



**SCREENING CHAPTER 23  
JUDICIARY AND FUNDAMENTAL RIGHTS**

**AGENDA ITEM I:  
JUDICIARY**

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# INSTITUTIONAL FRAMEWORK



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## TURKISH JUDICIAL SYSTEM

The principle of separation of powers exists in Turkey. In line with this principle, judicial power is exercised by independent courts on behalf of Turkish nation.  
(Article 9 of the Constitution)

Independence of courts, security of tenure of judges and public prosecutors, organization of courts, profession of judge and prosecutor, supervision of judges and public prosecutors, military courts and their organization, powers and duties of high courts are outlined in the Constitution.  
(Articles 138-160 of the Constitution)



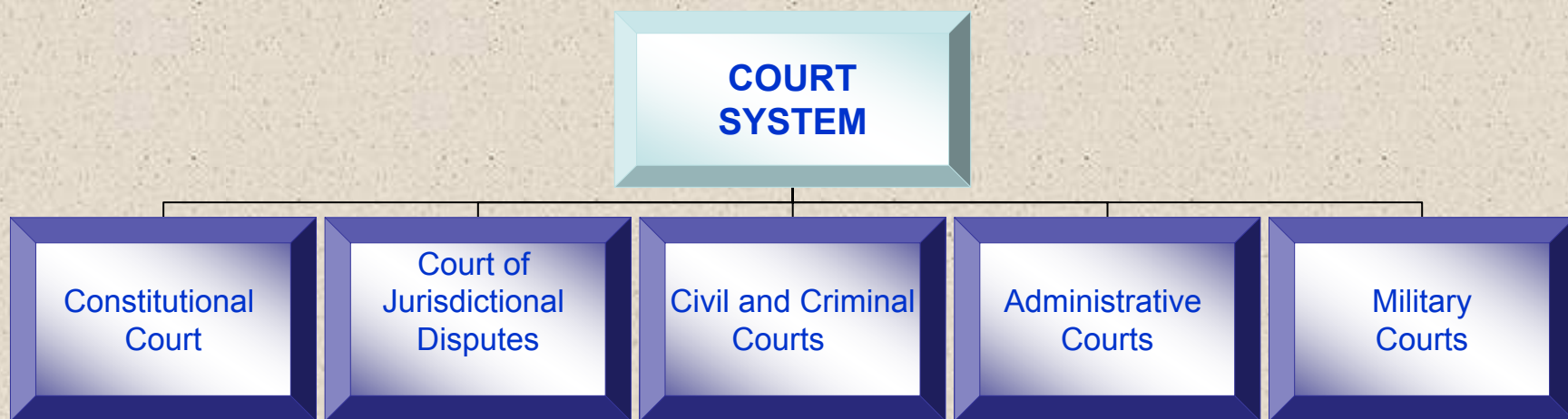
## ORGANIZATION OF COURTS

Article 142 of the Constitution:

The organization, duties and jurisdiction of the courts, their functioning and trial procedures shall be regulated by law

According to abovementioned Articles of the Constitution and related laws, the court system in Turkey can be classified under 5 main titles.







## I. CONSTITUTIONAL COURT

### Functions

The Constitutional Court shall examine the constitutionality; in respect of both form and substance of laws, decrees having the force of law, and the Rules of Procedure of the Turkish Grand National Assembly. Constitutional amendments are subject to constitutional review only in respect of form.

The Constitutional Court acts under the capacity of Supreme Tribunal, a criminal court where the President of the Republic, ministers, presidents and members of the High Courts and chief and deputy chief public prosecutors of these courts are tried for offences relating to their functions. Its decisions are final.



## **CONSTITUTIONAL COURT (Composition of the Court)**

The President of the Republic appoints the members of the Constitutional Court. Except the members appointed among high ranked officials and lawyers, he is presented with a list of three candidates for each position by the institutions shown in the Constitution (Article 146 of the Constitution) .

The following chart shows number and origins of the members of the Constitutional Court.





<b>Regular Members</b>	<b>Substitute Members</b>	<b>Institution</b>
2	2	Court of Cassation
2	1	Council of State
1	-	Military Court of Appeals
1	-	High Military Administrative Court
1	-	Court of Accounts
1	-	Academics nominated by Higher Educational Board
3	1	Senior Administrative Officers and Lawyers
<b>11</b>	<b>4</b>	<b>TOTAL</b>



## II. COURT OF JURISDICTIONAL DISPUTES

The Court of Jurisdictional Disputes is empowered to deliver final judgments in disputes between civil, administrative and military judiciary branches concerning their jurisdiction and decisions.

Its President is appointed from among the members of the Constitutional Court.

12 regular and 12 substitute members exist in addition to the President of the Court.



### III. CIVIL AND CRIMINAL JUDICIARY

Disputes arising from private law and criminal cases are handled by the civil and criminal judiciary, which functions under two separate branches:

- Civil Courts
- Criminal Courts

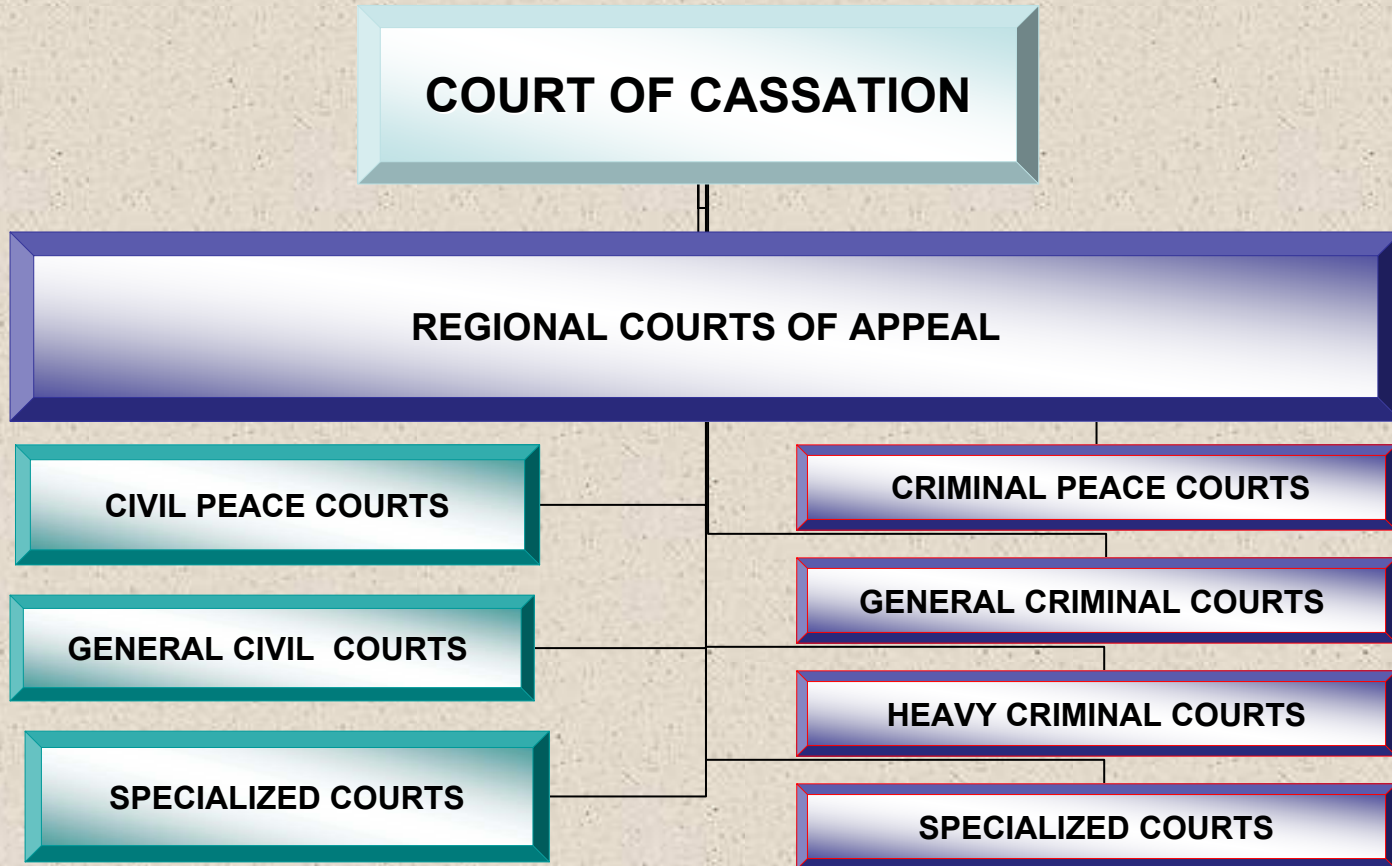
1. Civil courts deal with disputes between private parties (legal and natural persons). Whenever the administrative bodies involve in private law matters, they shall also be subject to the civil court jurisdiction.

2. Criminal courts' competence is on criminal cases. Under the civil jurisdiction, public prosecutors' offices are empowered to prosecute crimes and bring criminal cases before criminal courts.

Currently a two-tier system, namely courts of first instance and the Court of Cassation exists in Turkey. However, regional appeal courts will be introduced by 1 June 2007 to the judicial system as a third tier.



### III.CIVIL AND CRIMINAL JUDICIARY







## **COURT OF CASSATION**

The Court of Cassation is the last instance court for reviewing decisions and judgments given by civil and criminal courts and which are not referred by law to other judicial authority. It shall also be the first and last instance court for dealing with specific cases prescribed by law. (Article 154 of the Constitution)

Members of the Court of Cassation shall be appointed by the High Council of Judges and Public Prosecutors from among first class judges and public prosecutors, by secret ballot and by an absolute majority of the total number of members. (Article 154 of the Constitution)

The Court of Cassation reviews the decisions of first instance courts under 21 Civil and 11 Criminal Chambers. A president and sufficient number of members work together in each chamber. Rapporteur judges are given tasks of examining case files and preparing reports to be submitted to the general councils or chambers.





## **COURT OF CASSATION**

### **Chief Public Prosecutor's Office at the Court of Cassation**

The Chief Public Prosecutor and the Deputy Chief Public Prosecutor of the Court of Cassation shall be appointed by the President among five candidates who are nominated by the Grand General Council of the Court of Cassation.

(Article 32 of the Law on Court of Cassation)



## REGIONAL COURTS OF APPEAL

- The existing two-tier system will be replaced by three-tier system after the start of functioning of the regional courts of appeal.
- Law on Establishment, Duties and Competences of the Civil Courts of First Instance and the Regional Courts of Appeal (Law No:5235) is the legal basis for these new courts.



## REGIONAL COURTS OF APPEAL

- The starting date for functioning of the regional courts of appeal has been decided as 1 June 2007 by the Provisional Article 2 of the Law No 5235, since this system requires some preparations as regards physical and technical infrastructure, appointment of judges, public prosecutors and auxiliary personnel and their training on the new system.
- A Twinning Project funded by EU is being implemented in order to train the prospective courts of appeal judges/prosecutors and auxiliary personnel.
- Another EU funded project is prepared for meeting the physical infrastructure needs in 3 provinces (Ankara, Diyarbakır and Erzurum)



## REGIONAL COURTS OF APPEAL

- Regional Courts of Appeal will have at least 3 civil and 2 criminal divisions. Each Regional Court of Appeal will have a Chief Public Prosecutor's Office.
- They will have authority to examine files coming from the courts of first instances from the form and substance point of view.
- Regional Courts of Appeal may either approve the decision of the courts of first instance or reverse it.
- In the second case, it may either send the case file to the first instance court or retry the case on its own (Article 280 of the Criminal Procedure Code).





## FIRST INSTANCE COURTS

- Both for civil and criminal cases, the general courts of first instance are basic judicial authorities to settle disputes. In parallel to the Article 142 of the Constitution, the Law on Establishment, Competences and Duties of the Courts of First Instance and the Regional Courts of Appeal forms the legal basis for the establishment of these courts. (Law No: 5235 O.G. 7.10.2004, No:25606). The competences of Peace Civil Courts, Peace Criminal Courts and Heavy Criminal Courts are exceptionally defined by this Law and other related laws. Specialized courts both in civil and criminal fields exist and their establishment and competences are also arranged by laws.
- Establishment and competences of the public prosecution authorities in Turkey are also arranged by law. A public prosecutor's office is set up in each province or sub-province where a court organization exists. (Article 16 of the Law No. 5235)





## FIRST INSTANCE COURTS

- The heavy criminal court centres are the basic and main structural units for the functioning of courts of first instances. In each place where a heavy criminal court exists, a justice committee shall be set up. The head of the justice committees and one regular and one alternate member shall be appointed by the High Council for Judges and Prosecutors. The Chief Public Prosecutor of the relevant place is the natural member of the committees.



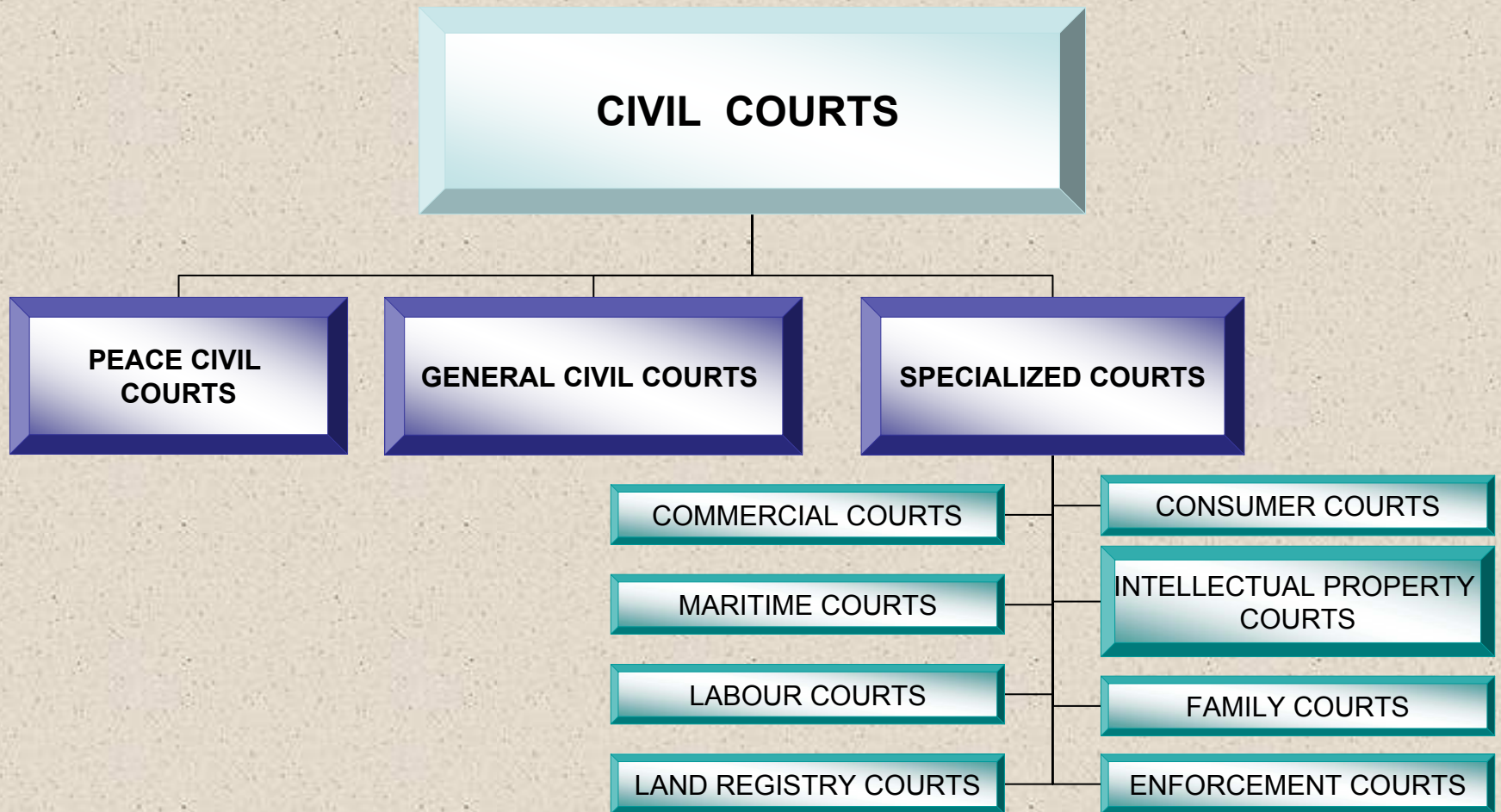
## Functions of the Justice Committees

The Justice Committees' tasks are as follows:

- Organizing the oral and practical exams for the applicants for the auxiliary personnel positions at the courthouses and prisons and making proposals for their appointment to the MoJ
- Carrying out the personal, disciplinary, payment matters of the auxiliary personnel
- Transferring of the auxiliary personnel to other places within its jurisdictional region on a permanent or temporary basis.
- Whenever a judge is not able to come his office for any reason, one of the judges in the jurisdictional area of the Justice Committee is charged with the missing judge's duties until he restarts or the High Council for Judges and Prosecutors makes a new assignment.



## CIVIL COURTS OF FIRST INSTANCE





## GENERAL CIVIL COURTS

- General Civil Courts are the basic trial courts with general and residual jurisdiction covering everything not specifically assigned to other tribunals.
- Specialized courts have been established to deal with cases which require expertise and special knowledge. If such specialized courts does not exist in a province or sub-province, cases fall under the scope of specialized courts are dealt with by general civil courts.



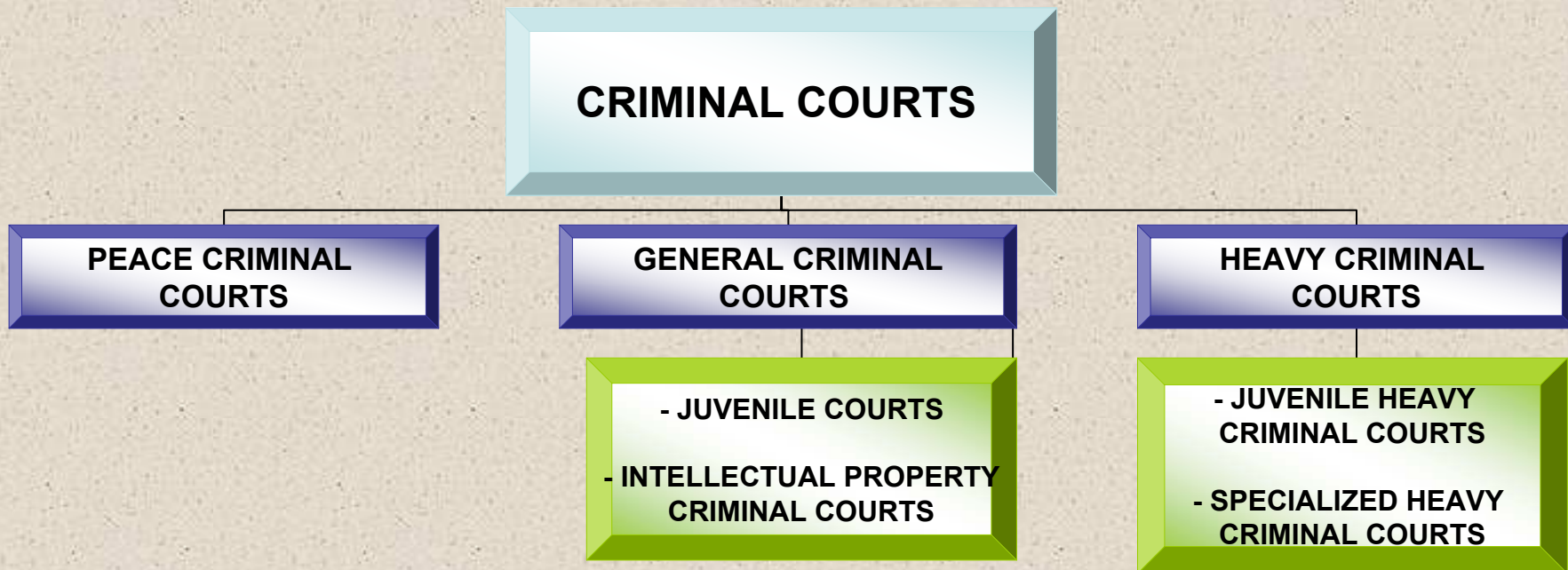


## NUMBER OF CIVIL COURTS

Name of the Court	Number
<b>General Civil Court</b>	<b>965</b>
<b>Peace Civil Court</b>	<b>816</b>
Commercial Court	55
Consumer Court	24
Family Court	160
Labour Court	125
Intellectual Property Court	7
Maritime Court	1
Enforcement Court	183
Land Registry Court	704
<b>TOTAL</b>	<b>3045</b>



## CRIMINAL COURTS OF FIRST INSTANCE





## CRIMINAL COURTS OF FIRST INSTANCE PEACE CRIMINAL COURTS

- Crimes which have a sentence of below 2 years or only fine or a security measure are dealt with by Peace Criminal Courts.
- They are composed of one judge.
- Public prosecutors do not attend these courts.



## **CRIMINAL COURTS OF FIRST INSTANCE**

### **GENERAL CRIMINAL COURTS**

- Crimes which are out of competences of peace criminal courts or heavy criminal courts, shall be handled by the General Criminal Courts of First Instance.
- They are composed of one judge.
- Juveniles under the age of 18 are tried by specialized juvenile courts.



## **CRIMINAL COURTS OF FIRST INSTANCE**

### **HEAVY CRIMINAL COURTS**

Heavy criminal courts are composed of 3 judges. In addition to crimes counted in the laws, those that require 10 years of imprisonment are tried by the heavy criminal courts.

Juveniles under the age of 18 are tried for same crimes in specialized juvenile heavy criminal courts composed of 3 judges.





## NUMBER OF CRIMINAL COURTS

Name of the Court	Number
<b>General Criminal Court</b>	<b>1126</b>
<b>Peace Criminal Court</b>	<b>835</b>
<b>Heavy Criminal Court</b>	<b>220</b>
Specialized Heavy Criminal Court	19
Intellectual Property Criminal Court	5
Juvenile Court	60
Juvenile Heavy Criminal Court	19
<b>TOTAL</b>	<b>2284</b>



## IV. ADMINISTRATIVE JUDICIARY





## COUNCIL OF STATE

The Council of State is the last instance court for reviewing decisions and judgments given by administrative courts and which are not referred by law to other administrative courts.

- It is also the first and last instance court for dealing with specific cases prescribed by law.



## The Council of State;

- tries administrative cases,
- gives its opinion within two months on draft legislation, the conditions and the contracts under which concessions are granted concerning public services which are submitted by the Prime Minister and the Council of Ministers,
- examines draft regulations,
- settles administrative disputes and
- discharges other duties as prescribed by law.





## Composition

- Three-fourths of the members of the Council of State shall be appointed by the High Council of Judges and Public Prosecutors from among the first category administrative judges and public prosecutors
- Remaining quarter shall be appointed by the President of the Republic from among officials meeting the requirements designated by law.



## REGIONAL ADMINISTRATIVE COURTS

- Composed of one presiding judge and two members.
- Appointments to these posts are made by the High Council for Judges and Prosecutors
- Total number of regional administrative courts is 28.
- Examine all of the decisions delivered by one judge at the tax courts
- Examine all of the decisions delivered by one judge and specified decisions delivered by panel of judges at the administrative courts upon an appeal raised by one of the parties. Decisions of the Regional Administrative Court in this procedure are definite.
- Solve disputes on competence and jurisdiction among administrative and tax courts in its jurisdictional territory.



## ADMINISTRATIVE AND TAX COURTS

- Both administrative and tax courts are composed of one presiding judge and sufficient number of members.
- Court panels are composed of one presiding judge and two members.
- Administrative courts deal with cases which are brought against the administrative organs because of the implementation of the administrative legislation.
- Tax courts deal with tax disputes.
- 76 administrative and 58 tax courts exist



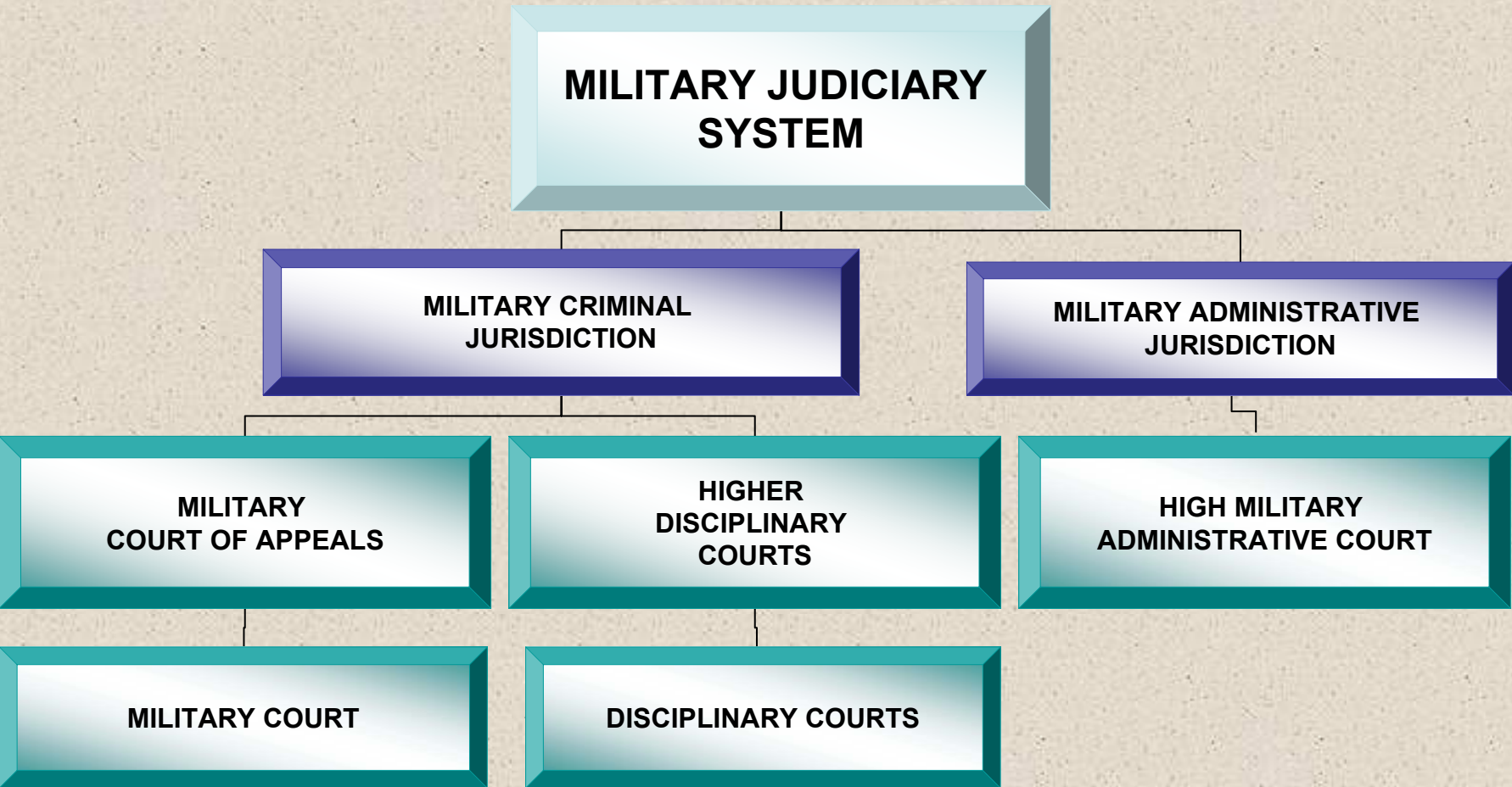
## V. MILITARY JUDICIARY

- Military justice is exercised by military courts and disciplinary courts. These courts have jurisdiction to try military personnel for military offences, for offences committed by them against other military personnel or in military places, or for offences connected with military service and duties. (Article 145 of the Constitution)





- The offences and persons falling within the jurisdiction of military courts in time of war or under martial law, the organization of the military courts, and the appointment where necessary, of judges and public prosecutors from courts of justice to military courts shall be regulated by law. (Article 145 of the Constitution)
- The organization of military judicial organs, their functions, matters relating to the status of the military judges, relations between military judges acting as military prosecutors and office of commander under which they serve, shall be regulated by law in accordance with the principles of the independence of courts, the security of tenure of judges and the requirements of military service. Besides, relations between military judges and the office of commander under which they serve regarding the requirements of military service apart from judicial functions, shall also be prescribed by law. (Article 145 of the Constitution)





## MILITARY COURTS

Military Courts are established by and function as per the Constitution and the Law No.353 on the Establishment and Proceedings of Military Courts. They have jurisdiction over the cases related with;

- The military crimes committed by the military personnel,
- The crimes committed by the military personnel against military persons or at military locations,
- or related with the military services and duties. (Law No.353, Article No.9)

In accordance with the amendment made to Law No.353 by Law No.5530 dated 29 June 2006, military courts shall try civilians only in exceptional cases, i.e. only for military crimes committed together with military persons.

## MILITARY COURTS

At the military courts;

**Ordinary  
Offences**

**Single Judge**

(Offences which may result up to three years imprisonment—Law No.353, Art.No.19)

**Serious  
Offences**

**Panel of Two Military  
Judges and an Officer.**

(Offences which may result in more than three years imprisonment— Law No.353, Art.No.19)

- **The court trial is governed by the judge.**  
( Law No.353, Art.No.144)
- **Prosecution is represented by the military prosecutor.**  
( Law No.353, Additional Art.No.1)





## DISCIPLINARY COURTS

- Disciplinary Courts are established in accordance with the provisions of the Law No.477 concerning “The Establishment of Disciplinary Courts, Trial Procedures and Disciplinary Offences and Penalties” and Article No.145 of the Constitution.
- They are in charge of handling the cases of disciplinary offences committed by the military persons.(Law No.477, Art.No.7)
- Disciplinary Courts are formed of three commissioned officers during the trial. In the trials of non-commissioned officers and the enlisted, one of the members is selected among the non-commissioned officers. (Law No.477, Art.No.2)
- The office of commander under which the disciplinary court is established, appoints the members who will serve at these courts and the appointments are renewed annually. (Law No.477, Art.No.3).



## MILITARY COURT OF APPEALS

Military Court of Appeals is established by and functions through the Article No.156 of the Constitution and the Law No.1600 on Military Court of Appeals.

- It is the last instance for reviewing decisions given by military courts. (Law No.1600, Art.No.16)
- Members of the Military Court of Appeals shall be appointed by the President of the Republic among three candidates nominated by the Plenary Assembly of the Military Court of Appeals. (Law No.1600, Art.No.14)
- All the members are military judges. (Law No.1600, Art.No.12)



## HIGH MILITARY ADMINISTRATIVE COURT

High Military Administrative Court is the first and the last instance for the judicial resolution of disputes arising from administrative acts and actions involving military personnel and relating to military service. (Law No.1602, Art.20)

Military judge and staff officer members shall be appointed by the President of the Republic from a list of three candidates, nominated by the Plenary Assembly composed of only military judge members of the Court and by the Chief of the General Staff, respectively. (Law No.1602, Art.8)