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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

TURKEY

LAW NO. 6718

**CONSTITUTIONAL AMENDMENT
AS TO LIFTING PARLIAMENTARY IMMUNITY**

GENERAL PREAMBLE

According to the Constitution, the objective of parliamentary immunity is to ensure the security of parliamentary proceedings by protecting the deputies from arbitrary and groundless investigation and arrest. Parliamentary immunity is an instrument which is not adopted for personal interest of a deputy who, indeed, enjoys it but for public interest. Therefore, a deputy is not provided with absolute protection but protected only during his/her membership; the statute of limitations does not apply during this term and it is possible to carry out investigation proceedings such as collection of evidence.

While “parliamentary immunity” has been adopted as a legal instrument, the procedure of “lifting of immunity” has also been included. In Turkey’s example, it is deemed possible to lift the parliamentary immunity, especially with respect to “the reaction it will provoke in the public”, more precisely, to allow the investigation and prosecution of a deputy. This matter can be clearly followed in the legislation of the Grand National Assembly of Turkey (Internal Regulations of the Senate of the Republic) and its practices as well as the related decisions of the Constitutional Court.

While Turkey is in the biggest and most comprehensive fight against terrorism, the statements of certain deputies constituting emotional and moral support to terrorism, the de facto support and assistance of certain deputies to terrorists and the calls of violence of certain deputies cause public indignation. Turkish public believes that certain deputies who, above all, support terrorism and terrorists, and call for violence exploit the parliamentary immunity and requests that the Assembly allow the prosecution of those who take such actions. The Assembly cannot be considered to remain silent upon such a request. Indeed, several deputies and the leaders of the political parties have requested the examination of the files of immunity and the lifting of immunity.

While the request for the examination of the files of immunity and the lifting of immunity has been brought to the agenda regarding the files related to terrorism and violence, both the politicians who are the subject of such files and some other politicians have requested that “all the current files of immunity be lifted”. The lifting of immunity and the judicial remedy has been deemed as priority within the context of fight against terrorism and it has been considered appropriate to lift all the files of lifting of immunity in order to ensure the support of those who request for the “lifting of the immunity of all the files” and the prevention of a political exploitation through the files, the immunity of which is not lifted.

The Constitution and the Rules of Procedure has regulated the process of lifting of immunity in a detailed manner and provided its conclusion within specific terms. According to this, the Joint Committee shall be assembled, the Drafting Committee shall be formed, the draft report shall be evaluated and concluded in the Committee, the dossiers of each proceeding shall be separately discussed and the status of each person in the dossiers embodying more than one person shall be separately evaluated and voted. As of today, there are five hundred and sixty-two (562) dossiers in the Joint Committee. When calculated according to a minimum of one hour for each dossiers excluding the term of service of the Joint Committee, a total of five hundred and sixty-two Plenary hours will be allocated to the deliberations. Even though the entire Agenda is allocated to the deliberations of dossiers, considering the practices of the proceedings of the Plenary, it is understood that approximately six dossiers may be discussed and this will take approximately ninety-four days. This will mean that a term of more than thirty weeks will be allocated to the dossiers and any other proceedings may not be carried out. As a consequence, the lifting of all the files of immunity in accordance with the regular proceedings in the Constitution and the Internal Regulations will prevent the parliamentary proceedings for an approximate term of eight months.

A provisional article is deemed as a solution to be added to the Constitution, considering the lifting of all the files of immunity, notably those related to terrorism and the disallowance of the blockage of the proceedings in the Grand National Assembly of Turkey. Through a

provisional article to be added to the Constitution, both the immunity of the files will be lifted and the parliamentary proceedings will not be blocked due to a long process.

The bill of law related to making amendments in the Constitution has been drafted and submitted with the intention of meeting the intense expectations of the public in terms of fight against terrorism, hindering the speculations and exploitations that will overshadow the realization of this objective and constituting an obstacle before the blockage of the parliamentary proceedings while taking a step in the matter of immunity.

PREAMBLES TO ARTICLE

ARTICLE 1 – Procedures and principles of deliberation concerning the parliamentary immunity and the resolutions on this matter shall be provided in Articles 83 and 85 of the Constitution and Articles 131 and 138 of the Internal Regulations of the Grand National Assembly of Turkey. Accordingly, there is a long process of deliberations at the Joint Committee Formed by the Members of the Committees on Constitution and on Justice concerning the lifting / waiving of the parliamentary immunity which has been provided in the Constitution and the Internal Regulations and brought to the agenda of the Joint Committee Formed by the Members of the Committees on Constitution and on Justice, and in the Plenary concerning the report of the Joint Committee.

It is aimed to lift the parliamentary immunity of all the deputies, without executing the procedures envisaged in the Internal Regulations and without any discrimination, concerning all the files of parliamentary immunity in the Ministry of Justice, the Office of the Prime Minister, the Office of the Speaker of the Grand National Assembly of Turkey and the Joint Committee Formed by the Members of the Committees on Constitution and on Justice, beginning with the files which demand the lifting of immunity by being submitted from the administrative authorities, chief prosecutor's offices and courts to the Ministry of Justice concerning the offences subject to permission of a superior authority, on the date of entry into force of the article and this amendment.

It is obvious that Article 85 of the Constitution titled "Application for Annulment" which is implemented upon the lifting of the immunity according to the Constitution and the procedures of the Internal Regulations, concerning the files the immunity of which is lifted as such. Since this article provides the auditing of this process by the Constitutional Court in accordance with the related legislation in cases where the immunity is lifted according to the provisions of the Constitution and Internal Regulations. The ability of implementation of Article 85 of the Constitution does not apply in cases where the immunity is lifted by adding a provision to the Constitution by a means excluding the existing procedures and provisions, namely bringing an exception to Article 83 of the Constitution.

ARTICLE 2- The article is related to the entry into force and referendum.

BILL OF LAW RELATED TO MAKING AMENDMENTS IN THE CONSTITUTION OF THE REPUBLIC OF TURKEY

ARTICLE 1 – The following provisional article has been added to the Constitution of the Republic of Turkey as Law No. 2709 dated 7/11/1982.

"PROVISIONAL ARTICLE 20- The first sentence of the second paragraph of Article 83 of the Constitution shall not apply for the files of the deputies concerning the lifting of the parliamentary immunity of deputies which are submitted from the authorities which are empowered to investigate or to allow investigation and from the Chief public prosecutor's offices and courts to the Ministry of Justice, Office of the Prime Minister, Office of the Speaker of the Grand National Assembly of Turkey or Chairmanship of the Joint Committee formed by the members of the Committees on Constitution and on Justice, on the date of entry into force of this article in the Grand National Assembly of Turkey.

The files related to lifting of the parliamentary immunity in the Chairmanship of the Joint Committee formed by the members of the Committees on Constitution and on Justice, the Office of the Speaker of the Grand National Assembly of Turkey, the Office of the Prime Minister and the Ministry of Justice shall be returned to the competent authority within fifteen days as of the date of entry into force of this article in order to take necessary action.”

ARTICLE 2 - This article shall enter into force on the date of its publication and shall be voted on in case of a referendum.