

## Legal system of the Republic of Turkey

The basics of the legal system in the Republic of Turkey are laid out in Articles 138 to 160 of the 1982 Constitution. Civilian and military jurisdiction is separated. While military courts usually only try military personnel they can also try civilians in times of martial law and in matters concerning military service.

### The legal profession

The general term for members of the legal profession in Turkey is *hukukçu*. In Turkey, any man or woman, after having graduated from a law faculty at a university, can become *avukat* (attorney-at-law or barrister), *hâkim* or *yargıç* (judge), *savcı* (prosecutor) or *noter* (notary or public notary) after terms of internship specified in separate laws.

### Lawyers (Attorneys-at-Law)

Private lawyers spend one year of internship and then join a bar association (*baro*) and the Union of Turkish Bars. All Turkish lawyers are required to wear black robes in court.

### Judges

The Turkish court system does not include the concept of a jury. Verdicts for both criminal and civil trials are reached by a judge or a panel of three judges, who have to base their verdicts on the law and their conviction. A judge is also a law school graduate and can be one of the following:

- criminal judge (wears a black robe with a red collar),
- civil judge (wears a black robe with a green collar),
- administrative judge (wears a black robe with a light brown collar).<sup>[2]</sup>

The first judge is serving at a penal court. These courts (*mahkeme(ler)*) are separated into *ağır ceza* (assize court), *asliye ceza* (penal court of first instance), and *sulh ceza* (penal court of peace). The second kind of judge serves at civil courts of first instance or at civil courts of peace (*sulh* or *asliye hukuk mahkemeleri*), while the last serves in administrative courts (*idari mahkemeler*).<sup>[3]</sup> The Supreme Council of Judges and Public Prosecutors (*Hâkimler ve Savcılar Yüksek Kurulu*) deals with the admission of judges and public prosecutors of courts of justice and administrative courts into the profession, appointments, transfers to other posts, the delegation of temporary powers, promotion to the first category, the allocation of posts; decisions concerning those whose continuation in the profession is found to be unsuitable; the imposition of disciplinary penalties and removal from office.<sup>[3]</sup> The General Directorate of Personnel Affairs of the Ministry of Justice works as the secretariat of the Supreme Council of Judges and Prosecutors.

## **Prosecutors**

Public charges are brought by prosecutors (*savcı*). Their full title is Prosecutor of the Republic (*Cumhuriyet savcısı*) and they have a chief office of prosecution (*Cumhuriyet Başsavcılığı*). Prosecutors are also divided into branches regarding their area in laws, similar to that of the judges. The Supreme Council of Judges and Public Prosecutors deals with administrative matters concerning judges of the Administrative and Judicial Courts and Public Prosecutors who are not members of the Court of Cassation or the Council of State.<sup>[4]</sup> In the *Country Report on Human Rights Practices in Turkey in 2006* (released by the Bureau of Democracy, Human Rights, and Labor in the US State Department on March 6, 2007) it was stated:

The High Council of Judges and Prosecutors was widely criticized for undermining the independence of the judiciary. The minister of justice serves as chairman of the seven-member high council, and the justice ministry undersecretary also serves on the council. The high council selects judges and prosecutors for the higher courts and is responsible for oversight of the lower courts. The high council is located in the Ministry of Justice and does not have its own budget. While the constitution provides for job security through tenure, the high council controls the careers of judges and prosecutors through appointments, transfers, promotions, reprimands, and other mechanisms.<sup>[5]</sup>

## **Civilian justice**

The judicial system is composed of general law courts; specialized heavy penal courts; military courts; the Constitutional Court, the nation's highest court; and three other high courts. The Court of Cassation hears appeals for criminal cases, the council of state hears appeals of administrative cases or cases between government entities, and the audit court audits state institutions. Most cases were prosecuted in the general law courts, which include civil, administrative, and criminal courts. In 2004 parliament adopted legislation providing for the establishment of regional appeals courts to relieve the high court's caseload and allow the judiciary to operate more efficiently.<sup>[5]</sup>

## **Judicial courts (courts of justice)**

There are two forms of judicial courts. The (civil) peace courts (*sulh mahkemeleri*) are the lowest civil courts in Turkey with a single judge. There is at least one in every district. Its jurisdiction covers all cases assigned to the court by the Code of Civil Procedure and other laws. The civil courts of first instance (*asliye hukuk mahkemeleri*) are the basic courts. Their jurisdiction covers all civil cases other than those assigned to the peace courts. There is one in every city and district, and sometimes divided into several branches according to the need and necessity.<sup>[3]</sup>

## **Criminal courts**

Even though the penalties are no longer divided into light and heavy sentences the criminal courts still are named according to the penalties they were entitled to pass. Penal courts of first instance (or simply penal courts *asliye ceza*) are courts with a single judge deciding on *minor* cases. There is one in every city and in every district, sometimes divided into several branches according to the need and population. The heavy penal courts (Interpol terms them *Central Criminal Courts*) consist of a presiding judge and two members with a public prosecutor. Offenses and crimes involving a penalty of over five years of imprisonment are under the jurisdiction of these courts of which there is one in every city. But it is sometimes divided into several branches according to the need and population.<sup>[3]</sup>

## **State Security Courts**

Under the 1982 Constitution the then military government established State Security Courts (*Devlet Güvenlik Mahkemeleri*, DGM) to try cases involving crimes against the security of the state, and organized crime. It would also act as a domestic tribunal to try cases involving genocide, crimes against humanity, and war crimes. The DGMs began to operate from May 1984 and replaced military courts which had been in operation during the martial law period. They existed only in eight (of then 67 and now 81) provinces.

In April 1991 the Law to Fight Terrorism (Law 3713) entered into force and cases involving crimes against the security of the state were now punishable under this law. The panel of three judges in each DGM included a military judge. As armed forces officers, such military judges remained dependent on the military for salary and pension, subject to military discipline and therefore not independent of military control. In a number of cases the European Court of Human Rights has found the presence of military judges in the State Security Courts to be a violation of the fair trial principles set out in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

In June 1999 the then Turkish government removed the military judge from the bench. In the context of a package of reforms to the Constitution passed in June 2004, the DGMs were formally abolished. The DGMs were transformed into Heavy Penal Courts, authorized to try only cases involving organized crime and terrorism. In cases of state security, genocide, crimes against humanity, or war crimes, the military discipline courts would take over. <sup>[6]</sup> Since the entering into law of a new Criminal Procedure Code on 1 June 2005, the official name for these courts has been "Heavy Penal Courts (competent to examine crimes under article 250 of the Criminal Procedure Code)". Most of the cases heard in these courts concern cases of political prisoners.<sup>[7][8]</sup>

## Supreme courts

The Constitutional Court, the Court of Cassation, the Council of State, the Military Court of Cassation, the Supreme Military Administrative Court and the Court of Jurisdictional Conflicts are the supreme courts mentioned in the judicial section of the Constitution.<sup>[4]</sup>

### The Constitutional Court

Main article: Constitutional Court of Turkey

The basic function of the Constitutional Court of the Republic of Turkey (*T.C. Anayasa Mahkemesi*), established in the 1961 Constitution, is to examine the constitutionality, in both form and substance, of laws, and decrees with the power of law and the Rules of Procedure of the Grand National Assembly of Turkey (GNAT). Other functions of the Court are as follows:

- With the capacity of the High Tribunal, the Constitutional Court judges the following: the President, members of the Council of Ministers, members of supreme courts, the chairman and members of the Supreme Council of Judges and Public Prosecutors and of the Supreme Council of Public Accounts, the Chief Republic Prosecutors and the Deputy Republic Chief Prosecutors for crimes related to their offices.
- It audits the finances of political parties.
- It examines GNAT decisions to revoke the immunities of deputies, or to dismiss members of parliament.
- It chooses the Chairman and Deputy Chairman of the Court of Jurisdictional Conflicts.

The Constitutional Court is composed of 11 regular and four substitute members. Decisions are made when the eleven members convene. The decisions of the Constitutional Court are final. These decisions cannot be amended in any manner and their application cannot be delayed.<sup>[4]</sup>

Currently, the head of the Turkish Constitutional Court is Mr. Haşim Kılıç, who holds the title President of the Constitutional Court (*Anayasa Mahkemesi Başkanı*).

### The Court of Cassation

Main article: Court of Cassation (Turkey)

The Court of Cassation (*Yargıtay*) is the last instance for reviewing rulings and judgments rendered by justice courts, criminal courts, the examination courts and renders verdicts upon appeal. The opinions rendered by the Court of Cassation are

taken as precedents for legal rulings in the first instance courts throughout the country, so that uniform application may be achieved. It is also able to modify its own ruling upon request.<sup>[4]</sup>

The Court of Cassation is divided into civil law and penal law chambers (*hukuk ve ceza daireleri*). As of April 2007 there were 21 civil law and 11 penal law chambers.<sup>[9]</sup>

The highest judge, who holds the title First President (*Birinci Başkan*), is currently Hasan Gerçeker. The Court of Cassation also has a Chief Public Prosecutor (*Yargıtay Cumhuriyet Başsavcısı*), who is currently Abdurrahman Yalçınkaya. In case of indictments against political parties, the Chief Public Prosecutor of the Court of Cassation appears before the Constitutional Court.

### **Turkish Court of Accounts**

Turkish Court of Accounts (*Sayıştay*) is Turkey's Supreme Audit Institution charged with auditing, on behalf of the GNAT, all accounts related to the revenues, expenditures and property of government departments financed by general and subsidiary budgets. No applications for judicial review of its decisions shall be filed in administrative courts.<sup>[4]</sup> There's a debate on whether *Sayıştay* is a supreme court, or even a court in the strictest sense.<sup>[10]</sup> The Turkish constitution is said to contradict with itself by not listing *Sayıştay* amongst supreme courts in articles 146-159 while allowing no appeals to most of its decisions, effectively giving it supreme court power.<sup>[11]</sup>

### **Administrative justice**

Main article: Turkish Council of State

Administrative courts (*idari mahkemeler*) exist at provincial level. The next instance are regional administrative courts (*bölge idari mahkemeler*). Administrative courts solved cases involving probate, bankruptcy, and citizenship matters. Tax and family law were handled in separate courts. The highest administrative court in Turkey is the Turkish Council of State (*Danıştay* also called Supreme Administrative Court) or, equivalent to a federal supreme administrative court such as the Conseil d'Etat in France or the Federal Administrative Court of Germany (Bundesverwaltungsgericht).

Its president (*Danıştay Başkanı*) is currently Mr. Mustafa Birden. The court also has an Advocate General (*Danıştay Başsavcısı* or *Danıştay Kanunsözcüsü* -- actually the word *başsavcı* refers to *chief prosecutor* and it is not appropriate use for an administrative court), who is currently Mr. Yılmaz Çimen.<sup>[12]</sup>

## **Military justice**

The military court system exercises jurisdiction over military personnel and during periods of martial law. The duties are described in Article 11 of Law 1402 on Martial Law of May 1971. Further details are laid out in Articles 11 to 14 of Law 353 on the Foundation and Criminal Procedures at Military Courts of October 1963 (revised in October 2006).

The military court system consists of

- military courts,
- a supreme military administrative court, and
- the military court of cassation.

## **Military courts**

Military Courts have jurisdiction to try military personnel for military offenses, for offenses committed by them against other military personnel or crimes committed in military places, or for offenses connected with military service and duties. Under martial law military courts are competent to try all offences that led to the announcement of martial law. Article 14 of Law 353 describes the offences to be tried at military courts in time of war.<sup>[13]</sup> According to Article 2 of Law 353 the courts consist of two military judges (*askeri hâkim*) and an officer. In cases involving more than 200 defendants the bench has four judges and one officer. Military prosecutors (*askeri savcı*) will be appointed according to the need.<sup>[14]</sup> Judges and prosecutors hold the title judge (*hâkim* or *yargıç*) along with their ordinary officer's ranks whether they are on the bench or prosecutors.

In military courts, there rarely are defense lawyers to the accused, although the defendants are entitled to legal counsel from military personnel with the title *askeri hâkim*.

## **Military Court of Cassation**

The Military Court of Cassation (*Askeri Yargıtay*) is the court of final instance for all rulings and verdicts rendered by military courts. It is also a court of first and final instance with jurisdiction over certain military personnel, stipulated by law, with responsibility for any specific trials of these persons.<sup>[4]</sup> It has a President, usually a brigadier general and a Chief Prosecutor usually a colonel.

## **Military High Court of Administration**

The Military High Court of Administration or the Supreme Military Administrative Court (*Askeri Yüksek İdare Mahkemesi*) has jurisdiction over military personnel in

administrative cases or active military service. Its organization is similar to that of the Military Court of Cassation.

Note that military courts and civilian courts do not act as subordinates to each other. They are independent from each other and should be immune to political influence. Also note that military courts are exceptional and are only available in military restricted areas.

### **Court of Jurisdictional Disputes**

The Court of Jurisdictional Conflicts (*uyuşmazlık mahkemesi*) is the final authority to settle disputes concerning verdicts and the competences of the Justice, Administrative or Military Courts. This court is made up of members of the Court of Cassation, the Council of State, the Supreme Military Court of Appeals, and the Military Administrative Court of Appeals.<sup>[4]</sup>

### **References**

1. Conscientious objectors are tried at military courts. As an example see public statement of Amnesty International on the case of Mehmet Tarhan
2. Images of the robes can be found on the website of H.Argun Bozkurt
3. Description of the various courts in Turkey Interpol (uses slightly different terms)
4. Political Structure of TURKEY, OFFICE OF THE PRIME MINISTER, DIRECTORATE GENERAL OF PRESS AND INFORMATION
5. Bureau of Democracy, Human Rights, and Labor (2007-03-06). "Country Report on Human Rights Practices in Turkey". U.S. State Department. <http://www.state.gov/g/drl/rls/hrrpt/2006/78844.htm>. Retrieved 2008-11-05.
6. "DGM'lerin Yerine 18 Ağır Ceza Mahkemesi" (in Turkish) (Press release). Avrupa Birliği Genel Sekreterliği. 2004-07-02.<http://www.abgs.gov.tr/index.php?p=36335&l=1>. Retrieved 2008-11-19.
7. Justice Delayed and Denied, Amnesty International, September 2006.
8. Also see a private source with an article on the background to the legal system
9. Compare the Turkish website of the Court of Cassation
10. "Sayıştay tartışması" (2001-03-07) *Yeni Safak*
11. Türk Hukuk Sistemi
12. Council of State(**English**)
13. Also see a critical article on military justice in Turkish
14. The complete text of Law 353 (**Turkish**)

[http://en.wikipedia.org/wiki/Legal\\_system\\_of\\_the\\_Republic\\_of\\_Turkey](http://en.wikipedia.org/wiki/Legal_system_of_the_Republic_of_Turkey)