

THE CONSTITUTION OF THE REPUBLIC OF TURKEY [1982] (Translated by Erhan Yasar)
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The Constitution of Turkey 4/4

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PART THREE JUDICIAL POWER

I. General Provisions

A. Independence of the Courts

ARTICLE 138 - Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law; and their personal conviction conforming with the Law.

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

No question shall be asked, debates held, or statements made in the Legislative Assembly 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.

B. Security of Tenure of Judges and Public Prosecutors

ARTICLE 139 - 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 over rights relating to their status, even as a result of the abolition of court or posts.

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, are reserved.

C. Judges and Public Prosecutors

ARTICLE 140 - Judges and public prosecutors shall serve as judges and public prosecutors of courts of justice and of administrative courts. These duties shall be carried out by career judges and public prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges,

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 the 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 shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges. Judges and public prosecutors 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.

Judges and public prosecutors shall not assume official or public functions other than

those prescribed by law.

Judges and public prosecutors shall be attached to the Ministry of Justice in so far as their administrative functions are concerned. Those judges and public prosecutors working in administrative posts of the justice service shall be subject to the same provisions as other judges and public prosecutors. Their categories and grades shall be determined according to the principles applying to judges and public prosecutors, and they shall enjoy all the rights accorded to judges and public prosecutors

D. Publicity of the Hearings and Verdict Justification

ARTICLE 141 - Court hearings shall be open to the public. It may be decided to conduct all or part of the hearings in closed session only in cases where required absolutely for reasons of public morality or public security,

Special provisions shall be provided in the law with respect to the trial of minors.

The decision of all courts shall be made in writing with a statement of justification. It is the duty of the judiciary to conclude trials as quickly as possible and at the minimum cost.

E. Organization of Courts.

ARTICLE 142 - The organization, functions and jurisdictions of the courts, their functioning and trial procedures shall be regulated by law.

F. The State Security Courts

ARTICLE 143 - State Security Courts shall be established to deal with offenses against the indivisible integrity of the State with its territory and nation, the free democratic order, or against the Republic whose characteristics are defined in the Constitution, and offense directly involving the internal and external security of the State.

State Security Courts shall consist of a President, two regular and two substitute members, one public prosecutor and a sufficient number of deputy public prosecutors. The President, one regular and one substitute member and the public prosecutor from among first category judges and public prosecutors; one regular and one substitute member from among first category military judges; and deputy public prosecutors from among public prosecutors of the Republic and military judges, shall be appointed in accordance with procedures prescribed by their special laws.

The President, members and substitute members, and public prosecutors and deputy public prosecutors of a State Security Court shall be appointed for four years; those whose term of office expires may be re-appointed.

The High Court of Appeal is the competent authority to examine appeals against the verdicts of a State Security Court.

Other provisions relating to the functioning, the duties and jurisdiction and the trial procedure of the State Security Court shall be prescribed by law.

In the event of declaration of martial law within the regions under the jurisdiction of a State Security Court, the latter may be transformed, in accordance with the provisions prescribed by law, into a Martial Law Military Tribunal with jurisdiction restricted to these regions.

G. Supervision of Judges and Public Prosecutors

ARTICLE 144 - Supervision of judges and public prosecutors with regard to the performance of their duties in accordance with laws, regulations, by-laws and circulars (administrative circulars, in the case of judges), investigation into whether they have committed offenses in connection with, or in the course of, their duties, whether their behavior and attitude are in conformity with their status and duties and if necessary, inquiry and investigation concerning them shall be made by judiciary inspectors with the

permission of the Ministry of Justice. The Minister of Justice may request the investigation or inquiry to be conducted by a judge or public prosecutor who is senior to the judge or public prosecutor to be investigated.

H. Military Justice

ARTICLE 145 - 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.

The offenses and persons falling within the jurisdiction of military courts in time of war or under martial law, their organization and the appointment, where necessary, of judges and public prosecutors from courts of justice to military courts shall be regulated by law. The 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 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.

II. Higher Courts

A. The Constitutional Court

I. Organization

ARTICLE 146 - The Constitutional Court shall be composed of eleven regular and four substitute members.

The President of the Republic shall appoint two regular and two substitute members from the High Court of Appeal, two regular and one substitute member from the Council of State; and one member each from the Military High Court of Appeal, the High Military Administrative Court and the Audit Court, three candidates being nominated for each vacant office by the Plenary Assemblies of each court from among their respective presidents and members, by an absolute majority of the total number of members; the President of the Republic shall also appoint one member from a list of three candidates nominated by the Council of Higher Education from among members of the teaching staff of Institutions of higher education who are not members of the Council, and three members and one substitute member from among senior administrative officers and lawyers.

To qualify for appointments as regular or substitute members of the Constitutional Court members of the teaching staff of institutions of higher education, senior administrative officers and lawyers shall be required to be over the age of forty and to have completed their higher education, or to have served at least fifteen years as a member of the teaching staff of institutions of higher education or to have worked actually at least fifteen years in public service or to have practiced as a lawyer for at least fifteen years. The Constitutional Court shall elect a President and Deputy President from among its regular members for a term of four years: by secret ballot and by an absolute majority of the total number of members. They may be re-elected at the end of their term of office.

The Members of the Constitutional Court shall not assume other official and private functions, besides their main functions.

2. Termination of Membership

ARTICLE 147 - The members of the Constitutional Court shall retire on reaching the age of sixty five.

Membership in the Constitutional Court shall terminate automatically if a member is convicted of an offense requiring his dismissal from the judicial profession; it shall terminate by a decision of an absolute majority of the total number of members of the Constitutional Court if it is definitely established that he is unable to perform his duties on account of ill health.

3. Functions and Powers

ARTICLE 148 - The Constitutional Court shall examine the Constitutionality in respect of both form and substance of laws, decrees having force of law, and the rules of Procedure of the Grand National Assembly of Turkey, Constitutional amendments shall be examined and verified only with regard to their form. However, no action shall be brought before the Constitutional Court alleging the unconstitutionality as to the form or substance of decrees having force of law, issued during a state of emergency, martial law or in time of war.

The verification of laws as to form shall be restricted to consideration of whether the requisite majority was obtained in the last ballot; the verification of constitutional amendments shall be restricted to consideration of whether the requisite majorities were obtained for the proposal and in the ballot, and whether the prohibition on debates under urgent procedure was complied with.

Verification as to the form may be requested by the President of the Republic or by one - fifth of the members of the Grand National Assembly of Turkey. Applications for annulment on the grounds of defect in form shall not be made more than ten days after the date on which the law was promulgated; nor shall objection be raised.

The President of the Republic, members of the Council of Ministers, Presidents and members of the Constitutional Court, of the High Court of Appeal, of the Council of State, of the Military High Court of Appeal, of the High Military Administrative Court of Appeal, their Chief Public Prosecutors, Deputy Public Prosecutors of the Republic, and the Presidents and members of the Supreme Council of Judges and Public Prosecutors, and of the Audit Court shall be tried for offenses relating to their functions by the Constitutional Court in its capacity as the Supreme Court.

The Chief Public Prosecutor of the Republic or Deputy Chief Public Prosecutor of the Republic shall act as public prosecutor in the Supreme Court.

The judgments of the Supreme Court shall be final.

The Constitutional Court Shall also perform the other functions given to it by the Constitution.

4. Functioning and Trial Procedure

ARTICLE 149 - The Constitutional Court shall convene with its President and ten members, and shall take decisions by absolute majority. Decision of annulment of Constitutional amendments shall be taken by a two - thirds majority.

The Constitutional Court shall give priority to the consideration of, and to decisions on, applications for annulment on grounds of defect in form.

The organization and trial procedures of the Constitutional Court shall be determined by law; its method of work and the division of labor among its members shall be regulated by the Rules of Procedure prepared by the Court itself.

(Amended by Law Nr. 4121, Article 14, dated 23 July 1995) The Constitutional Court shall examine cases on the basis of files except where it acts as the Supreme Court.

However when it deems necessary, it may summon those concerned and those having knowledge relevant to the case, to present oral depositions. In cases involving the permanent dissolution of a political party, the chairman of the political party in question

or his attorney shall be heard as defense, following the testimony of the Chief Prosecutor of the High Court of Appeal.

5. The Annulment Action

ARTICLE 150 - The President of the Republic, Parliamentary Groups of the Party in power and of the main opposition party, and a minimum of one - fifth of the total number of members of the Grand National Assembly of Turkey shall have the right to apply for annulment action to the Constitutional Court, based on the assertion of the unconstitutionality of laws in form and in substance, of decrees having force of law, of Rules of Procedure of the Grand National Assembly of Turkey or of specific articles or provisions thereof. If more than one political party is in power, the right of the parties in power to apply for annulment action shall be exercised by the party having the greatest number of members.

6. Stature of Limitation for Annulment Action

ARTICLE 151 - The right to apply for annulment directly to the Constitutional Court shall lapse sixty days after the publication in the Official Gazette of any contested Law, of any Statutory Decree, or of any Rules or Procedures.

7. Contention of Unconstitutionality Before Other Courts

ARTICLE 152 - If a court which is trying a case, finds that the law or the statutory decree to be applied is unconstitutional, or if the court is convinced of the gravity of a claim of unconstitutionality as submitted by one of the parties, it may postpone any deliberation of the case until the Constitutional Court decides on this issue.

If the court is not convinced of the gravity of a claim of unconstitutionality, such a claim may be decided on by the competent authority of appeal together with the principal judgment.

The Constitutional Court shall decide such matters and make public its judgment within five months after receiving the contention. If no decision is reached within this period, the trial court shall conclude the case under existing legal provisions. However, if the decision of the Constitutional Court is announced before the decision of the trial court on the merits of the case becomes final, the trial court is obliged to comply with it.

No contention of unconstitutionality may be repeated against any legal provision until ten years elapse after the publication in the Official Gazette of a decision by the Constitutional Court dismissing a given contention on its merits.

8. Decisions of the Constitutional Court

ARTICLE 153 - Decisions of the Constitutional Court are final. Decisions of annulment may not be made public without a written statement of justification.

In the course of annulment of a law or a part of its provisions, The Constitutional Court may not act as a legislator and pass judgment leading to new application. Laws, Statutory Decrees, or Rules of Procedure of the Grand National Assembly of Turkey or provisions thereof, shall cease to have effect from the date of publication in the Official Gazette of the annulment decision. Where necessary, the Constitutional Court may also decide on the date on which the annulment decision shall come into effect. That date shall not be more than one year from the date of the publication of the decision in the Official Gazette.

In the event of any postponement of the date on which an annulment decision is to come into effect, the Grand National Assembly of Turkey shall debate and decide with priority on the draft bill or a law proposal, designed to fill the legal void arising from the annulment decision.

An annulment decision may not have retroactive effect.

Decisions of the Constitutional Court shall be published immediately in the Official Gazette, and shall be binding on the legislative, executive, and judicial organs, on administrative authorities, and on persons and corporate bodies.

B. The High Court of Appeal

ARTICLE 154 - The High Court of Appeal is the last instance for reviewing decisions and judgments given by courts of justice and which are not referred by law to other judicial authority. It shall also be the first and last instance for dealing with specific cases prescribed by law.

Members of the High Court of Appeal shall be appointed by the Supreme Council of Judges and Public Prosecutors from among the first category judges and public prosecutors of the Republic of the courts of justice, or those considered to be members of this profession, by secret ballot and by an absolute majority of the total number of members.

The First President, first deputy presidents and heads of division shall be elected by the Plenary Assembly of the High Court of Appeal from among its own members, for a term of four years, by secret ballot and by an absolute majority of the total number of members; they may be re-elected at the end of their term of office.

The Chief Public Prosecutor of the Republic and the Deputy Chief Public Prosecutor of the Republic of the High Court of Appeal shall be appointed by the President of the Republic for a term of four years from among five candidates nominated for each office by the Plenary Assembly of the High Court of Appeal from among its own members by secret ballot. They may be re-elected at the end of their term of office.

The organization, the functioning, the qualifications and procedures of election of the President, Deputy Presidents, the heads of division and members and the Chief Public Prosecutor of the Republic and the deputy chief public prosecutor of the Republic of the High Court of Appeal shall be regulated by law in accordance with the principles of the independence of courts and the security of tenure of judges.

C. The Council of State

ARTICLE 155 - The Council of State is the last instance for reviewing decisions and judgments given by administrative courts and which are not referred by law to other administrative courts. It shall also be the first and last instance for dealing with specific cases prescribed by law.

The Council of State shall try administrative cases, give its opinions on draft legislation submitted by the Prime Minister and the Council of Ministers, examine draft regulations and all conditions and contracts under which concessions are granted, settle administrative disputes and discharge other duties as prescribed by law.

Three - fourths of the members of the Council of State shall be appointed by the Supreme Council of Judges and Public Prosecutors from among the first category administrative judges and public prosecutors, or those considered to be of this profession; and the remaining one - fourth of the members by the President of the Republic from among officials meeting the requirements designated by law.

The President, Chief Public Prosecutor, Deputy Presidents, and heads of division of the Council of State shall be elected by the Plenary Assembly of the Council of State from among its own members for a term of four years by secret ballot and by an absolute majority of the total number of members. They may be re-elected at the end of their term of office.

The organization, the functioning, the qualifications and procedures of election of the President, the Chief Public Prosecutor, the deputy presidents, and the heads of division and the members of the Council of State, shall be regulated by law in accordance with the principles of specific nature of the administrative jurisdiction, and of the independence of

the courts and the security of tenure of judges.

D. Military High Court of Appeal.

ARTICLE 156 - The Military High Court of Appeal is the last instance for reviewing decisions and judgments given by military courts. It shall also be the first and last instance for dealing with specific cases designated by law concerning military personnel.

Members of the Military High Court of Appeal shall be appointed by the President of the Republic from among three candidates nominated for each vacant office by the Plenary Assembly of the Military High Court of Appeal from among military judges of the first category, by secret ballot and by an absolute majority of the total number of members. The Chairman, Chief Public Prosecutor, Deputy Chairmen and heads of division of the Military High Court of Appeal shall be appointed according to rank and seniority from among the members of the Military High Court of Appeal. The organization, the functioning of the Military High Court of Appeal, disciplinary and personnel matters concerning the Status of its members shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges and with the requirements of military service.

E. The High Military Administrative Court of Appeal

ARTICLE 157 - The High Military Administrative Court of Appeal shall be the first and last instance for the judicial supervision of disputes arising from administrative acts and actions involving military personnel or relating to military service, even if such acts and actions have been carried out by civilian authorities. However in disputes arising from the obligation to perform military service, there shall be no condition that the person concerned be a member of the military body. Members of the High Military Administrative Court of Appeal who are military judges shall be appointed by the President of the Republic from a list of three candidates nominated for each vacant office by the Chairman and members of the Court, who are also military judges, by secret ballot and by an absolute majority of the total number of such members, from among military judges of the first category; members who are not military judges shall be appointed by the President of the Republic from a list of three candidates nominated for each vacant office by the Chief of the General Staff from among officers holding the rank and qualifications prescribed by law. The term of office of members who are not military judges shall not exceed four years. The Chairman, Chief Public Prosecutor and heads of division of the Court shall be appointed from among military judges according to rank and seniority. The organization and functioning of the High Military Administrative Court, its procedure, disciplinary affairs and other matters relating to the status of its members shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges and with the requirements of military service.

F. The Jurisdictional Conflict Court

ARTICLE 158 - The Jurisdictional Conflict Court shall be empowered to deliver final judgments in disputes between courts of justice, and administrative and military courts concerning their jurisdiction and decisions. The organization of the Jurisdictional Conflict Court, the qualifications of its members and the procedure for their election, and its functioning shall be regulated by law. The office of the President of this Court shall be held by a member delegated by the Constitutional Court from among its own members. Decisions of the Constitutional Court shall take precedence in jurisdictional disputes between the Constitutional Court and other courts.

III. The Supreme Council of Judges and Public Prosecutors

ARTICLE 159 - The Supreme 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 security of tenure of judges. The President of the Council is the Minister of Justice. The Undersecretary to the Minister of Justice shall be an ex-officio member of the Council. Three regular and three substitute members of the Council shall be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the plenary assembly of the High Court of Appeal from among its own members and two regular and two substitute members shall be similarly appointed from a list of three candidates nominated for each vacant office by the plenary assembly of the Council of State. They may be re-elected at the end of their term of office. The Council shall elect a deputy president from among its elected regular members. The Supreme Council of Judges and Public Prosecutors shall deal with the admission of judges and public prosecutors of courts of justice and of administrative courts into the profession, appointments, transfers to other posts, the delegation of temporary powers, promotion, and 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. It shall 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. It shall also exercise the other functions given to it by the Constitution and laws. There shall be no appeal to any judicial instance against the decisions of the Council.

The functioning of the Council and methods of performing its duties, the procedure governing election and working methods, the principles relating to the examination of objections within the Council shall be regulated by law. The Minister of Justice is empowered to appoint judges and public prosecutors with their consent, to temporary or permanent functions in the central offices of the Ministry of Justice. The Minister of Justice may, in cases where delay is deemed prejudicial, confer temporary powers on judges or public prosecutors to prevent the disruption of services, subject to the approval of the Supreme Council of Judges and Public Prosecutors at its first meeting thereafter.

IV. The Audit Court

ARTICLE 160 - The Audit Court shall be charged with auditing, on behalf of the Grand National Assembly of Turkey, all the accounts relating to the revenue, expenditure and property of government departments financed by the general and subsidiary budgets, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgment. Parties concerned may file a single request for reconsideration of a final decision of the Audit Court within fifteen days of the date of written notification of the decision. No applications for judicial review of such decisions shall be filed in administrative courts. In the event of a dispute between the Council of State and the Audit Court concerning decisions on matters of taxation or similar financial obligations and duties, the decision of the Council of State shall take precedence. The organization, functioning and auditing procedure of the Audit Court, the qualifications, appointment, duties and powers, rights and obligations of its members, other matters relating to their personnel status, and the security of tenure of the Chairman and members shall be regulated by law. The procedure for auditing, on behalf of the Grand National Assembly of Turkey, of State property in possession of the Armed Forces shall be regulated by law in accordance with the principles of secrecy required by National Defense.

PART FOUR FINANCIAL AND ECONOMIC PROVISIONS

CHAPTER ONE FINANCIAL PROVISIONS

I. The Budget

A. Preparation and Implementation of the Budget

ARTICLE 161 - The expenditures of the State and those of public corporations other than state economic enterprises shall be determined by annual budgets. The beginning of the fiscal year and the preparation and implementation of the general and subsidiary budgets shall be defined by law. The law may prescribe special periods and procedures for investments relating to development plans, or for business and services expected to last more than one year. No provisions other than those pertaining to the budget shall be included in the Budget Act.

B. Debate on the Budget

ARTICLE 162 - The Council of Ministers shall submit the draft of general and subsidiary budgets and the report containing the national budgetary estimates to the Grand National Assembly of Turkey at least seventy- five days before the beginning of the financial year.

The draft budgets and the report shall be considered by the Budget Committee, which shall be composed of forty members. In the composition of this Committee, the proportional representation of the various political party groups and independent members in the Assembly, shall be taken into consideration subject to the allocation of at least twenty - five seats to members of the party or parties in power. The draft budget, which shall be adopted by the Budget Committee within fifty- five days shall thereafter be considered by the Assembly and shall be decided on before the beginning of the fiscal year.

Members of the Grand National Assembly of Turkey shall express their opinions on ministerial, departmental and subsidiary budgets during the debates held in Plenary Session on each budget as a whole; the various headings and motions for amendment shall be read out and put to the vote without separate debate. During debates in the Plenary Session on the draft Budget Act, members of the Grand National Assembly of Turkey shall not make proposals which entail an increase in expenditure or a decrease in revenue.

C. Principles Governing Budgetary Amendments

ARTICLE 163 - Appropriations granted under the general and subsidiary budgets shall indicate the limit of expenditure allowed. No provisions shall be included in the budget to the effect that the limit of expenditure may be exceeded in pursuance of a decision of the Council of Ministers. The Council of Ministers shall not be empowered to amend the budget by a decree having force of law. In draft amendments entailing an increase in appropriations under the budget for the current fiscal year and, in draft laws and law proposals providing for additional financial commitments in the budgets for the current or following year, the financial resources which would meet the stated expenditure shall be indicated.

D. Final Account

ARTICLE 164 - Draft final accounts shall be submitted to the Grand National Assembly of Turkey by the Council of Ministers within seven months of the end of the relevant fiscal year, unless a shorter period is prescribed by law. The Audit Court shall submit its notice of conformity to the Grand National Assembly of Turkey within seventy - five days of the submission of the draft final accounts in question. The draft final accounts shall be placed on the agenda of the budget Committee together with the Draft Budget

Act for the new fiscal year. The Budget Committee shall submit the draft Budget Act to the plenary assembly in conjunction with the draft final accounts; the plenary assembly shall consider, and decide on. the draft final accounts in conjunction with the draft Budget Act for the new fiscal year. The submission of the draft final accounts and the notice of conformity to the Grand National Assembly of Turkey shall not preclude the auditing of accounts for the relevant year which have not already been dealt with by the Audit Court and shall not indicate that a final decision has been taken on these accounts.

E. Auditing of State Economic Enterprises

ARTICLE 165 - The principles governing the auditing, by the Grand National Assembly of Turkey of the accounts of public establishments and partnerships in which more than half of the capital directly or indirectly belongs to the State, shall be regulated by law.

CHAPTER TWO ECONOMIC PROVISIONS

I. Planning

ARTICLE 166 - The planning of economic, social and cultural development, in particular the speedy, balanced and harmonious development of industry and agriculture throughout the country, and the efficient use of national resources on the basis of detailed analysis and assessment and the establishment of the necessary organization for this purpose are the duty of the State. Measures to increase national efficiency and production, to ensure stability in prices and balance in foreign trade transactions, to promote investment and employment, shall be included in the plan; in investments, public benefit and requirements shall be taken into account; the efficient use of resources shall be taken as objectives. Development activities shall be realized according to this plan. The procedure and principles governing the preparation of development plans, their approval by the Grand National Assembly of Turkey, their implementation and their revision, and of the prevention of amendments liable to affect the unity of the plan shall be regulated by law.

II. Supervision of Markets and Regulation of Foreign Trade

ARTICLE 167 - The State shall take measures to ensure and promote the sound, orderly functioning of the money, credit, capital, goods and services markets; and shall prevent the formation, in practice or by agreement, of monopolies and cartels in the markets. In order to regulate foreign trade for the benefit of the economy of the country, the Council, of Ministers may be empowered by Law to introduce or lift additional financial impositions on imports, exports and other foreign transactions in addition to tax and similar impositions.

III. Exploration and Exploitation of Natural Resources

ARTICLE 168 - Natural wealth and resources shall be placed under the control and at the disposal of the State. The right to explore and exploit them belongs to the State. The State may delegate this right to individuals or public corporations for specific periods. Of the natural wealth and resources, those to be explored and exploited by the State in partnership with individuals or public corporations, and those to be directly explored and exploited by individuals, or public corporations shall be subject to the explicit permission of the law. The conditions to be observed in such cases by individuals and public corporations, the procedure and principles governing supervision and control by the State, and the sanctions to be applied shall be prescribed by law.

IV. Forests and the Inhabitants of Forest Villages

A. Protection and Development of Forests

ARTICLE 169 - The State shall enact the necessary legislation and take the necessary measures for the protection of forests and the extension of their areas. Forest areas destroyed by fire shall be reforested; other agricultural and stock - breeding activities shall not be allowed in such areas All forests shall be under the care and supervision of the State. The ownership of State forests shall not be transferred to others. State forests shall be managed and exploited by the State in accordance with the law. Ownership of these forests cannot be acquired through prescription, nor shall servitude other than that in the public interest be imposed in respect of such forests. Acts and actions which might damage forests shall not be permitted. No political propaganda which might lead to the destruction of forests shall be made; no amnesties or pardons to be specifically granted for offenses against forests shall be legislated. Offenses committed with the intention of burning or destroying forests or reducing forest areas shall not be included within the scope of amnesties or pardons on other occasions. The restraining of forest boundaries shall be prohibited, except in respect of areas whose preservation as forests is considered technically and scientifically useless but whose conversion into agricultural land has been found definitely advantageous, and in respect of fields, vineyards, orchards, olive groves or similar areas which technically and scientifically ceased to be forest before 31 December 1981 and whose use for agricultural or stock- breeding purposes has been found advantageous, and in respect of built - up areas in the vicinity of cities, towns or villages.

B. Protection of the Inhabitants of Forest Villages

ARTICLE 170 - Measures shall be introduced by law to secure co-operation between the State and the inhabitants of villages located in or near forests in the supervision and exploitation of forests for the purpose of ensuring their conservation and improving the living conditions of their inhabitants; the law shall also regulate the development of areas which Technically and scientifically ceased to be forests before 31 December 1981, the identification of areas whose preservation as forest is considered technically and scientifically useless, their exclusion from forest boundaries, their improvement by the State for the purpose of settling all or some of the inhabitants of forest villages in them, and Their allocation to these villages. The State shall take measures to facilitate the acquisition, by these inhabitants, of farming equipment and other inputs, The land owned by villagers resettled outside a forest shall immediately be reforested as a state forest.

V. Promotion of Cooperatives

ARTICLE 171 - The State shall take measures, in keeping with national and economic interests, to promote the development of cooperatives, which shall be primarily designed to increase production and protect consumers. *(Second paragraph abolished by Law Nr. 4121, Article 15, dated 23 July 1995)*

VI. Protection of Consumers, Small Traders and Craftsmen

A. Protection of The Consumer

ARTICLE 172 - The State shall take measures to protect and inform consumers and shall encourage their initiatives to protect themselves.

B. Protection of Small Traders and Craftsmen

ARTICLE 173 - The State shall take measures to protect and support small traders and craftsmen.

PART FIVE MISCELLANEOUS PROVISIONS

I. Preservation of Reform Laws

ARTICLE 174 - No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws indicated below, which aim to raise Turkish society above the level of contemporary civilization and to safeguard the secular character of the Republic, and which were in force on the date of the adoption by referendum of the Constitution of Turkey.

1. Act Nr. 430 of 3 March 1340 (1924) on the Unification of the Educational System;
2. Act Nr. 671 of 25 November 1341 (1925) on the Wearing of Hats;
3. Act Nr. 677 of 30 November 1341 (1925) on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles;
4. The principle of Civil marriage according to which the marriage act shall be concluded in the presence of the competent official adopted with the Turkish Civil Code Nr. 743 of 17 February 1926, and Article 110 of the Code;
5. Act Nr. 1288 of 20 May 1928 on the Adoption of International Numerals;
6. Act Nr. 1353 of 1 November 1928 on the Adoption and Application of the Turkish Alphabet;
7. Act Nr. 2590 of 26 November 1934 on the Abolition of Titles and Appellations such as Efendi, Bey or Paşa;
8. Act Nr. 2596 of 3 December 1934 on the Prohibition of the Wearing of Certain Garments;

PART SIX PROVISIONAL ARTICLES

PROVISIONAL ARTICLE 1 - On proclamation under lawful procedure of the adoption by referendum of the Constitution as the Constitution of the Republic of Turkey, the Chairman of the National Security Council and Head of State at the time of the referendum, shall assume the title of President of the Republic and shall exercise all constitutional functions and powers of the President of the Republic for a period of seven years. The oath he took as Head of State on 18 September 1980 shall remain valid. At the end of the period of seven years the election for the Presidency of the Republic shall be held in accordance with the provisions set forth in the Constitution.

The President of the Republic shall also hold the chairmanship of the National Security Council formed on 12 December 1966 under Act Nr. 2356, until the convening of the Grand National Assembly of Turkey and the formation of the Presidium of the Assembly following the first general elections.

If the Presidency of the Republic falls vacant for any reason before the Grand National Assembly of Turkey convenes and assumes its functions at the end of the first general elections, the most senior member of the National Security Council shall act as President of the Republic and shall exercise all his constitutional functions and powers until the convening of the Grand National Assembly of Turkey and its election of a new President of the Republic in accordance with the provisions of the Constitution.

PROVISIONAL ARTICLE 2 - The National Security Council formed on 12 December 1980 under Act Nr. 2356 shall continue to exercise its functions under Act Nr. 2324 on the Constitutional Order and Act Nr. 2485 on the Constituent Assembly until the convening of the Grand National Assembly of Turkey and the formation of the Presidium of the Assembly following the first general elections held under the Political Parties Act and the Elections Act prepared in accordance with the Constitution.

After the adoption of the Constitution, Article 3 of Act Nr. 2356 concerning to the procedure for filling a seat on the National Security Council which falls vacant for any

reason shall cease to apply.

After the Grand National Assembly of Turkey has convened and assumed its functions, the National Security Council shall become the Presidential Council for a period of six years, and the members of the Council of National Security shall acquire the title of members of the Presidential Council. The oath they took on 18 September 1980 as members of the Council of National Security shall remain valid. Members of the Presidential Council shall enjoy the rights and immunity conferred by the Constitution on members of the Grand National Assembly of Turkey, The legal existence of the Presidential Council shall terminate on the expiry of the period on six years.

The functions of the Presidential Council shall be as follows:

- a. To examine laws adopted by the Grand National Assembly of Turkey and submitted to the President of the Republic concerning: the fundamental rights and freedoms and duties, the principle of secularism, the preservation of the reforms of Atatürk, national security and public order, set forth in the Constitution, the Turkish Radio and Television Corporation, International Treaties, the sending of Armed Forces to foreign countries and the stationing of foreign forces in Turkey, emergency rule, martial law and the state of war, and other laws deemed necessary by the President of the Republic, within the first ten days of the period of fifteen days granted to the President of the Republic for his consideration;
- b. On the request of the President of the Republic and within the period specified by him: To consider and give an opinion on matters relating to: the holding of new general elections, the exercise of emergency powers and the measures to be taken during a state of emergency, the management and supervision of the Turkish Radio and Television Corporation, the training of youth and the conduct of Religious affairs;
- c. According to the request of the President of the Republic, to consider and investigate matters relating to internal or external security and such other matters as are deemed necessary, and to submit its findings to the President of the Republic.

PROVISIONAL ARTICLE 3 - With the convening of the Grand National Assembly of Turkey and the formation of the Presidium of the Assembly following the first general elections held in accordance with the Constitution:

- a. Act Nr. 2324 of 27 October 1980 on the Constitutional Order;
- b. Act Nr. 2356 of 12 December 1980 on the National Security Council;
- c. Act Nr. 2485 of 29 June 1981 on the Constituent Assembly, shall cease to have effect and the legal existence of the National Security Council and the Consultative Assembly shall terminate.

PROVISIONAL ARTICLE 4 - *(Abolished by Law Nr. 3361, Article 4, dated 17 May 1987)*

PROVISIONAL ARTICLE 5 - On the tenth day following the proclamation by the Supreme Election Council of the results of the first general elections, the Grand National Assembly of Turkey shall convene of its own accord at the premises of the Grand National Assembly of Turkey in Ankara at 15.00 hours The eldest Deputy shall take the Chair for this session. At this session the deputies shall take their oaths.

PROVISIONAL ARTICLE 6 - Until the Grand National Assembly of Turkey formed in accordance with the Constitution, adopts the Rules of Procedure which shall govern its sessions and proceedings, those provisions of the Rules of Procedure of the Grand National Assembly which were in force before 12 September 1980 and which are not contrary to the Constitution shall apply.

PROVISIONAL ARTICLE 7 - The present Council of Ministers shall continue in

office until the convening of the Grand National Assembly of Turkey and the formation of the new Council of Ministers following the first general elections.

PROVISIONAL ARTICLE 8 - Legislation relating to the organization, duties, powers and functioning of the new organs, institutions and agencies established under the Constitution and other legislation whose introduction or amendment is provided for in the Constitution, shall be enacted during the period of the Constituent Assembly, starting from the date of the adoption of the Constitution; legislation which cannot be dealt with during this period shall be enacted within the year following the first session of the newly elected Grand National Assembly of Turkey.

PROVISIONAL ARTICLE 9 - Within a period of six years following the formation of the Presidium of the Grand National Assembly of Turkey which is to convene after the first general elections, the President of the Republic may refer to the Grand National Assembly of Turkey for further consideration any Constitutional amendments adopted by the Assembly. In this case the re-submission of the Constitutional amendment draft in its unchanged form to the President of the Republic by the Grand National Assembly of Turkey, is only possible with a three fourths majority of the votes of the total number of members.

PROVISIONAL ARTICLE 10 - Local elections shall be held within a year of the first session of the Grand National Assembly of Turkey.

PROVISIONAL ARTICLE 11 - Principal and substitute members of the Constitutional Court who were in office on the date of the adoption by referendum of the Constitution shall continue to hold office and exercise their functions. Those previously elected by the Constitutional Court to specific functions shall retain the status thus acquired. No election shall be held to fill the vacant seats of the regular members of the Constitutional Court until the number of these members falls to eleven, nor shall an election be held to fill the vacant seats of substitute members until the total number of regular and substitute members falls to fifteen. Until the Constitutional Court adapts to the new system, the principles and order of precedence set forth in the Constitution shall be observed in the elections which are to be held because the number of regular members has fallen below eleven, or because the total number of regular and substitute members has fallen below fifteen.

Until the number of regular members of the Constitutional Court falls to eleven, the quorum prescribed by Act Nr. 44 of 22 April 1962 shall be observed in all cases and proceedings.

PROVISIONAL ARTICLE 12 - Persons appointed by the Head of State as regular and substitute members of the Supreme Judges and Public Prosecutors from among the members of the High Court of Appeal and the Council of State under Provisional Article 1 of Act Nr. 2461 of 13 May 1981 on the Supreme Council of Judges and Public Prosecutors; as Chief Public Prosecutor and Deputy Chief Public Prosecutor in accordance with the Provisional Article appended to Act Nr. 1730 on the High Court of Appeal under Act Nr. 2483 of 25 June 1981; and as President, Chief Public Prosecutor, Deputy Presidents and heads of division of the Council of State under Provisional Article 14, paragraph 2 of Act Nr. 2575 of 6 January 1982 on the Council of State shall continue to exercise their functions until the end of the term of office for which they were elected. The Provisions of the Provisional Articles of Act Nr. 2576 of 6 January 1982 which concern the appointment of the Presidents and members of Administrative Courts shall also remain in force.

PROVISIONAL ARTICLE 13 - The elections of one regular and one substitute member to be elected to the Supreme Council of Judges and Public Prosecutors from among the members of the High Court of Appeal shall take place within twenty days of the entry into force of the Constitution.

Until the assumption of office by the elected members, the quorum for meetings of the Council shall be met with the participation of substitute members.

PROVISIONAL ARTICLE 14 - The obligation of the labor unions to deposit their revenues in the State banks shall be fulfilled within two years of the entry into force of the Constitution, at the latest.

PROVISIONAL ARTICLE 15 - No allegation of criminal, financial or legal responsibility shall be made, nor shall an application be filed with a court for this purpose against any decision or measure whatsoever taken by the National Security Council formed under Act Nr. 2356 which has been exercising legislative and executive power on behalf of the Turkish nation from 12 September 1980 to the date of the formation of the Presidium of the Grand National Assembly of Turkey which is to convene following the first general elections; or against any government formed during the term of office of the Council; or against the Consultative Assembly which has exercised its functions under Act Nr. 2485 on the Constituent Assembly.

Provisions of the above paragraphs shall also apply in respect of persons who have taken decisions and adopted or implemented measures as part of the implementation of such decisions and measures by the administration or by the competent organs authorities and officials.

No allegation of unconstitutionality shall be made against decisions or measures taken under laws or decrees having force of law enacted during this period or under Act Nr. 2324 on the Constitutional Order.

PROVISIONAL ARTICLE 16 - Persons who fail to participate in the referendum on the Constitution without valid legal or actual reasons despite being entitled to vote and being included on the register of electors and the polling station register compiled for the referendum, shall neither participate nor stand for election in general elections, by-elections, local elections or referendums for a period of five years following the referendum on the Constitution.

PART SEVEN FINAL PROVISIONS

I. Amendment of the Constitution

ARTICLE 175 - (Amended by Law Nr. 3361, Article 3, dated 17 May 1987)

Constitutional amendments may be proposed in writing by at least one third of the total number of members of the Grand National Assembly of Turkey. Proposals to amend the Constitution are heard twice in the plenary session of the Grand National Assembly. The adoption of a proposal for an amendment is by secret balloting and shall require a three fifths majority of the total number of members of the Assembly.

The consideration and adoption of proposals for the amendment of the Constitution shall be subject to the provisions governing the consideration and adoption of legislation, with the exception of the conditions set forth in the first paragraph of this Article.

The President of the Republic may refer back amendments to the Constitution to be discussed once again in the Grand National Assembly.

If the Assembly adopts by two thirds majority the unchanged a draft law amending the Constitution which has been referred back to it for further consideration by the President of the Republic, the President may submit the law to referendum.

Any amendment to the Constitution which is upheld by a majority less than three fifths or two thirds and which is not referred back to the Grand national Assembly by the President of the Republic is promulgated in the Official Gazette to be submitted to public referendum.

The President may submit to public referendum amendments to the Constitution or Articles thereof, that have been upheld by the Grand National Assembly by two thirds majority, directly or upon referral back by the President. Amendments to the Constitution, or Articles thereof, that have not been submitted to public referendum are promulgated in the Official Gazette.

Amendments to the Constitution that are submitted to public referendum must receive a majority vote of acceptance to enter into force.

Where amendments to the Constitution are submitted to public referendum, the Grand National Assembly shall decide which amendments are to be voted on in groups and which as separate Articles.

To ensure participation in public referendum, in general elections or in interim elections, all measures including fines shall be taken These are regulated by law.

II. Preamble and Headings of Articles

ARTICLE 176 - The Preamble, which states the basic views and principles underlying the Constitution, shall form an integral part of the Constitution.

The headings of Articles merely indicate the subject matter of the Articles their order/ and the connections between them, These headings shall not be regarded as a part of the text of the Constitution.

III. Entry into Force of the Constitution

ARTICLE 177 - Upon its adoption by referendum and its publication in the Official Gazette, this Constitution shall become the Constitution of the Republic of Turkey and shall enter into force in its entirety, subject to the following exceptions and the provisions relating to their entry into force:

a. The provisions of Part II, Chapter II relating to personal liberty and security, the Press, publication and the media, and the right and freedom of assembly, The provisions of Chapter III, relating to labor, collective agreements, the right to strike, and lockout. These provisions shall come into force when the relevant legislation is promulgated, or when the existing legislation is amended, and at the latest, when the Grand National Assembly of Turkey assumes its functions. However until their entry into force, existing legislation and the decrees and decisions of the National Security Council shall apply.

b. The provisions of Part II relating to political parties and the right to engage in political activities, shall come into force on the promulgation of the new Political Parties Act which is to be prepared in accordance with these provisions; The right to vote and stand for election shall come into force on the promulgation of the Elections Act, also to be prepared in accordance with these provisions.

c. The provisions of Part III, relating to legislative power:

These provisions shall come into force on the proclamation of the results of the first general elections. However, the provisions relating to the functions and powers of the Grand National Assembly of Turkey which take place in this section shall be exercised by the National Security Council until the Grand National Assembly of Turkey assumes its functions, the provisions of Act Nr. 2485 of 29 June 1981 on the Constituent Assembly being reserved.

d. The provisions of Part III relating to the functions and powers of the President of the Republic and to the State Supervisory Council under the heading "President of the Republic"; to regulations, National Defense, procedures governing emergency rule under the heading "Council of Ministers"; to all other provisions under the heading

"Administration" except local administration, and except the Atatürk High Institute of Culture, Language and History; and all the provisions relating to the judiciary power, except the State Security Courts, shall come into force on the publication in the Official Gazette of the adoption by referendum of the Constitution. Provisions relating to the President of the Republic and the Council of Ministers which do not come into force shall come into force when the Grand National Assembly of Turkey assumes its functions, and the provisions relating to local administrations and to the State Security Courts shall come into force on the promulgation of the relevant legislation.

e. If new legislation, or amendments to existing legislation are required in connection with the constitutional provisions which are to come into force on the proclamation of the adoption by referendum of the Constitution or in connection with existing or future institutions, organizations and agencies, the procedure to be followed shall be subject to those provisions of existing laws which are not unconstitutional, or to the provisions of the Constitution, in accordance with Article 11 of the Constitution.

The second paragraph of Article 164 regulating procedures for the consideration of draft final accounts shall come into force in 1984.

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