

TURKEY

GENERAL PUBLIC PROSECUTORY OF THE COURT OF CASSATION OF TURKEY

As you know the legal assistance in criminal matters is executed by the bilateral and multilateral conventions. Turkey is a party of the European Convention on Mutual Assistance in Criminal Matters. Also Turkey has made bilateral conventions. The mutual legal assistance is carrying out by the conventions mentioned above and by the domestic law. If there is no convention between the parties, the requests are executed by reciprocity and consuetudinary law.

The legal assistance especially matters to offences of drug and human trafficking, Money laundering and terrorism. Because of the execution of the legal assistance according to domestic law and conventions about mentioned crimes, the attention must be attracted to the problems arise from domestic law. Consequence of this, I would like to inform you about our domestic law and the conventions we ratified.

1- The Judicial Cooperation in Criminal and Civil Matters

- The Turkish Constitution and the Turkish Criminal Code includes provisions on extradition in Turkish Constitution, article 38 / last paragraph. It provides that citizens shall not be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court. Also Turkish Criminal Code (law No: 5237) Article 18 governs the extradition of foreign criminals. As Turkey ratified the European Convention on Extradition and according to article 16 of this convention, in case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. According to the article 90/last paragraph of the Turkish Constitution, if it is related to the fundamental rights and freedoms and beneficial, the legal value of the international conventions exceeds the national legal system.

- Turkey believes in the importance of combating with transnational serious organised crime and developing new tools for this aim. Since the beginning of Eurojust as a cooperation unit, Turkey takes parts in its activities as far as possible. Turkey is aware that new measures have to be taken into account for full participation in Eurojust activities in active way. Turkey drafts a new strategy includes enactment of a new law, enhancing legal capacity, improving the quality of human sources and other necessities. For example foreign language requirements are a issue to be tackled thorough this strategy.(Replies to issues and questions posed to the Turkish authorities by the European Commission. www.abgs.gov.tr) Also Turkey is a part of the European Convention on Mutual Assistance in Criminal Matters.

As the problems related to the legal assistance, we can give an example about England. England authorities invites the person whose testimony is wanted to be taken, and if the person does not came willingly to give testimony, England authorities do not orders the person by force and returns back the legal assistance as unexecuted.

European countries (especially Germany, Holland, Belgium and England) are returning back our requests about extradition of the terror criminals as unexecuted by the political reasons.

2 - Fight Against Terrorism

So far Turkey has ratified 13 international agreements regarding combat on terrorism. Turkey becomes party to all present 12 UN basic international conventions regarding terrorism. There is an anti terror Law (Act No 3713) and the law on the "Compensation of Losses Resulting from

Terrorist Acts and the Measures Against Terrorism” (law No: 5233). Financing of terrorism offence is also a crime under the law of 3713 article 7/A.

3 - Co-operation in the Field of Drug Trafficking

The Turkish Criminal Court (law no 5237) Article 188, declares heavy penalties about drug trafficking and drug making. The same law contains article 35 (attempt to commit an offence), article 37 (perpetration), article 38 (solicitation), article 39 (aiding) , article 220 (establishing organisations for committing an offence). We have national strategy in drug trafficking.

The Holland authorities do not reply the legal assistance of the Turkish authorities about the drugs transferred abroad from Turkey and caught in Holland because of the reason that it is a continuing crime.

4 - Fight Against Human Trafficking

Trafficking in human beings for purposes of sexual or labour exploitation is punishable according to the Turkish Criminal Court (law No 5237) article 80. Also as mentioned above the same law contains article 35 (attempt to commit an offence), article 37 (perpetration), article 38 (solicitation), article 39 (aiding) , article 220 (establishing organisations for committing an offence). Our legal system is compatible with EU standards.

5 - Fight Against Money Laundering

According to article 9 Law No 4208 measures can be taken in the scope of Money laundering offence. According to this article if there is a serious circumstantial evidence about money laundering the authority can give an order of freezing of claims and rights in banks and non-bank financial institutions as well as in real and other legal persons. Also public prosecutors may decide to freeze claims and rights in cases where it is necessary . To avoid delay Public Prosecutors Office notifies the peace court magistrate about the decision at the latest 24 hours. Peace court magistrate at most within 24 hours whether to approve the decision or not, in case of non approval, the decision of the public prosecutor becomes void.

Also article 133 of the Criminal Procedure Code stipulates the appointment of a curator for the company management. Article 54 and article 55 of the Turkish Criminal Code deal with the concepts of “confiscation of property” and “confiscation of benefits” respectively. For article 55 of the Criminal Code; not only the material benefits derived from an offence or constituting the subject of an offence but also economical earnings obtained by the evaluation or conversion of these material benefits are confiscated. There is a good organization and co-operation between prosecutors, and law enforcement bodies who are working under the control of public prosecutors.