

## JURISDICTION

### A. Justice system from the point of view of the armed forces

In Turkey, we have a military justice system, which is separated from general civil justice system.

In addition to the civil Laws, the military society requires its own laws and regulations. Generally speaking, discipline and order is very important for the armed forces. In case it is broken, military body wants to restore it immediately. For this purpose a different and separated system is required.

The constitution is the primary source of the military Law governing our military establishment.

### B. Independence of the Courts

1. According to Turkish Constitution, Judges shall be independent in the discharge of their duties. They shall give judgment in accordance with

- the Constitution,
- laws,
- and their personal conviction conforming with the laws.

2. No organ, authority, office or individual may give orders or instructions to courts or judges, or send them circulars, make recommendations or suggestions relating to the exercise of judicial power.

3. No question shall be asked, debates held, or statement made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.

4. 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.

### C. Security of tenure of judges and public prosecutors

1. Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution. They shall not be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.

2. There are some exceptions indicated in law, relating to

- those convicted for an offense requiring dismissal from the profession,
- those who are definitely established as unable to perform their duties on account of ill-health,
- and those determined unsuitable to remain in the profession.

D. Judges and prosecutors. (and their jobs)

1. Judges and prosecutors shall serve as judges and prosecutors of courts of justice and of administrative courts.

2. Judges shall discharge their duties in accordance with the principles of

- the independence of the courts,
- and the security of tenure of judges.

3. Followings, about judges and prosecutors, shall be regulated by law in accordance with the same principles;

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

4. According to the Constitution, judges and prosecutors shall exercise their duties until they complete the age of sixty-five, however, the age limit, promotion and the retirement of military judges shall be prescribed by law.

Military judges promote for every three years when civilian ones promote for every two years. And the age limit is related to their statutes and maximum time of their last ranks.

5. Judges and prosecutors shall not assume official functions other than those prescribed by laws.

E. Supervision of judges and prosecutors

Supervision of judges and prosecutors shall be made by judiciary inspectors with the permission of Ministry of justice. For military judges, with the permission of Ministry of National Defense. This supervision covers

-The performance of their duties in accordance with laws, regulations, by-laws and circulars,

-Investigations into whether they have committed offenses in connection with, or in the course of, their duties,

-And if necessary, inquiry and investigations concerning them.

F. If you have a military judgment, what are the statutes, rights relating to their status and discipline matters of related personnel

According to Turkish Constitution, organization of military judicial organs, their functions, matters relating to the status of military judges, relations between military judges acting as military prosecutors and the office of Commander under which they serve, shall be regulated by Law. This is done in accordance with the principles of the independence of courts and the security of tenure of judges and with the requirements of military service.

Relations between military judges and the office of commander under which they serve, regarding the requirements of military service apart from the judicial functions, shall also be prescribed by law.

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 resolve of the abolition of court or post.

Judges and public prosecutors (in the General Justice System) shall exercise their duties until they complete the age of sixty-five; the age limit, promotion and the retirement of military judges shall be prescribed by Law.

According to the Retirement Act, military judges who are colonel in rank and Military High Court members are retired at sixty. Other military judges who aren't Military High Court members are retired at the maximum time of their rank, at about 50

The qualifications, appointment rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change of their duties or posts, the initiation of disciplinary proceedings against them and subsequent imposition of disciplinary penalties.. etc. shall be regulated by Law in accordance with the principles of independence of the courts and the security of tenure of judges.

G. Coverage (scope) and implementation of military criminal and disciplinary law

Military criminal Law covers the area of misbehaves which are more serious than disciplinary misbehaves and areas of military personnel.

Military justice shall be exercised by military courts and military disciplinary courts. These courts shall have jurisdiction to try military personnel;

- For military offenses,
  - For offenses committed by them,
    - Against other military personnel or,
    - In military places,
  - Or for offenses connected with military service and duties,
- Military courts also have jurisdiction to try non-military persons,

- For military offenses specified in the special Law.
- And for offenses committed while performing their duties specified by Law, or against military personnel on military places specified by Law.

H. **ORGANIZATION OF COURTS:** in the constitution, judicial branch is separated in three departments. General, administrative and military jurisdiction.

1. Military justice shall be exercised by military courts (courts-martial) and disciplinary courts. Military criminal justice tribunals are composed of disciplinary courts and courts - martial as the courts of first instance and the court of military appeals as the higher court.

2. In military jurisdiction, there also exists administrative jurisdiction. In the military administrative jurisdiction both first and last instance judicial body is the high military administrative court.

3. The generally accepted basic principles judicial organs and the members of the bench are granted such as the independence of the judges are similarly regulated for military judge corps in military laws and regulations.

#### I. Disciplinary courts

Disciplinary courts have the jurisdiction concerning the disciplinary offenses of the military personnel stated in the statute which closely effect the discipline of the units. As a rule, the competence of these courts are limited to the table or organization and establishment of the respective command.

Disciplinary court consists of three officers, one as the president and two as the members. As a rule, trials are open to public and judgments are subject to review.

#### J. Courts - Martial (Military Courts)

Courts - martial have the jurisdiction concerning the cases of military offenses of the military personnel (offenses of the military personnel having military nature), offenses committed in military areas, against other military personnel or concerning military service and duties.

Courts - martial consists of two military judges and one commissioned officer.

The competence of the court - martial as a rule covers the personnel who is contained in the same table of organization and establishment of the respective court and therefore work for the same commander of the unit or the chief of the installation, or the personnel who are put under the judicial authority of the said commander.

Courts - martial are established or abolished by the ministry of national defense and are under the control and supervision of the ministry.

#### K. Court of military appeals

The court of military appeals is the final reviewing authority of the decisions and judgments of the courts - martial and disciplinary courts. Besides, it is the first and final trial forum of certain offenses of military personnel.

The president, the chief prosecutor and all of the members of the court of military appeals are elected from among the members of the military judge corps.

#### L. High military administrative court

High military administrative court has the jurisdiction for legal review of the actions concerning military service or military personnel, including actions taken by civilian authorities, both as the first instance and final legal forum. This court also fulfills other duties regulated in other acts.

M. Civil Law; private law disputes and other criminal or administrative disputes arising among the military personnel are settled by general private (civil) Law, criminal or administrative courts, outside the scope of military jurisdiction.

N. The place of the armed forces in the constitutional order

The armed forces are viewed as the instruments of the state and it is a fundamental tenet of democracy that military power shall be subordinate to the civil authority.

In Turkey, the president of the Republic represents the office of the Commander in Chief of the Turkish Armed Forces.

The Chief of the General Staff is the Commander of the Armed forces and he accomplishes the function of the Commander-in-Chief in case of a war in the name of the president of Republic.

The Turkish Constitution gives the Turkish General Staff a special statue, not connecting it to any office of ministries. chief of the General Staff is appointed by President and is the Commander of Armed Forces and responsible to the Prime Minister for his duties. So we may conclude that the Turkish Armed Forces are under the control of the civilian authority.

O. Armed forces and mechanism of the national security

The National Security Council shall be composed of the Prime Minister; the Chief of the General Staff; the Ministers of National Defense, Internal Affairs, and Foreign Affairs; the Commanders of the Army, Navy and the Air Force, and the General Commander of the Gendarme, under the chairmanship of the President.

The National Security Council shall submit to the Council of Ministers its views on taking decisions and ensuring necessary coordination with regard to the formulation establishment, and implementation of the National Security Policy of the State.

The Council or Ministers shall give priority consideration to the decisions of the National Security Council concerning the measures that it deems necessary.

P. Armed forces and internal security services

Security forces, police, gendarme and the others, under the authority of Minister of Internal Affairs are responsible for the Internal security services. In case these security forces are unable to restore the public order, local units of the Armed Forces are asked, to assume control of the situation, by the local Governors.

(Local Administering Law express the procedure of the calling of the armed forces, and, the process of cope.

## Partnership For Peace

1. Partnership for peace is a major initiative by NATO directed at increasing confidence and cooperative efforts to reinforce security. It offers participating states to strengthen their relations with NATO in accordance with their own individual interest and capabilities.
2. At the January 1994 Brussels Summit, Alliance leaders announced that They have decided to launch an immediate and practical programme that will transform the relationship between NATO and participating states. This programme is partnership for peace.
3. The states participating in the North Atlantic Cooperation Council (NACC) and other CSCE countries have been invited to join the NATO member states in this Partnership. Partner states are invited by the North Atlantic Council (NAC) to participate in political and military bodies at NATO Headquarters with respect to Partnership activities.
4. NATO will consult with any active participant in the partnership if that partner perceives a direct threat to its territorial integrity, political independence, or security.
5. NATO will work with its partners in concrete ways towards,
  - a. Transparency in defense budgeting,
  - b. Promoting democratic control of defense ministries,
  - c. Joint planning,
  - d. Joint military exercise,
  - e. and creating an ability to operate with NATO forces in such fields as
    - peacekeeping,
    - search and rescue and humanitarian operations,
    - and others as may be agreed.
6. Partnership for Peace has been established within the framework of the North Atlantic Cooperation Council. It builds on the momentum of cooperation created by the NACC.

7. Aims of the Partnership.

- facilitation of transparency in national defense planning and budgeting processes,

- ensuring democratic control of defense forces,

- Maintenance of the capability and readiness to contribute to operations under the authority of the UN and/or the responsibility of the CSCE,

- the development of cooperative military relations with NATO, for the purpose of joint planning, training and exercises in order to strengthen the ability of PEP states to undertake missions in peacekeeping, search and rescue, humanitarian operations.

- the development of forces that are better able to operate with the forces of NATO members.

8. Active participating in the PFP will play an important role in the process of NATO's expansion. Article 10 of the Washington Treaty provides for such expansion.

9. To Subscribe, states sign a Framework Document, in which they recall that they are committed to the preservation of democratic societies and the maintenance of the principles of international law. The next step is the submission by each state (Partner) of a Presentation Document to NATO.

10. Up to now, twenty-five countries had joined PFP Romania is included.

11. Partners undertake to make available personnel, assets, facilities, and capabilities necessary for carrying out the agreed "partnership programme". They will fund their own participation activities and will endeavour to share the burdens of exercises in which they take part in.

12. To facilitate cooperation activities, NACC Partner countries and other PFP participating states are invited to send permanent liaison officers to NATO Headquarters and to a separate Partnership Coordination Cell. at Mons. This cell is responsible for coordinating joint military activities with in the PFP and for carrying out the military planning necessary to implement the Partnership Programme.

13. PFP provides an affective mechanism to develop the essential military capabilities, required to operate effectively with NATO and to encourage interoperability between NATO and Partners.



Any damages caused by a military personnel in the execution of his duties may be divided into two categories;

1. Damages to the properties of state, or the properties used only for military purposes.

Articles 130 and 137 of the Military Criminal Act, express the criminal responsibilities. Any person, convicted for the violation of Art.130 and 137 of the Mil. Criminal Code, also is legally responsible for paying for the damage according to article 130. Military prosecutors shall pursue the compensation for any damage along with the criminal case.

2. Damages to the properties of the third persons are different. In these situations, convicted are legally responsible. However, third person, whose properties were damaged, has the right to claim (sue) the Ministry of National Defense. (MND)

At first instance, the MND shall pay for the damages. But the MND (like the other government agencies) has the right to recourse to the convicted, for paying.

Article 129 of the Constitution states the principle on this issue. Actions for damages arising from faults committed by public servants and other public employees in the exercise of their duties shall be brought only against the administration in accordance with the procedure and conditions prescribed by Law. Administration recourse to them thereafter.