



1.1. INDEPENDENCE OF THE JUDICIARY



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I- GENERAL PRINCIPLES ON INDEPENDENCE OF THE JUDICIARY IN TURKISH LEGAL SYSTEM

Rule of Law

- The Constitution clearly sets out that Republic of TURKEY is a state governed by the rule of law.

Article 2 of the Constitution is as follows:

Republic of TURKEY is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights...



The Principle of Separation of Powers

- The principle of separation of powers has been accepted in the Constitution.
- The general principles of the Constitution outline the exercise of Legislative Power, Executive Power and Judicial Power.



The Principle of Separation of Powers

Legislative Power

Legislative power is vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated.

(Art 7 of the Constitution)

Executive Power

Executive power shall be exercised and carried out by the President of the Republic and the Council of Ministers in conformity with the Constitution and the law.

(Art 8 of the Constitution)



The principle of Separation of Powers

Judicial power

Judicial power shall be exercised by independent courts on behalf of the Turkish Nation. (Article 9 of the Constitution)

In line with these provisions Part Three of the Constitution is entitled Fundamental Organs of the Republic and includes three chapters:

- Legislative Power (Art. 75-100)
- Executive Power (Art 101-137) and
- Judicial Power (Art 138- 160).



The Principle of Separation of Powers

In the Chapter of Judicial Power the following subjects are covered:

- Independence of the Courts,
- Guarantees of Judges and Public Prosecutors
- Provisions Related to Judges and Public Prosecutors
- Establishment of Courts
- Provisions Related to High Courts



Independence of Judges

Judges are independent in discharging their duties.

Article 138 of the Constitution is as follows:

Judges shall be independent in discharging their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming with the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power,

No organ, authority, office or individual may send them circulars, or make recommendations or suggestions.



Independence of Judges

No questions shall be asked, debates held, or statements made in the Parliament relating to the exercise of judicial power concerning a case under trial.

Legislative and executive organs and the administration shall comply with court decisions; these organs and the administration shall neither alter them in any respect, nor delay their execution.

(Art 138 of the Constitution)



Independence of Judges

The same principle is also repeated in the Law on Judges and Public Prosecutors No: 2802 (O.G.: 26/2/1983 no: 17971).

- Judges shall discharge their duties in accordance with the principles of independency of courts and guarantees of judges.
- No organ, authority, office or individual may give orders or instructions to courts and judges to exercise of judicial power, send them circulars or make recommendations or suggestions.
- Judges shall be independent in discharge of their duties. They shall give judgment in accordance with the constitution, law and their personal conviction. (Article 4 of Law No: 2802)



Guarantees of Judges and Public Prosecutors

Judges and public prosecutors;

- shall not be dismissed, or retired before the age prescribed by the Constitution;

- nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post. (Article 139/I of the Constitution)



Guarantees of Judges and Public Prosecutors

Exceptions to that guarantee which shall be indicated in law:

- those convicted for an offence requiring dismissal from the profession,
- those who are definitely unable to perform their duties on account of ill-health, and
- those determined as unsuitable to remain in the profession.
(Article 139/II of the Constitution)



Guarantees of Judges and Public Prosecutors

Retirement Age

The retirement age for judges and public prosecutors has been stated in the Constitution:

- Judges and public prosecutors shall exercise their duties until they reach the age of 65; promotion according to age and the retirement of military judges shall be prescribed by law. (Article 140 of the Constitution)
- Retirement age for military judges is 60 according to the Law on Military Judges (Article 21 of Law No. 357).



Guarantees of Judges and Public Prosecutors

The same provisions have been provided in the Law on Judges and Public Prosecutors.

- Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.
- Exceptions which shall be indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health, and those determined as unsuitable to remain in the profession, are reserved. (Article 44, Law No: 2802)



Equality of Judges and Public Prosecutors Functioning in the Ministry of Justice

All guarantees of judges and public prosecutors are applied to judges and public prosecutors functioning in the Ministry of Justice. (Art. 34 of Law No: 2802)

Judges and Public Prosecutors functioning in the Ministry of Justice:

- Have equal rights of other judges and public prosecutors.
- Receive their promotions from the High Council of Judges and Public Prosecutors.
- Their term in the Ministry is accepted as having been spent in the profession.
- No judge or public prosecutor functions in the Ministry without his/her consent.



Equality of Judges and Public Prosecutors Functioning in the Ministry of Justice

- They have the right to return to the courts at any time. In this case, the High Council appoints them to an appropriate place. (Art. 38 of Law No: 2802)

In almost all cases the High Council uses its discretion to appoint them to the most preferred courthouses in Turkey.



Equality of Judges and Public Prosecutors Functioning in the Ministry of Justice

- In Turkish legal system, personnel affairs of judges and public prosecutors require extensive bureaucratic work. In principle, judges and public prosecutors are transferred at least four times in their careers. There are more than 9,000 judges and public prosecutors and their promotion and personnel needs require certain units in the Ministry.
- All the work in the Ministry is carried out by judges functioning in the Ministry who have all guarantees of judges.
- This forms an additional guarantee for judges functioning in the courts since no administrative staff are responsible for their personnel affairs.



GUARANTEES AT THE MILITARY COURTS

Through the amendments made by the Law No.5530 dated 29 June 2006 to the Law No.353 on the Establishment and Proceedings of Military Courts, extensive guarantees are ensured.

Judiciary procedures are the same as those of the courts of justice. (Law No.353, Additional Art.No.1)



Guarantees are provided through the Constitution and the other related laws for the military judges to work impartially and independently. Accordingly,

- Military judges are independent in the performance of their duties. (Constitution Art.138)
- Rights of matters pertaining to the status of the military judges are the same as those of civilian ones. (Constitution Art. 140)
- They are entitled to stay in the profession. (Constitution Art. 139)
- They are promoted upon the performance records given by their military seniors and by the Military Court of Appeals. (Law No.357, Art. 12, 13)



- Performance records are not arranged for the members of the high courts. (Law No.357, Art.12)
- Military judges are appointed through a joint decree issued by the Minister of National Defense and the Prime Minister, and upon the approval of the President of the Republic. (Law No.357, Art.16)
- They cannot be appointed to a different place and position before four years, unless they request so. (Law No.357, Art.16)



Establishment of Courts

Establishment of courts, their functions and competence can only be regulated by law. (Art 142 of Constitution)

- Law on Establishment of First Instance Courts and Courts of Appeal, No: 5235 (Official Gazette: 7 October 2004 no: 25606) regulates establishment of all civil and criminal courts and Courts of Appeal.



Competence of the Courts

The judiciary has jurisdiction over all issues of a judicial nature and has exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

A judgment given by a court cannot be reviewed by executive or legislative power.

A judgment given by a court can only be reviewed upon appeal to the High Courts; Court of Cassation or Council of State where appropriate in line with the relevant Laws stated below:

- Criminal Procedure Code, Articles 260-310
- Civil Procedure Code, Articles 426-444
- Administrative Procedure Law, Articles 45-55



Matters to be Regulated by Law (Constitution Art 140/III)

As regards judges and public prosecutors the following matters shall be regulated by law in accordance with the principles of the independence of the courts and the guarantees of judges :

- qualifications,
- appointment,
- rights and duties,
- salaries and allowances,
- promotion,



- temporary or permanent change in their duties or posts,
- the initiation of disciplinary proceedings against them,
- the subsequent imposition of disciplinary sanctions,
- the conduct of investigation concerning them and
- the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of their duties,
- the conviction for offences or instances of incompetence requiring their dismissal from the profession,
- their in-service training and
- other matters relating to their personnel status.



All issues listed above as a rule of Constitution have been regulated in the Law on Judges and Public Prosecutors (Law No: 2802)

The aim of the Law on Judges and Public Prosecutors is to regulate:

- qualifications, appointments, rights and duties, salaries and allowance, promotion in the profession, permanent and temporary change in their positions and duties, initiation of disciplinary proceeding, and conducting disciplinary sanction, initiation of investigation concerning them and decision to prosecute them on account of crimes committed in connection with, or in the course of their duties, incompetence and crimes requiring dismissal from the profession, in-service training and other personnel affairs of judicial and administrative judges and prosecutors.



- wages, allowance and financial, social rights and aids of heads and members of Constitutional Court, Court of Cassation and Council of State.

All matters mentioned above are regulated in the Law No: 2802 in detail.



II- HIGH COUNCIL OF JUDGES AND PUBLIC PROSECUTORS

Formation, working procedure and functions of High Council of Judges and Prosecutors have been regulated with:

- Article 159 of Constitution,
- Law on High Council of Judges and Prosecutors No: 2461 (O.G.:14.5.1981 No: 17340) and
- By-law on High Council of Judges and Prosecutors which was prepared and put into force by the High Council.



FORMATION

High Council of Judges and Prosecutors is composed of :

- Three regular and three substitute members from Plenary Assembly of Court of Cassation
- Two regular and two substitute members from Plenary Assembly of the Council of State
- The Undersecretary of the Ministry of Justice
- Minister of Justice (Chairman)
- No members from first instance or regional courts



APPOINTMENT FROM COURT OF CASSATION AND COUNCIL OF STATE

- Three regular and three substitute members from Court of Cassation
- President of the Republic appoints from a list of three candidates nominated for each vacant office by Plenary Assembly of the Court of Cassation
- Two regular and two substitute members from Council of State
- President of the Republic appoints from a list of three candidates nominated for each vacant office by Plenary Assembly of the Council of State



APPOINTMENT FROM COURT OF CASSATION AND COUNCIL OF STATE

- The members are appointed for a term of four years.
- They may be re-elected at the end of their term of office.
(Constitution Art. 159/2, Law No:2461 Art. 8)
- Regular members elect a Deputy Chairman.



WORKING CONDITIONS

High Council works as two different board:

- High Council of Judges and Public Prosecutors and
- Council for Examination of Objections.

- High Council of Judges and Public Prosecutors is composed of 3 regular members from Court of Cassation, 2 regular members from Council of State, the Undersecretary of the Minister of Justice and Minister of Justice as chairman.

- However, Minister of Justice rarely attends the meetings of the High Council.



WORKING CONDITIONS

Council for Examination of Objections is composed of all regular and substitute members which is 12 in total.

The chairman of the Council is the Minister of Justice. The Council shall elect a deputy chairman from among its elected regular members. (Constitution Art. 159/2, Law No:2461 Art. 8)

In case of absence of the chairman, deputy chairman presides.



ATTENDANCE OF THE MINISTER

Although Minister of Justice is the chairman of High Council of Judges and Prosecutors, in practice he rarely attends its meetings.

Generally, the meetings are presided over by deputy chairman from the Court of Cassation.

The number of meetings presided over by Minister of Justice in the last 6 years are listed below:



ATTENDANCE OF THE MINISTER

YEAR	MEETINGS ATTENDED
2001	9
2002	11
2003	12
2004	8
2005	4
2006 (As of 26.09.2006)	2



UNDERSECRETARY OF THE MINISTRY

Membership of the Undersecretary of the Ministry shall continue during duration of his/her post. When the undersecretary is not present, deputy undersecretary who represents him/her shall attend the council. (Law No:2461 Art. 10/2).

The Undersecretary of the Ministry of Justice shall be appointed among the first class judges and public prosecutors qualified to be selected to High Courts. (Law No:2802 Art. 37-38)

In line with the Constitutional Court decision, the Undersecretary can only be appointed to the Court of Cassation or Council of State in case of removal from the post, as a safeguard.



FUNCTIONS OF THE HIGH COUNCIL

The functions of the High Council of Judges and Public Prosecutors are listed below:

- To appoint members of the Court of Cassation, Council of State and Court of Jurisdictional Disputes
- Take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction of a court
- Admission of judges and public prosecutors into the profession,



- appointments, transfers to other posts, the delegation of temporary powers,
- promotion and allocation of posts,
- decisions concerning those whose continuation in the profession is found to be unsuitable,
- the imposition of disciplinary sanction and
- removal from office.



DECISION PROCEDURE

- Normally the High Council convenes 2 times a week.
- The required meeting number is 7.
- The High Council takes decisions with absolute majority. (Law No:2461 Art. 10, By-law Art. 4)



DECISION PROCEDURE

- The decisions of the High Council cannot be appealed at any court. (Constitution Art.159).
- However, re-examination can be requested from the High Council and objection can be made to Council for Examining the Objections.

Re-examination

- Within ten days after servicing of the Council decisions, Minister of Justice or those concerned may demand examination of a decision one more time from the Council.
- In this case, the Council, composed by 7 members, renders a decision, carrying out the necessary examination.

(Law No:2461 Art. 11)



Objection and the Competent Authority (Law No:2461 Art. 12)

- Within ten days after the date of servicing the decision, those concerned may object against the re-examination decision taken by the Council.
- The objection plea is concluded by the Council for Examining the Objections, composed by 7 regular members and 5 substitute members. (Attendance of at least eight members except for the chairman is compulsory for taking a decision.)
- The decision taken is final and directly applicable, and cannot be appealed before a court.



INDEPENDENCE OF THE HIGH COUNCIL

- Independence of High Council of Judges and Prosecutors is guaranteed by the Constitution and law.
- The High Council of Judges and Public Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the guarantees of judges. (Constitution Art. 159/1)
- The High Council of Judges and Public Prosecutors is independent. (Law No:2461 Art. 3)



DISCIPLINARY PROCEDURE REGARDING MEMBERS OF THE HIGH COUNCIL

Disciplinary provisions in their specific laws (Law on Court of Cassation or Law on Council of State where appropriate) shall be applied to the regular and substitute members;

- due to their disciplinary matters and
- crimes stemming from or committed in the course of their duties.

(Law No:2461 Art. 17)



III- SELECTION AND APPOINTMENT TO THE PROFESSION

Selection to candidateship and appointment to the profession are different procedures.

- Candidate judges and prosecutors are subject to general administrative class of Law on Civil Servants (Law No: 657) and do not have the status of judges and prosecutors.

Therefore provisions of Law on Civil Servants which are not contrary to Law on Judges and Public Prosecutors are applied for the candidates. (Law No: 2802, Article7)

- Candidate judges and prosecutors are accepted to the profession by a decision of High Council of Judges and Public Prosecutors at the end of their training period. (Law No: 2802, Article 13)



Selection to Candidateship

- The number of candidate judges and public prosecutors to be appointed in a year is designated by the Ministry of Justice by taking opinion of the Turkish Justice Academy and taking into account of the needs and vacant posts.
- The number of candidate judges and public prosecutors to be appointed to candidateship is declared in publication for the exam.
(Art. 8 of Law No: 2802)



Conditions of Selection as Candidate Judge or Public Prosecutor

Qualifications of Candidates

- To be younger than thirty five years old for the candidates having PhD degree,
- To be younger than thirty years old for the candidates having bachelor degree,
- To be civil or criminal judge or public prosecutor to have bachelor degree on law,
- To be an administrative judge, to have bachelor degree on law, economics, finance, political science and administrative science which have law lessons in its curriculum,
- not to be banned from public service,
- to be mentally and physically healthy to perform as judge or prosecutor. (Article 8 of Law No: 2802)



Conditions of Selection

- Not to be sentenced to imprisonment of more than three months,
- To be successful at written and oral exams (Article 8 of Law No: 2802)

Written Exam

- Written exam aims to evaluate legal knowledge on related fields and general culture of the candidates.
- Since 1998 the written exam has been held by Student Selection and Placement Centre (OSYM) which is an independent institution and holds all important exams in Turkey.
- It is compulsory to get a mark of 70 out of 100 to be invited to the interview.



Conditions of Selection

Interview

Law on Judges and Public Prosecutors left the criteria for interview to “By-law on Written Examination, Interview and Appointment of Candidate Judges and Public Prosecutors in Civil, Criminal and Administrative Judiciary” dated 09.09.1991 and published in the Official Gazette No: 20986.

The criteria that should be taken into consideration during the interview are;

- expressing ability of interviewee,
- capacity of interviewee to comprehend, summarize and evaluate a subject,
- behaviour of interviewee,
- general and physical situation of interviewee. (Art 28 of By-Law)



Conditions of Selection CONT'D

Interview

- Interview is not a second examination; but an assessment to determine whether the person who wants to be a judge is suitable for the profession of judge in terms of points mentioned above.

- Interview Committee is composed of 5 first class judges qualified to be selected to High Courts;

Undersecretary of Ministry of Justice or Deputy Undersecretary, Director General for Criminal Affairs, Director General for Law Affairs, Director General for Personnel and Chairman of Inspection Committee. (Art. 27 of the By-law)



Conditions of Selection

- The interview is evaluated out of 100 and to be successful at least 70 is compulsory.
- The average of the written exam and interview is calculated and a list is formed according to points scored by the candidates.
- Finally, successful candidates are appointed as candidate judge and prosecutor by Ministry of Justice.



TRAINING PERIOD

- Training period is regulated in line with the Law on Turkish Justice Academy No: 4954 (Official Gazette: 31 July 2003, No: 25185)
- Pre-service training shall be given in accordance with the Law on Turkish Justice Academy.
- A report is given for each candidate by every court or other unit in which they spent their training.



TRAINING PERIOD

- Candidates shall attend two courses in Turkish Justice Academy; first term training and last term training.
- At the end of the last term training Turkish Justice Academy holds a written and final exam to evaluate the performance of the candidates.
- Candidates who fail the exam cannot be accepted to the profession by the High Council.



APPOINTMENT TO PROFESSION

At the end of the training period, High Council of Judges and Public Prosecutors decides on whether to accept candidates to profession of judge and public prosecutor.

Candidates who are:

- inappropriate to the profession because of their behaviour or other reasons or

- unsuccessful in the training period,

are not accepted to the profession by the High Council.



- In the last 6 years 5 candidates were not accepted to the profession by the High Council.
- Candidates accepted to the profession are appointed as judges and public prosecutors.



IV- PROMOTION OF JUDGES AND PUBLIC PROSECUTORS

The fundamental principles for promotion of judges and public prosecutors are:

- qualification in the profession
- seniority
- judicial ethics

The qualifications, appointment, rights and duties and promotion of judges and public prosecutors shall be regulated by Law. (Art. 140 of Constitution)

The competent authority for promotion of judges and public prosecutors is High Council of Judges and Public Prosecutors. (Art. 18 of Law No:2802)



1- Classes of Judges and Public Prosecutors

The profession of judges and public prosecutors is composed of four classes and shown below from higher to lower:

- first class
- designated as first class
- second class,
- third class.

The seniority of judges and public prosecutors is designated in accordance with their classes and grades. (Law No:2802, Art.15)

Judges and public prosecutors get one grade every year and get one degree in two years if they are qualified. (Law No:2802, Art.18-21)



2- Types of Promotion

There are three types of promotion:

- Distinguished (the best promotion)
- Preferential (the medium promotion)
- Ordinary (the minimum type of promotion)



3- Criteria for Promotion

A) Assessment Marks Given By the High Courts

The main criteria for promotion of judges and public prosecutors are

- Accuracy in the judgments
- Rapidity in finalizing a case

The evaluation is based on number of cases reviewed by High Courts (Court of Cassation or Council of State) and the assessment is also made by the High Courts.



For all cases reviewed by the High Courts a mark is given by filling a form in respect of:

- Accuracy of the judgment,
- Rapidity in finalizing the case, including not causing unnecessary delays
- Implementing procedural provisions in full and on time,
- Comprehension ability regarding the subject of the case,
- Success in the reasoned opinion,
- Taking into account precedent cases,
- Qualification and content of the indictment (For public prosecutors only)
- Accuracy of final reading (For public prosecutors only)



The marks given by the High Courts are

- Very Good,
- Good,
- Medium or
- Poor.

However, it is at the discretion of the High Courts to fill the mark form without giving any degree by clarifying their reasons. Reversal or ratification of the case is not the main criteria for getting a good mark in the evaluation of the High Courts.

All members of a Chamber give the mark in an open vote since that mark is of crucial importance in promotion of judges and public prosecutors.



A judge should reach the following proportion of marks from the High Courts upon review of judgments:

- 1- For distinguished promotion 85%
- 2- For preferential promotion 70%
- 3- For ordinary promotion 50%

A public prosecutor should reach the following proportion of marks from the High Courts upon review of judgments:

- 1- For distinguished promotion 90%
- 2- For preferential promotion 75%
- 3- For ordinary promotion 50%

B) Ratio of incoming and outgoing cases

Ratio of incoming and finalized cases by a judge or public prosecutor is a criterion for promotion. However, the ratios are at the discretion of the High Council of Judges and Public Prosecutors.

The principles set out by the High Council are shown as follows.

For Judges:

- For distinguished promotion 80% of the incoming cases
 - For preferential promotion 70% of the incoming cases
 - For ordinary promotion 50% of the incoming cases
- should be finalized in the period of promotion of judges.



For public prosecutors the same criterion is as follows:

- For distinguished promotion 90%
- For preferential promotion 80%
- For ordinary promotion 50%

Certain exceptions are foreseen for special conditions and for specialized courts to ensure equal promotion opportunity.



C) Not to have a conviction or disciplinary sanction impeding promotion.
(Art. 21, Law No 2802)

D) Appraisal files of judicial inspectors

Every courthouse is inspected by judicial inspectors within every two years. Judicial inspectors who are also qualified judges fill the appraisal files about judges and public prosecutors in accordance with their observations. (Art 24, Law No:2802)

E) Forms filled by the chief public prosecutors to other public prosecutors. (Art. 23, Law No 2802),

F) Publications related to profession

G) Completing two years in their degree



Criteria for Designation to First Class

- 1- To get the first degree (different from first class) in the profession,
- 2- Completing 10 years in the profession,
- 3- Not to get a conviction or disciplinary sanction impeding promotion to first class
- 4- Being successful in the profession.
- 5- Getting more than half of his/her promotions distinguished or preferential which are higher than ordinary promotion.
- 6- The last promotion should be distinguished or preferential.



Criteria for First Class

- 1- To be successful for 3 years after designating to first class.
- 2- Not to get a conviction or disciplinary sanction impeding promotion to first class



V- TRANSFER OF JUDGES AND PUBLIC PROSECUTORS

Main Sources

- Law on Judges and Public Prosecutors (Law No: 2802)
- By-law on Appointment and Transfer

Civil and criminal judges and public prosecutors and administrative judges are transferred in accordance with the By-law on Appointment and Transfer. They shall be transferred with their acquired rights and salaries to an equal or higher post. (Art.35 of Law No:2802)



Judicial Regions

- Turkey is divided into judicial regions on the basis of geographical and economic conditions, social and cultural facilities, availability of hospitals, transportation facilities etc. For example Istanbul or Ankara are among first regions whereas Şırnak province is third region and Uludere a small town in Şırnak province is fifth region.
- All judges and public prosecutors have to work and complete minimum terms of service in those regions designated for criminal and civil judiciary as well as for administrative judiciary.



Transfer and appointment in criminal and civil judiciary

According to the By-law on Appointment and Transfer the minimum terms of service for the designated 5 class of regions of criminal and civil judiciary are as follows:

- Fifth region (minimum 2 years of service)
- Fourth Region (minimum 2 years of service)
- Third Region (minimum 3 years of service)
- Second Region (minimum 5 years of service)
- First Region (minimum 7 years of service)



General Principles of Transfer and Appointment

- 1- Transfers are made from lower region to higher region in accordance with the seniority, success and personal records of judges and public prosecutors.
- 2- Judges and public prosecutors cannot request their transfer before completing their minimum term of service in their region.
- 3- Unsuccessful or inharmonious judges and public prosecutors may be transferred to an equal or lower region.
- 4- Transfers depend on vacant posts and qualifications of the judges and public prosecutors. Requests of the judges and public prosecutors are also taken into consideration.



5- Judges and public prosecutors who are not designated to the first class cannot be transferred to the first regions without exceptions stated in the By-law.

Judges and public prosecutors who completed their service in the fifth and fourth regions and had 3 successful promotions and also completed 8 years in the profession can be transferred to first regions taking into account the needs of the first regions.

6- In order to maintain their service in the first regions, judges and public prosecutors should be successful in their post and act in accordance with judicial ethics.

7- Judges and public prosecutors outstandingly successful in the profession and who completed their service in the fifth region may be transferred to a higher region than usual.



8- Judges and public prosecutors against whom a disciplinary sanction of changing the location is imposed are immediately transferred to a lower region.

9- Judges and public prosecutors who have an excuse such as health problems, marriage, education or natural disaster can be transferred to another place without taking into account their service term.

10- A judge can be appointed as a prosecutor or a prosecutor can be appointed as a judge taking into account the needs.



Transfer And Appointment in Administrative Judiciary

According to By-law on Appointment and Transfer the administrative judiciary are divided into 3 classes of regions with the same criteria mentioned in criminal and civil judiciary.

- Minimum terms of service in the regions:
- Third Regions (minimum 5 years of service)
- Second Regions (minimum 7 years of service)
- First Regions (minimum 10 years of service)



General Principles of Transfer And Appointment

- 1- Transfers are made from lower region to higher region in accordance with the seniority of administrative judges.
- 2- Administrative judges cannot request their transfer before completing their minimum term of service in their region.
- 3- Unsuccessful or inharmonious administrative judges may be transferred to an equal or lower region.
- 4- The transfers depend on vacant posts and qualifications of the administrative judges. Requests of the administrative judges are also taken into consideration.
- 5- Administrative judges who are not promoted to the first class cannot be transferred to the first regions without exceptions stated in the By-law.



6- In order to maintain their service in the first regions administrative judges should be successful in their post and act in accordance with judicial ethics.

7- Administrative judges who completed 5 years and are outstandingly successful in the profession can be transferred to first regions taking into account the needs of the first regions.

8- Administrative judges against whom a disciplinary sanction of changing the location imposed are immediately transferred to a lower region.



9- Administrative judges who have an excuse such as health problems, marriage, education or natural disaster can be transferred to another place without taking into account their service term.

10- An administrative judge can be appointed as an administrative prosecutor and an administrative prosecutor can be appointed as an administrative judge considering the needs.



Similar Provisions

- Removal of a court

In case of removal of a court by a decision of High Council, judges and public prosecutors serving in the court are transferred to an equal post and equal region.

- Appointment to Court of Cassation or Council of State as Rapporteur Judge

Law on Court of Cassation and Law on Council of State are applied where appropriate.



Adoption of the Appointment List

- Draft appointment list is prepared by DG Personnel Affairs by taking into account requests, records and previous promotions of the relevant judges and public prosecutors in accordance with the By-law on Appointment and Transfer and principles designated by High Council for the appointment list.
- Draft appointment list, records, vacant posts and other relevant documents are submitted to the High Council of Judges and Public Prosecutors. The High Council examines the Draft List and cited documents and after the alterations in the Draft List adopts the Appointment List at the latest within one month.
- Appointment Lists of the High Council of Judges and Public Prosecutors are directly applied and issued in the Official Gazette.



VI- EXISTENCE OF APPROPRIATE DISCIPLINARY PROCEDURES

The Constitution provides that investigations of judges or public prosecutors may be possible in the following conditions:

- If they have committed offences in connection with, or in the course of their duties,
- Whether or not their behavior and attitude are in conformity with their status and duties.



Disciplinary Procedure and Criminal Investigation of Judges and Prosecutors

- Permission of the Ministry of Justice

Initiating disciplinary investigation on behaviour and conduct not conforming with profession and initiating criminal investigation on offences in connection with the profession is subject to the permission of the Ministry of Justice (Law on Judges and Prosecutors, Law No: 2802, Article 82).



- Disciplinary investigation or criminal investigation may be initiated upon a complaint or denunciation.
- The denunciation or complaint petitions on judges/prosecutors are submitted to the Directorate General for Criminal Affairs. In the DG for Criminal Affairs a judge is assigned to examine the complaint and make an assessment on whether to investigate or not.



The denunciations and complaints shall not be processed unless they include:

- definite event or concrete evidence
- name, address, signature, etc.
- new evidence on the event which was investigated before

Also subjects which take part in the jurisdictional and appraisal competence of judges and can be claimed in objection or appeal phases and denunciation or complaint petition given by mentally ill persons shall not be processed (Law no:2802, Article 97)

However denunciations or complaints including definite event or concrete evidence are processed even if they do not bear name address or signature.



On complaints which are processed, a senior judge/prosecutor or judicial inspector conducts a preliminary examination (Law no: 2802, Article 82)

- According to the report prepared after the preliminary examination;
 - If the events claimed against the judge/prosecutor cannot be proved, it is decided not to proceed further.
 - If there is sufficient evidence, it is decided to give permission for initiating investigation
- Upon permission for investigation, a senior judge/prosecutor or judicial inspector leading the investigation, takes the defence of judge/prosecutor and prepares a report. This report is submitted to the DG for Criminal Affairs and examined therein.



- Upon assessment of that unit;

- If it is necessary to impose disciplinary sanction, the investigation file is submitted to the High Council of Judges and Prosecutors

- If it is decided to open a criminal investigation, the investigation file is sent to Prosecution Office concerned

- After this phase Ministry of Justice shall not intervene in investigation (Law no: 2802 Article 87).

- All transactions relating to disciplinary or criminal investigation are conducted by a judge discharged in Ministry of Justice. It is possible to object or appeal to Administrative Courts against the transactions conducted during the investigation.



Imposing Disciplinary Sanctions Against Judges and Public Prosecutors

- The right to impose disciplinary sanctions against judges is vested in the High Council of Judges and Public Prosecutors.

(Constitution Article 159/3; Law No.2461, Article 4/1; Law No: 2802, Article 62/1)



- The report, prepared as a result of an investigation is examined by the High Council of Judges and Public Prosecutors and a decision is taken on disciplinary matter.
- The report is not binding for the High Council.
- Judges and Prosecutors shall not be subjected to disciplinary sanctions without being granted the right of defence. (Law No:2802 Article 71)
- If three years have lapsed after committing an action requiring a disciplinary sanction, the judge neither shall be subject to any disciplinary investigation nor a sanction, with the exception of offences requiring the Dismissal from Profession and Change of Location sanctions. (Law No:2802, Article 72/2)



- The conditions under which judges may be subjected to disciplinary sanctions are prescribed in Law No 2802 Article 62-69. Accordingly, the following disciplinary sanctions may be applied depending on the nature and gravity of disciplinary actions;

- a- warning
- b- deduction from salary
- c- condemnation
- d- suspension of grade promotion
- e- suspension of degree promotion
- f- change of location
- g- dismissal from profession



- Judges and public prosecutors can request re-examination of the case from the High Council. Furthermore an objection can be made to the Council of Examination of Objections. (Law No 2802 Art 73)

No objection or appeal may be made to any court against decisions of the High Council.



CONDUCTING CRIMINAL PROSECUTION AGAINST JUDGES AND PUBLIC PROSECUTORS

A-OFFENCES WITH RESPECT TO DUTIES

- If a criminal prosecution is initiated against a judge/prosecutor (as a result of investigation or inquiry initiated by the Ministry of Justice either ex officio or denunciation or complaint,) the prosecution file shall be sent to the public prosecution office nearest to where the suspected judge performs his duty. (Law No.2802, Art.89/1)
- The public prosecutor shall prepare the indictment within five days and submit it to the Heavy Criminal Court (HCC).



- The HCC shall decide whether or not a criminal case is opened.
- If the HCC decides that a criminal case should be opened,
- Cases against those have a first degree and serving in HCC's are brought before the Court of Cassation,
- Cases against other judges and public prosecutors are brought before the HCC of their judicial area. (Law No.2802, Art.89/2,90)



B- PERSONAL OFFENCES

The Ministry of Justice has no competence on offences merely in connection with personal offences. The Chief Public Prosecutor of the HCC which is in the nearest judicial region shall conduct the investigation and the HCC concerned shall try the case. (Law No: 2802, Art.93)



Statistics on Disciplinary Cases Submitted to High Council and Decisions Given

	Disciplinary Sanction Imposed	Decision Not to Impose Disciplinary Sanction	Other Decisions	Total
2004	136	118	95	349
2005	118	95	66	279
2006	82	63	84	229



- The current system is a safeguard for judges and prosecutors since it makes a distinction between the competent organs who initiate the inquiry and are authorized to impose a disciplinary sanction.
- In other words, if the High Council was authorized to decide on both initiating a disciplinary proceeding and implementing sanctions, it would have been given both the functions of prosecution and trial.



The actions of the relevant departments of the Ministry of Justice which are against judges and public prosecutors (including decision for opening an investigation or not to investigate) can be brought before an administrative court and Council of State.

That examination is an additional guarantee for judges and public prosecutors since the decisions of the High Council are not open to appeal. (Art.125 of the Constitution)



VII- OTHER PROVISIONS RELATED TO JUDGES AND PUBLIC PROSECUTORS

Right of supervision

- Over all judicial courts: Court of Cassation;
- Over administrative courts: Council of State;
- Over prosecutors of Court of Cassation: chief prosecutor of Court of Cassation;
- Over prosecutors of Council of State: chief prosecutor of Council of State;
- Over prosecutors: chief public prosecutors within his/her jurisdictional area

have right of supervision .



- Head of court has right of supervision over judges charged in the court to ensure the effective functioning of the judges.
(Article 6 of Law No: 2802)
- The Ministry of Justice has right of supervision over the judges and public prosecutors except for duties relevant to exercising of judicial power.
- Judges and public prosecutors are attached to the Ministry of Justice with regard to administrative functions and affairs. (Article 6 of Law No: 2802)



Profession of Judges and Public Prosecutors

Judges and public prosecutors shall serve as judges and public prosecutors of civil and criminal courts and of administrative courts.

These duties shall be carried out by professional judges and public prosecutors.

Therefore all judges and public prosecutors are professional and no lay judges serve in Turkish judicial system.



Rights and Administrative Duties of Judges and Public Prosecutors

- Judges and public prosecutors shall not assume official or public functions other than those prescribed by law.

- Judges and public prosecutors are attached to the Ministry of Justice where their administrative functions are concerned.



Guarantee of Lawfully Designated Court

No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.

(Art 37 of the Constitution)



Opening Compensation Cases Against Judges

The Constitution provides that:

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the guarantees of judges.

(Art.138 of the Constitution)



Article 141 of the Criminal Procedure Code sets out that:

Persons who suffer damage during the investigation or prosecution of offences may request from the State compensation for material and non-material damages incurred.

In this case it is not possible to bring an action against the judge/prosecutor because of his verdict.

However, judges may be held responsible according to Civil Procedure Code No.1086, Article 573-576, on the condition that judges aim to harm one of the parties, or their verdicts are not based on a legal basis or judges has been sentenced on account of their corruption, people concerned may file a lawsuit against them and demand compensation.



Judges are also protected from malicious complaints and actions. The complainant must pay a fine if he/she is not found just.

In the lights of the provisions stated above, judges shall not be liable for their judgments merely based on their judicial discretionary competences.



JUDGES ASSOCIATIONS

According to Art. 33/1 of Constitution, everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission.

However, Article 33/6 of the Constitution provides that the provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require.



JUDGES ASSOCIATIONS

Article 57 of the Civil Code provides that everyone has the right to form associations without prior permission.

According to repealed Article 16 of Association Law (Law No:2908) judges and public prosecutors may be members of associations on condition of permission of the Ministry of Justice.

It is provided in the Article 140/5 of the Constitution that judges and public prosecutors shall not assume official or private functions other than those prescribed by law.

The same rule has been regulated in Article 48 of Judges and Public Prosecutors Law.