difference is paid against receipts of expenses.

Performance payment

ARTICLE 74- (1) Provided that sufficient amount of appropriation is available in the budget for performance payments, monthly performance payments may be granted to those who are, amongst Court staff members subject to Law numbered 657 having fulfilled a minimum of ninety percent of the performance criteria predetermined by the President, established by the President to have displayed a higher performance than their peers as a consequence of their exceptionally hard work and efforts. The amount of such payment is determined by the President and may not exceed the sum calculated by multiplication of the indicator value 5.000 by the monthly coefficient applied to the salaries of public servants.

(2) Procedures and principles relating to the execution of this Article are set out by the President.

Establishment anniversary and awarding of honor certificates

ARTICLE 75- (1) The twenty-fifth day of April every year is the establishment anniversary of the Court. A celebration is held and seminars, conferences and similar events may be organized on the day of the anniversary.

(2) Honor certificates and gifts are presented to retired Presidents, Deputy Presidents and members as a homage to their past services.

(3) Sufficient amount of resources is allocated in the Court budget every year in order to cover the costs of the anniversary ceremonies and gifts. Expenditures so made are not subject to the Public Procurement Law numbered 4734.

Missions abroad

ARTICLE 76- (1) Rapporteurs and assistant rapporteurs may be assigned abroad for up to two years by the Presidential Office in order to improve their knowledge and background, attend post-graduate studies, conduct scientific research or, as part of mutual cooperation, to work or study at foreign courts, universities or international organizations. If deemed necessary, the Presidential Office may be extended up to the same length as the original duration.

(2) The financial rights, obligations, compulsory services, covering of expenses and transfer of salaries and benefits of those thus assigned abroad are subject to the provisions applicable to civil servants.

(3) The rights of promotion, advancement, retirement, salary, benefits and all other rights and obligations of those sent abroad pursuant to the provisions of this present remain effective.

Cadres

ARTICLE 77- (1) The determination, establishment, utilization and termination of Court cadres and other matters pertaining to the cadres are regulated in accordance with the provisions of the Decree-Law numbered 190.

Provisional Articles

PROVISIONAL ARTICLE 1- (1) The duties of the Deputy Secretary General, Director of Writing Office, Director of Press and Public Relations, Director of Judgments, Directorate of the Private Secretarial Services, Archive Director, Director of Financial Affairs, IT Director, Director of Personnel and Training, Director of Publications, Library Director, Director of Administrative Affairs, Treasurer and Civil Defense Expert at the Presidential Office of the Constitutional Court terminate at the date of promulgation of this present Law. These staff members are appointed to cadres consistent with their grades and degrees at the Court or in the Ministry of Justice organization within no longer than six months. They continue to enjoy the salaries, additional indicators and all types of increase in pay, compensation and other financial benefits until appointment to a new cadre. In case the sum of salary, additional indicators and all types of increase in pay, compensation and other financial benefits payable to them in their new cadres is lower than the same in their former cadres, they are entitled to receive the difference as a compensation without any deduction as long as they remain in their new cadres until such gap is closed.

(2) With the exception of those listed in paragraph one, staff members who are attached to the cadres of the Presidential Office at the date of promulgation of this present Law and whose cadre and position titles go unchanged are deemed appointed to the Presidential Office cadres with the same titles.

(3) Until the completion of reorganization and appointments in accordance with this present Law, duties assigned to the Court units which are to be reorganized or newly created continue to be carried out by units tasked with such duties previously. The Presidential Office ensures consistency of its organization and cadres with this present law within no longer than six months. Cadre changes within this scope are executed in accordance with the provisions of the Decree-Law numbered 190 without applying the provision of the last paragraph of Article 9 of the said Decree-Law.

(4) The President and Deputy President in office at the date this present Law becomes effective complete their term of office applicable at the date they were elected.

(5) The Regulation and the By-Law provided for in this present law is prepared and set into effect by the Presidential Office within six months at the latest. The provisions of the current Regulation and By-Law which do not contrast with this present Law remain effective until the new Regulation and By-Law become effective.

(6) Save provisions inconsistent with this present Law, references in the legislation to the Law on the Establishment and Rules of Procedure of the Constitutional Court dated 10/11/1983 and numbered 2949 are deemed as made to this present Law.

(7) Treatment expenditures incurred prior to the date this present Law becomes effective are subject to the provisions of Article 14 of the Law numbered 2949 which is repealed by this present Law.

(8) The Court deals with individual applications filed against final proceedings and decisions which are finalized and notified after 23/9/2012.

Amended and repealed provisions

ARTICLE 78- (1) The Law numbered 2949 on the Establishment and Rules of Procedure of the Constitutional Court is hereby repealed.

(2) The phrase "President of the Constitutional Court" in Table (1) appended to the Vehicles Law dated Law 5/1/1961 and numbered has been amended as "the President and members of the Constitutional Court".

(3) The phrase "Constitutional Court" in Article 13 of the Passport Law dated 15/7/1950 and numbered 5682 has been replaced with the expression "the President and members of the Constitutional Court and...".

(4) The phrase "Constitutional Court" in Articles 1 and 2 of the Law on Judges and Prosecutors dated 24/2/1983 and numbered 2802, the phrases "President of the Constitutional Court" and "Deputy President of the Constitutional Court, Members of the Constitutional Court" in Article 103 of the said Law and the phrases "President of the Constitutional Court", "President of the Court of Disputes and..." and "members of the Constitutional Court" in the additional indicators table (I) appended to the said have been removed from the texts of respective articles.

(5) The phrases "President of the Constitutional Court", "President of the Court of Disputes and..." and "Members of the Constitutional Court" in Article 1 of the Decree-Law on Compensations for High Judicial Office dated 23/1/1987 and numbered 270 have been removed from the article text.

(6) The phrase "to the Office of the Press Advisor of the Constitutional Court" has been added in Article 59 of the Law on Civil Servants dated 14/7/1965 and numbered 657 to follow the phrase "to the Office of the Secretary General of".

(7) The cadres listed in the section pertaining to the Presidential Office of the Constitutional Court in table (I) appended to the Decree Law numbered 190 have been abolished and removed from respective tables; the cadres in appended lists (1) and (2) have been established and incorporated in the section relating to the Office of the President of the Constitutional Court in the tables appended to the Decree-Law numbered 190. Cadres in the appended lists (3) and (4) have been established and incorporated in the sections relating to the Ministry of Justice and the Presidential Office of the Court of Audits in table (II) appended to the Decree-Law numbered 190.

(8) The phrase "Directors of the Presidential Office of the Constitutional Court" has been added to the section below heading (5) of table (II) appended to the Law on Civil Servants numbered.

(9) Article 5 of the Law on Fees dated 2/7/1964 and numbered 492 shall be followed by the Article in the next paragraph below; the phrase "for individual applications" has been added to follow the phrase "in judicial matters" in the first sentence of section "(A) Court Fees" in fee schedule (1) appended to the Law on Fees dated 2/7/1964 and numbered 492 and the phrase

“Individual application to be lodged before the Constitutional Court” has been added to the subparagraph entitled “I – Application fee:”. Therefore, the said text will read as:

“Individual applications to be lodged with the Constitutional Court

ARTICLE 5/A- A fee is charged for individual applications to be lodged with the Constitutional Court in accordance with the fee schedule (1)”

“4. Before the Constitutional Court:

TL 150,00”

Entry into Force

ARTICLE 79- (1)

- a) Articles 45 to 51 of this present Law become effective on 23/9/2012,
- b) Other provisions of this present Law become effective upon the date of promulgated.

Enforcement

ARTICLE 80- (1) The provisions of this present law are executed by the Council of Ministers.