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Cybercrime legislation – country profile

TURKEY

This profile has been prepared within the framework of the EU/COE Joint Project on Regional Cooperation against Cybercrime in South-eastern Europe in view of sharing information on cybercrime legislation and assessing the current state of implementation of the Convention on Cybercrime under national legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

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Country:	Turkey
Signature of Convention:	10/11/2010
Ratification/accession:	
Provisions of the Convention	Corresponding provisions/solutions in national legislation (pls quote or summarise briefly; pls attach relevant extracts as an appendix)
Chapter I – Use of terms	
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”: For the purposes of this Convention:	LAW numbered 5651 and dated 4/5/2007 ON REGULATION OF PUBLICATIONS ON THE INTERNET AND COMBATING CRIMES COMMITTED BY MEANS OF SUCH PUBLICATIONS

a "computer system" means any device or a group of interconnected or related devices, one or more of which, pursuant to a program, performs automatic processing of data;

b "computer data" means any representation of facts, information or concepts in a form suitable for processing in a computer system, including a program suitable to cause a computer system to perform a function;

c "service provider" means:

i any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and

ii any other entity that processes or stores computer data on behalf of such communication service or users of such service;

d "traffic data" means any computer data relating to a communication by means of a computer system, generated by a computer system that formed a part in the chain of communication, indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service

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Definitions

ARTICLE 2 – (1) In the enforcement of this Law, the following terms shall refer to the corresponding meanings:

- a) Ministry: Ministry of Transport and Communication,
- b) Presidency: Telecommunication Communication Presidency under the Authority,
- c) President: President of the Telecommunication Communication Presidency,
- ç) Information: The form of data with acquired meaning,
- d) Access: To obtain the possibility of utilization by connecting to internet medium,
- e) Access provider: All and any real or legal entities providing their users with the possibility of accessing to the internet medium,
- f) Content provider: All and any real or legal entities generating, modifying and providing all kinds of information or data provided to the users in the internet medium,
- g) Internet medium: The environment which is created on the internet which is made available to the public and that are those other than the communication systems as well as private or corporate computer systems,
- h) Publication on the internet: Data which is provided on the internet and the content of which can be accessed by an indefinite number of persons,
- i) Monitoring: Follow-up of the information and data without influencing the data on the internet,
- j) Authority: Telecommunications Authority,
- k) Public use providers: Those who provide individuals with the possibility of using the internet in a certain location and for a certain period of time,
- l) Traffic information: Values such as parties, time, period, the type of service used, the amount of data transferred and the connection points regarding all kinds of accesses on the internet,
- m) Data: All kinds of values which can be processed by computers,
- n) Publication: Publications on the internet,
- o) Hosting provider: Real or legal entities providing the systems hosting the

	services and contents.
Chapter II – Measures to be taken at the national level	
Section 1 – Substantive criminal law	
<i>Title 1 – Offences against the confidentiality, integrity and availability of computer data and systems</i>	
<p>Article 2 – Illegal access Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the access to the whole or any part of a computer system without right. A Party may require that the offence be committed by infringing security measures, with the intent of obtaining computer data or other dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Article 243 paragraph 1, Turkish Penal Code no 5237/2005 Offences Related to Data Processing Systems Accessing a Data Processing System Article 243 (1) Any person who unlawfully accesses, partially or fully, a data processing system, or remains within such system, shall be subject to a penalty of imprisonment for a term of up to one year or a judicial fine. (2) Where the act defined in the aforementioned section is committed in relation to a system which is only accessible with the payment of a fee then the penalty to imposed shall be decreased by up to one half. (3) Where any data within any such system is deleted or altered as a result of this act then the penalty to be imposed shall be a term of imprisonment of six months to two years.</p>
<p>Article 3 – Illegal interception Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the interception without right, made by technical means, of non-public transmissions of computer data to, from or within a computer system, including electromagnetic emissions from a computer system carrying such computer data. A Party may require that the offence be committed with dishonest intent, or in relation to a computer system that is connected to another computer system.</p>	<p>Article 243 paragraph 1, Turkish Penal Code no 5237/2005 Offences Related to Data Processing Systems Accessing a Data Processing System Article 243 (1) Any person who unlawfully accesses, partially or fully, a data processing system, or remains within such system, shall be subject to a penalty of imprisonment for a term of up to one year or a judicial fine. (2) Where the act defined in the aforementioned section is committed in relation to a system which is only accessible with the payment of a fee then the penalty to imposed shall be decreased by up to one half. (3) Where any data within any such system is deleted or altered as a result of this act then the penalty to be imposed shall be a term of imprisonment of six months to two years.</p>
<p>Article 4 – Data interference 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or</p>	<p>Article 244 paragraph 2, Turkish Penal Code no 5237/2005 Preventing the Functioning of a System and Deletion, Alteration or Corrupting of Data</p>

<p>suppression of computer data without right. 2 A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.</p>	<p>Article 244</p> <p>(1) Any person who prevents the functioning of a data processing system or renders such useless shall be subject to a penalty of imprisonment for a term of one to five years.</p> <p>(2) Any person who deletes, alters, corrupts or bars access to data, or introduces data into a system or sends existing data to another place shall be subject to a penalty of imprisonment for a term of six months to three years.</p> <p>(3) Where this offence is committed in relation to a data processing system of a public institution or establishment, bank or institution of credit then the penalty to be imposed shall be increased by one half.</p> <p>(4) Where a person obtains an unjust benefit for himself or another by committing the acts defined in the aforementioned sections, and such acts do not constitute a separate offence, a penalty of imprisonment he shall be subject to a penalty of imprisonment from two years to six years and a judicial fine of up to five thousand days shall be imposed</p>
<p>Article 5 – System interference Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data</p>	<p>Article 244 paragraphs 1, Turkish Penal Code no 5237/2005 Preventing the Functioning of a System and Deletion, Alteration or Corrupting of Data Article 244</p> <p>(1) Any person who prevents the functioning of a data processing system or renders such useless shall be subject to a penalty of imprisonment for a term of one to five years.</p> <p>(2) Any person who deletes, alters, corrupts or bars access to data, or introduces data into a system or sends existing data to another place shall be subject to a penalty of imprisonment for a term of six months to three years.</p> <p>(3) Where this offence is committed in relation to a data processing system of a public institution or establishment, bank or institution of credit then the penalty to be imposed shall be increased by one half.</p> <p>(4) Where a person obtains an unjust benefit for himself or another by committing the acts defined in the aforementioned sections, and such acts do not constitute a separate offence, a penalty of imprisonment he shall be subject to a penalty of imprisonment from two years to six years and a judicial fine of up to five thousand days shall be imposed</p>

<p>Article 6 – Misuse of devices</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right:</p> <p>a the production, sale, procurement for use, import, distribution or otherwise making available of:</p> <p>i a device, including a computer program, designed or adapted primarily for the purpose of committing any of the offences established in accordance with the above Articles 2 through 5;</p> <p>ii a computer password, access code, or similar data by which the whole or any part of a computer system is capable of being accessed, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5; and</p> <p>b the possession of an item referred to in paragraphs a.i or ii above, with intent that it be used for the purpose of committing any of the offences established in Articles 2 through 5. A Party may require by law that a number of such items be possessed before criminal liability attaches.</p> <p>2 This article shall not be interpreted as imposing criminal liability where the production, sale, procurement for use, import, distribution or otherwise making available or possession referred to in paragraph 1 of this article is not for the purpose of committing an offence established in accordance with Articles 2 through 5 of this Convention, such as for the authorised testing or protection of a computer system.</p> <p>3 Each Party may reserve the right not to apply paragraph 1 of this article, provided that the reservation does not concern the sale, distribution or otherwise making available of the items referred to in paragraph 1 a.ii of this article.</p>	
<i>Title 2 – Computer-related offences</i>	
<p>Article 7 – Computer-related forgery</p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the input, alteration, deletion, or suppression of computer data, resulting in inauthentic data with the intent</p>	<p>Article 244 paragraphs 2, Turkish Penal Code no 5237/2005</p> <p>Preventing the Functioning of a System and Deletion, Alteration or Corrupting of Data</p> <p>Article 244</p> <p>(1) Any person who prevents the functioning of a data processing system or</p>

<p>that it be considered or acted upon for legal purposes as if it were authentic, regardless whether or not the data is directly readable and intelligible. A Party may require an intent to defraud, or similar dishonest intent, before criminal liability attaches.</p>	<p>renders such useless shall be subject to a penalty of imprisonment for a term of one to five years.</p> <p>(2) Any person who deletes, alters, corrupts or bars access to data, or introduces data into a system or sends existing data to another place shall be subject to a penalty of imprisonment for a term of six months to three years.</p> <p>(3) Where this offence is committed in relation to a data processing system of a public institution or establishment, bank or institution of credit then the penalty to be imposed shall be increased by one half.</p> <p>(4) Where a person obtains an unjust benefit for himself or another by committing the acts defined in the aforementioned sections, and such acts do not constitute a separate offence, a penalty of imprisonment he shall be subject to a penalty of imprisonment from two years to six years and a judicial fine of up to five thousand days shall be imposed</p>
<p>Article 8 – Computer-related fraud Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the causing of a loss of property to another person by:</p> <ul style="list-style-type: none"> a any input, alteration, deletion or suppression of computer data; b any interference with the functioning of a computer system, <p>with fraudulent or dishonest intent of procuring, without right, an economic benefit for oneself or for another person.</p>	<p>Article 158 paragraph 1 subparagraph (f), Turkish Penal Code no 5237/2005</p> <p>Qualified Theft by Deception Article 158</p> <p>(1) Where the offence of theft by deception is committed:</p> <ul style="list-style-type: none"> a) by exploiting the religious beliefs and emotions of a person; b) by taking advantage of a person being in a dangerous or difficult circumstance; c) by taking advantage of a weakness in the capacity to perceive; d) by using, as an instrument, the legal personalities of: a public institution or corporation; public professional institution; political party; foundation or association; e) by causing loss to a public institution or corporation; f) by using as an instrument electronic data processing systems, a bank or lending institution; g) by taking advantage of the facilitative capacity of the press and publication organs; h) by executing acts during the commercial activities of a merchant or company manager or representative of a company or within the framework of activities of a co-operative by an administrator, i) by a freelancer, who takes advantage of the trust generated by

his profession;

j) by obtaining a loan which would not otherwise be obtainable from a bank or other finance institution, or

k) With the intention of collecting an insurance payment, the offender shall be sentenced to a penalty of imprisonment for a term of two to seven years and a judicial fine of up to five thousand days. However, in section one (e), (f) and (j) the penalty of imprisonment shall not be less than three years and the judicial fine shall not be less than double the benefit obtained from the offence.

Misuse of Bank or Credit cards

Article 245

- (1) Any person who secures a benefit for himself, or another, by acquiring or retaining (by any means), a bank or credit card of another person; or using, or allowing to be used, such a card without the consent of the card holder or the residual owner shall be sentenced to a penalty of imprisonment for a term of three to six years and a judicial fine of up to five thousand days.
- (2) Any person who produces, sells, transfers, purchases or receives a counterfeit bank or credit card which relates to the bank account of another shall be sentenced to a penalty of imprisonment for a term of four to seven years and judicial fine of up to ten thousand days.
- (3) Any person who secures a benefit for himself or another by using a counterfeit or falsified bank or credit card shall be sentenced to a penalty of imprisonment for a term of four to eight years and judicial a fine of up to five thousand days, provided such act does not constitute a separate offence.
- (4) Where an offence described in section one concerns a loss to:
 - a) a spouse of a marriage where such spouse has not been subject to a court decree of separation,
 - b) a direct-antecedent or direct-descendent, direct in-law, adoptive parent or adopted child; or
 - c) a sibling residing in the same dwelling.no penalty shall be imposed on the person who is related in such a way.
- (5) The provisions of effective remorse in respect of offences against property in this code shall be applicable to acts which falls within the scope of section one.

Title 3 – Content-related offences

Article 9 – Offences related to child pornography

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

- a producing child pornography for the purpose of its distribution through a computer system;
- b offering or making available child pornography through a computer system;
- c distributing or transmitting child pornography through a computer system;
- d procuring child pornography through a computer system for oneself or for another person;
- e possessing child pornography in a computer system or on a computer-data storage medium.

2 For the purpose of paragraph 1 above, the term "child pornography" shall include pornographic material that visually depicts:

- a a minor engaged in sexually explicit conduct;
- b a person appearing to be a minor engaged in sexually explicit conduct;
- c realistic images representing a minor engaged in sexually explicit conduct

3 For the purpose of paragraph 2 above, the term "minor" shall include all persons under 18 years of age. A Party may, however, require a lower age-limit, which shall be not less than 16 years.

4 Each Party may reserve the right not to apply, in whole or in part, paragraphs 1, sub-paragraphs d. and e, and 2, sub-paragraphs b. and c.

Article 226 paragraphs 3-5, Turkish Penal Code no 5237/2005

Obscenity

Article 226

(1) Any person who:

- a) gives to a child obscene written or audio-visual material; or who reads or induces another to read such material to a child or makes a child watch or listen to such material;
- b) makes public the content of such material in a place accessible

or visible

- to a child, or who exhibits such material in a visible manner or who reads or talks about such material, or who induces another to read or talk about such material to a child;
- c) offers such materials for sale or rent in such a manner as to reveal the content of that material;
- d) offers for sale, sells or rents such materials, in any place other than a specified

points of sale;

- a) gives or distributes such materials along with the sale of other products or services as a free supplement; or
- b) advertises such products

shall be sentenced to a penalty of imprisonment for a term of six months to two years and a judicial fine.

(2) Any person who broadcasts or publishes obscene written or audio-visual material or who acts as an intermediary for this purpose shall be sentenced to a penalty of imprisonment for a term of six months to three years and a judicial fine of up to five thousand days.

(3) A person who uses children in the production of obscene written or audio-visual materials shall be sentenced to a penalty of imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. Any person who conveys such material into the country, who copies or offers for sale such material or who sells, transports, stores, exports, retains possession of such material or offers such material for the use of others shall be sentenced to a penalty of imprisonment for a term of two to five years and a judicial fine of up to five thousand days.

(4) Any person who produces, conveys into the country, offers for sale, sells, transports, stores or offers for the use of others written or audio-

visual materials of sexual acts performed with the use of force, animals, a human corpse, or in any other unnatural manner shall be sentenced to a penalty of imprisonment for a term of one to four years and a judicial fine of up to five thousand days.

- (5) Any person who broadcasts or publishes the materials described in sections three and four or who acts as an intermediary for this purpose or who ensures children see, hear or read such materials shall be sentenced to a penalty of imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.
- (6) Legal entities shall be subject to specific security measures for involvement in these offences.
- (7) The provisions of this article shall not apply to academic works. The provisions of this article shall not apply, except section 3, to artistic or literary works where children are prevented from accessing such.

Turkish Criminal Code, Law. No. 5237 (Effective since 1st of June, 2005)

Definitions

Article 6- (1) In application of Criminal Laws,

b) Child is the one who has not completed 18 years of age.

Crimes against Humanity

Article 77- (1) Committing of acts below with politic, philosophic, race based or religious motives against a part of public within a plan, constitutes crime against humanity.

....

f) Sexual assault, sexual exploitation of children

Sexual Exploitation of Children

ARTICLE 103- (1) Person who exploits a child, shall be sentenced to imprisonment from three to eight years.

Sexual exploitation has been regarded as;

- a) any sexual act committed on a child who has not completed fifteen years of age or who have not developed perception of legal meaning and consequences of the act although he has completed fifteen years of age
- b) sexual acts committed against other children by only applying physical force, threat, deception or other reasons that would affect their mental power (will)

(2) In case that sexual exploitation is performed by plunging of organ or any other objects, it is convicted to imprisonment from eight to fifteen years.

(3) (Amended w. Law 5377- 29.6.2005/ art.12) Penalties pursuant to provisions above are aggravated one half in case sexual exploitation is committed by lineal ancestors, ones with second or third degree of consanguinity, step father, adopter, guardian, educator, instructor, child minder, person who is in charge of providing health service or others who have protection and surveillance responsibility or by abusing power arising out of employment relationships or jointly by more than one person.

(4) Penalties pursuant to provisions above are aggravated one half in case sexual exploitation if sexual exploitation is committed by application of force or threat on children mentioned in sub clause 1-(a)

(5) In case force and violence used for sexual exploitation causes serious consequences of malicious injury, provisions regarding malicious injury shall apply as well

(6) In case corporal or mental health of victim impaired, it is convicted imprisonment penalty not less than fifteen

(7) In case crime causes vegetative state or death of victim, aggravated life sentence shall be convicted.

Obscenity

ARTICLE 226 – (1) One who

a) Gives child products that contain obscene images, writings or expressions or show, read or make somebody listen content of those,

b) Displays contents of such where children can access or can see or displays those publicly, exhibits, reads, makes somebody read, says, make somebody say openly,

c) Presents those products for sale or rent in a way that their content could be understood,

d) Present those products for sale, sells or leases in places other than shopping places specific for sale of those,

e) Gives or distributes those products gratis with sale of other goods and services or indirectly

f) Advertises those products

Shall be imprisoned from six months to two years and judiciary fine.

(2) One who publishes or acts as intermediary for publishing by press and broadcast of obscene images, writings or expressions shall be imprisoned from six months to three years and judiciary fine up to five thousand days.

(3) One who utilizes children in production of obscene images, writings and expressions shall be imprisoned from 5 years to ten years and judiciary fine up

	<p>to five thousand days. One who imports, duplicates, exposes for sale, sales, transfers, stores, exports, retains or presents for other's use shall be imprisoned from two to five years and judiciary fine up to five thousand days.</p> <p>(4) One who produces, imports, exposes for sale, sales, transfers, stores, presents for other's use or retains products that contain writings, voices or images of sexual acts realized by violence, with animals, with dead human body or by non-natural ways shall be imprisoned from one to four years and judiciary fine up to five thousand days.</p> <p>(5) One who publishes via press or broadcast or act as intermediary for publishing or provides seeing, hearing or reading of children to those products mentioned in third and forth paragraphs shall be imprisoned from six to ten years and judiciary fine up to five thousand days.</p> <p>(6) Due to those crimes specific security measures shall be applied for legal persons</p> <p>(7) Provisions of this article shall not apply for scientific works and artistic and literal works provided that children's access is prevented</p> <p>Prostitution</p> <p>ARTICLE 227 – (1) One who encourages child for prostitution, eases the way of such, procures or accommodates with this purpose, acts as an intermediary for child's prostitution shall be imprisoned from four to ten years and up to five thousand judiciary fines. Preparation acts for such offence are penalized as they have already been completed.</p>
<p><i>Title 4 – Offences related to infringements of copyright and related rights</i></p>	
<p>Article 10 – Offences related to infringements of copyright and related rights</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.</p> <p>2 Each Party shall adopt such legislative and other measures as may be</p>	<p>Articles 1/B, 2, 71-75, Turkish Law on Intellectual and Artistics Works ,no 5846/1951 (revised 2006)</p> <p>Definitions</p> <p>Article 1/B</p> <p>The following terms have the following meanings:</p> <p>a) Work: Any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.</p> <p>b) (Amendment: 3.3.2004 - 5101/28) Author: The person creating the work.</p> <p>c) Adaptation: Intellectual and artistic product bearing the characteristic of the adaptor, which is created by benefiting from another work but which is not independent of such work.</p>

necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.

3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

- d) **Collection:** Works such as encyclopedias and anthologies whose content consists of selection and arrangements, which are the results of intellectual creativity, provided that the rights on the original work are reserved.
- e) **Fixation:** The act of recording sounds or representation of sounds or sounds and images in an apprehensible, reproducible and transmittable manner.
- f) **Phonogram:** The physical medium that carries sounds in which sounds of a performance or other sounds or representations of sounds are fixed, excluding fixation of sounds that are comprised in audiovisual works such as cinematographic works.
- g) **Computer program:** A set of computer instructions arranged in a way that will make a computer system carry out a special process or task and the preparatory work that will lead to the creation and development of such set of instructions.
- h) **Interface:** The parts of a program that form the interaction and connection between the hardware and software elements of a computer.
- i) **Interoperability:** The ability of computer program parts to jointly function, to interact and to mutually use the exchanged information.
- j) **Related rights:** The rights that belong to holders of neighbouring rights and film producers that make the first fixation of films, provided that the moral and economic rights of the author are not prejudiced.
- k) **Neighbouring rights:** The rights that belong to performers who interpret, introduce, recite, sing, play and perform a work in various ways and in an original form with the permission of the author, phonogram producers that make the first fixations of sounds that are the result of a performance or other sounds and radio-television organizations, provided that the moral and economic rights of the author are not prejudiced.
- l) (Amendment: 3.3.2004 - 5101/9) **Ministry:** The Ministry of Culture and Tourism.

B. Types of Intellectual and Artistic Works

I. Literary and Scientific Works

Article 2

The following are literary and scientific works:

1. (Amendment: 7.6.1995 - 4110/1) Works that are expressed by language and writing in any form, and computer programs expressed in any form together their preparatory designs, provided that the same leads to a computer program at the next stage.

2. (Amendment: 1.11.1983 - 2936/1) All kinds of dances, written choreographic works, pantomime and similar theatrical works without dialogue;
3. (Amendment: 7.6.1995 - 4110/1) All kinds of technical and scientific photographic works, all kinds of maps, plans, projects, sketches, drawings, geographical or topographical models and similar works, all kinds of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, lacking in aesthetic quality.

(Addition: 7.6.1995 - 4110/1) Ideas and principles on which any element of a computer program is based, including those on which its interfaces are based, are not deemed works.

Criminal Actions

I- Offenses

(1) Infringement of Moral Rights

Article 71 (Amendment: 1.11.1983- 2939/11)

Any person, who in contravention of the provisions of this Law, intentionally;

1. Publishes a work or discloses it to the public, irrespective of whether it has been made public, without the written permission of the author or his successor;
 2. Gives a title to a work or to the reproduced copies of the work without the written permission of the author or his successor;
 3. Gives the appearance that the work of another person is his own or his own work is that of another person or who acts contrary to the provision of second paragraph of Article 15,
 4. Fails to cite the source in the cases covered by Articles 32, 33, 34, 35, 36, 37, 39 and 40, or cites the source in a wrong , incomplete or misleading way,
 5. (Addition: 21.2.2001- 4630/ 26) Modifies a work without the written permission of the author,
- (Amendment: 3.3.2004- 5101/ 17) shall be sentenced to imprisonment from two years to four years, or a judicial fine between fifty billion TL. and one hundred and fifty billion TL, or both considering the severity of the damages.

(2) Infringement of Economic Rights

Article 72- (Amendment: 03.03.2004-5101/18)

Any person, who in contravention of this Law, intentionally;

1. Sells or distributes the copies of a work or adaptations of such work that have been reproduced by him in contrary to the provisions of an existing contract with the rightholder shall be sentenced to imprisonment from three months to two years or a judicial fine between ten billion TL. and fifty billion TL. or both considering the severity of the damages;
2. Sells a work and its reproduced copies in places indicated in the seventh paragraph of Article 81 of this Law without the permission of the rightholder shall be sentenced to imprisonment from three months to two years or a judicial fine between five billion TL. and fifty billion TL. or both considering the severity of the damages;
3. Without the permission of the rightholder,
 - a) Adapts a work in any manner,
 - b) Reproduces a work in any manner,
 - c) Distributes a work in any manner,
 - d) Lets the copies of a work enter into the country through legal or illegal ways and puts them into commercial use in any manner,
 - e) Displays or performs a work in places open to the public, organizes such display or disseminates it by devices enabling the transmission of all kinds of signs, sounds, and/or images including digital transmission or acts as intermediary for such dissemination,

shall be sentenced to imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages.

(3) Other Offenses

Article 73-(Amendment: 3.3.2004-5101/19)

The following provisions shall apply to the offenses other than those referred to in Articles 71, 72, 80 and 81 of this Law.

- 1- Any person, who intentionally;

- a) Possesses for commercial purposes copies of a work, in the knowledge or with reasonable grounds to know, that they have been reproduced in contrary to the provisions of this Law,
- b) Transfers or grants an economic right or a license or creates a pledge on, or disposes in any way of such right or license, in the knowledge or with reasonable grounds to know, that such right or license does not exist or that he is not entitled to dispose of such right or license,
- c) Possesses for commercial purposes or distributes a technical instrument whose sole purpose is to facilitate the neutralization or unpermitted removal of any technical device used to protect a computer program,

shall be sentenced to imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages.

2- Any person, who intentionally reproduces the copies of works, productions and phonograms, that have been reproduced and distributed in accordance with the provisions of this Law, by way of identical printing and production along with the distinctive title, trademark and identifying information of the rightholders of reproduction and distribution, by means of signs, writing, sound, devices or methods enabling repetition of the data or images which are moving or motionless or distributes the copies reproduced by such way shall be sentenced to imprisonment from three years to six years or a judicial fine between twenty billion TL. and two hundred billion TL. or both considering the severity of the damages.

II. Offender
Article 74

If the offenses referred to in Articles 71, 72, 73 and 80 have been committed by the agents or employees of an enterprise, the owner, manager or the person who, irrespective of his name and title, actually operates such enterprise, who has not prevented the commitment of the offense shall be punished as the offenders. If the act requiring punishment has been committed on the instructions of the owner, manager or the person who actually operates the enterprise, such person shall be punished as the offender and the agent or employees as accomplices.

Any person who, in the knowledge of the unlawful nature of the performance of

a work, provides premises for such performance with or without consideration or takes a role or part in the performance, shall be punished as an accomplice.

(Amendment: 3.3.2004-5101/20) If any of the offenses specified in Articles 71, 72, 73 and 80 are committed within the framework of business activities of a legal person, such legal person shall be jointly and severally liable together with the other offenders for the expenses and fines.

The provisions of Articles 64, 65, 66 and 67 of the Criminal Code shall be reserved.

III. Prosecution and Recidivism

Article 75 (Amendment:3.3.2004-5101/21)

The investigation of the offenses specified in Articles 71, 72, 73 and 80 shall be subject to complaint. Public prosecution shall be initiated upon a complaint, provided that the rightholders submit the documents and/or copies proving their rights to the Public Prosecutor. In case these documents and/or copies are not submitted within six months, a decision of non-prosecution shall be issued, the provisions of Article 76 of this Law are reserved. Subparagraph (8) of the first paragraph of Article 344 of the Code of Criminal Procedure, No. 1412 shall not apply to the implementation of the provisions of this Article.

In addition to the persons whose rights have been infringed the following shall also be entitled to file complaints:

1. The Ministry of Education and the Ministry of Culture in the cases covered by subparagraph (4) of Article 71 with respect to acts contrary to the obligation to cite the source as required by Article 35;
2. The Ministry of Culture and the Directorate General of Press and Publication and the institutions representing the Turkish press in the cases covered by subparagraph (4) of Article 71 with respect to the acts contrary to the obligation to cite the source as required by Article 36.
3. The Ministry of Culture in the cases covered by the subparagraph (14) and (15) in the framework of the last paragraph of the Article 19.
4. Collecting societies for the fields in which they operate.

(Amendment: 3.3.2004-5101/21) In case of infringement of the rights of authors, related rights holders and other rightholders and upon request of persons who are entitled to file a complaint, the public prosecutor of the place where the infringement has occurred or where it has produced effect may request the competent court to have the unlawfully reproduced copies or publications seized, to have them destroyed, to have the technical devices used

to this end sealed and sold and to close down the premises where unlawful reproduction has taken place.

(Amendment: 3.3.2004-5101/21) If the authors or rightholders fail to file a complaint or any other request to the competent court within fifteen days of the seizure of the copies and non-periodical publications, the competent court shall, upon the request of the public prosecutor, order to have adequate number of copies preserved to provide basis for the case and the rest destroyed or, if there are possibilities enabling their re-use as raw material, to have them sold as raw material in their present form or after degrading their characteristics in such a way as to preclude their re-use. The provisions of the Article 68 of this Law shall apply in case the authors or rightholders file a complaint or request within the stipulated time period. The rules and procedures regarding the destruction of seized copies and non-periodical publications, their re-use as raw material, and their sale as raw material shall be set out in a by-law to be issued by the Ministry.

In cases where delay is considered to be detrimental, public prosecutor may, *ex-officio*, issue an order for seizure and sealing to be submitted for approval to the competent court within three days.

Right holders may file a request to the Chief Public Prosecutor with the documents which prove their rights, within six months beginning from the date on which they acquired knowledge of the infringement and the identity of the perpetrator, provided that the offense remains in the prescription term of the action. As regards this offense the trial procedure of the Law on Procedure in Flagrant Offenses No 3005 shall apply regardless of whether the stipulation concerning place in the subparagraph (A) of the first Article of the said Law and the stipulation concerning time laid down in the Article 4 of the same law are met.

If a person who has been convicted (*res judicata*) of an offense specified in this Law recommits the same offense within two years, the sentence for the new offense shall be increased by one fold. (Addition: 3.3.2004-5101/21) Sentences of imprisonment imposed upon a repetition of the offense may not be suspended and converted to a fine or an alternative measure for imprisonment. The related provisions of the Law on the Struggle against Organized Crime Aimed at Unlawful Gain and Benefit shall apply to the offenses referred to in this Law, provided that the requirements of the said Law are fulfilled.

Title 5 – Ancillary liability and sanctions

Article 11 – Attempt and aiding or abetting

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 2 through 10 of the present Convention with intent that such offence be committed.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, an attempt to commit any of the offences established in accordance with Articles 3 through 5, 7, 8, and 9.1.a and c. of this Convention.

3 Each Party may reserve the right not to apply, in whole or in part, paragraph 2 of this article.

Articles 35, 37-40, Turkish Penal Code no 5237/2005

Attempt

Article 35

- (1) Any person who begins to directly act, with the appropriate means and with the intention of committing an offence, but has been unable to complete such offence due to circumstances beyond his control, shall be culpable for the attempt.
- (2) In a case of attempt, depending upon the seriousness of the damage and danger that accrued, an offender shall be sentenced to a penalty of imprisonment for a term of thirteen to twenty years where the offence committed requires a penalty of aggravated life imprisonment, or to a penalty of imprisonment for a term of nine years to fifteen years where the offence committed requires a penalty of life imprisonment. Otherwise the penalty shall be reduced by one-quarter to three-quarters.

Jointly Committed Offences

Principal Involvement

Article 37

- (1) Any person who jointly performs an act prescribed by law as an offence shall be culpable as the offender of that act.
- (2) Any person who uses another as an instrument for the commission of an offence shall remain culpable as an offender. The penalty of a person who uses another as an instrument who lacks the capacity of acting with fault shall be increased by one-third to one-half.

Incitement

Article 38

- (1) A person who incites another to commit an offence shall be subject to the penalty appropriate to the offence that is committed.
- (2) Where there is incitement to offend by using influence arising from a direct-descendent or direct-antecedent relationship, the penalty of the instigator shall be increased by one-third to one half. Where there is incitement of a minor, a direct-descendant or direct-antecedent relationship is not necessary for the application of this section.
- (3) Where the identity of the instigator is not known and if the offender plays a role in the identification of the instigator, or other accomplice, he shall be sentenced to a penalty of imprisonment for a term of twenty to

twenty-five years if the offence committed requires aggravated life imprisonment and to a term of imprisonment of fifteen years to twenty years if the offence committed requires life imprisonment. Otherwise the penalty to be imposed may be reduced of one-third.

Assistance

Article 39

- (1) A person who assists another with the commission of an offence shall be sentenced to a penalty of imprisonment for a term of fifteen years to twenty years if the offence committed requires aggravated life imprisonment, and to a term of ten to fifteen years imprisonment if the offence committed requires life imprisonment. Otherwise the penalty to be imposed shall be reduced by one-half. However, in this case, the penalty to be imposed shall not exceed eight years.
- (2) A person remains culpable as an assistant if he:
 - a) encourages the commission of an offence, or reinforces the decision to commit an offence, or promises that he will assist after the commission of an act.
 - b) provides counsel as to how an offence is to be committed, or provides the means used for the commission of the offence.
 - c) facilitate the execution of an offence by providing assistance before or after the commission of the offence.

The Dependency Rule

Article 40

- (1) In order to constitute a jointly committed offence it is sufficient that unlawful and committed intentionally. Each person participating in the commission of an offence shall be sentenced according to his unlawful act, irrespective of the individual circumstances of another which may prevent the imposition of a sentence.
- (2) For specific offences, only the person possessing the proscribed qualities required for such offence may be defined as the offender. Other persons involved in the commission of these offences shall remain culpable for inchoate assistance.
- (3) In order to be culpable for a jointly committed offence, there must have been, at least, an attempt to commit the offence.

<p>Article 12 – Corporate liability</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for a criminal offence established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within it, based on:</p> <ul style="list-style-type: none"> a a power of representation of the legal person; b an authority to take decisions on behalf of the legal person; c an authority to exercise control within the legal person. <p>2 In addition to the cases already provided for in paragraph 1 of this article, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	<p>Article 60, Turkish Penal Code no 5237/2005</p> <p>Security Measures Specific to Legal Entities</p> <p>Article 60</p> <ul style="list-style-type: none"> (1) Where there has been a conviction in relation to an intentional offence committed for the benefit of a legal entity, which is subject to civil law and operating license granted by a public institution, by misusing the permission conferred by the license and through the participation of the organs or representatives of the legal entity it shall cancel this license. (2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offences committed for the benefit of such entities. (3) Where the application of the provisions in the above sections would lead to more serious consequences than the offence itself, the judge may not impose such measures. (4) The provisions of this article shall only apply where specifically stated in the law.
<p>Article 13 – Sanctions and measures</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.</p> <p>2 Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p>	<p>Prescribed in details in the above mentioned Articles</p>
<p>Section 2 – Procedural law</p>	
<p>Article 14 – Scope of procedural provisions</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish the powers and procedures provided for in this section for the purpose of specific criminal investigations or proceedings.</p>	<p>Articles 160-165,170-171, Turkish Criminal Procedure Code no 5271/2005</p> <p>The duties of the Republic prosecutor after being informed that an offense has been committed</p> <p>Article 160</p>

2 Except as specifically provided otherwise in Article 21, each Party shall apply the powers and procedures referred to in paragraph 1 of this article to:

- a the criminal offences established in accordance with Articles 2 through 11 of this Convention;
- b other criminal offences committed by means of a computer system; and
- c the collection of evidence in electronic form of a criminal offence.

3 a Each Party may reserve the right to apply the measures referred to in Article 20 only to offences or categories of offences specified in the reservation, provided that the range of such offences or categories of offences is not more restricted than the range of offences to which it applies the measures referred to in Article 21. Each Party shall consider restricting such a reservation to enable the broadest application of the measure referred to in Article 20.

b Where a Party, due to limitations in its legislation in force at the time of the adoption of the present Convention, is not able to apply the measures referred to in Articles 20 and 21 to communications being transmitted within a computer system of a service provider, which system:

- i is being operated for the benefit of a closed group of users, and
- ii does not employ public communications networks and is not connected with another computer system, whether public or private,

that Party may reserve the right not to apply these measures to such communications. Each Party shall consider restricting such a reservation to enable the broadest application of the measures referred to in Articles 20 and 21

(1) Immediately following being informed, through denunciation or by any other means, of a condition having the impression that an offense has been committed, the Republic prosecutor initiates an investigation to uncover the truth and to determine if the conditions demand the filing of a public court case.

(2) The Republic prosecutor is obligated to collect and protect all the evidence in favor of or against the suspect and to protect the rights of the suspect, through the judicial security force under his or her authority, for the investigation of the material truth and for the execution of a fair trial.

The duties and authorities of the Republic prosecutor

Article 161

(1) The Republic prosecutor can perform all types of investigations directly or through the judicial security forces under his command; can request any information from any public functionary to reach the results indicated in the above Article. The Republic prosecutor requests the execution of the said operations from the relevant Republic prosecutor responsible for the location, if a requirement to perform an operation outside the jurisdiction of the court arises due to his or her legal duties.

(2) Judicial security force authorities are obligated to immediately inform the relevant Republic prosecutor under whom they function, of the cases they have taken charge of, of the people they have apprehended and the precautions practiced; and to carry out the orders concerned with the administration of justice given by this Republic prosecutor without delay.

(3) The Republic prosecutor issues his or her orders to the judicial security force officers in paper; or orally or in case of emergencies. An order given orally is issued in paper as well, in the shortest time possible.

(4) Other public functionaries are also obligated to provide the information and the documents required within the scope of the investigation being conducted, to the Republic prosecutor without delay.

(5) Direct investigations are conducted by the Republic prosecutors, concerning public functionaries for whom improper exploitation or negligence in their duties or works related to the administration of justice appointed to them by the Law or required of them at the legal offices, and security force supervisors or officers for whom improper

exploitation or negligence in the oral and written requests and orders given by the Republic prosecutors have been determined. The provisions of the Law about the Adjudication of Civil Servants and Other Public Officers are administered for governors and sub-governors; the procedures of exercise of jurisdiction judges are subject to due to the duties are administered concerning senior security force supervisors.

- (6) Under conditions of *flagrante delicto* requiring severe sentences, provided that the provisions of this Law are applied, the administration of investigations for individual offenses of governors and sub-governors according to the general provisions is under the jurisdiction of the Republic prosecutors of the province the sub-governor is related to and of the closest province to the governor's area of office. For conducting of trials concerning such offenses, the appointed court of the location of investigation is authorized.

The request of a magisterial decree by the Republic prosecutor in an investigation

Article 162

- (1) The Republic prosecutor submits his or her requests to the magistrate of the criminal court of peace of the location where the operation is to be performed, if he or she deems necessary conducting of an investigative operation, which can only be administered by a judge. The judge of the magistrate of the criminal court of peace determines if the requested operation is in accordance with the Law and performs the required further action.

The administration of the investigation by a judge of the magistrate of the criminal court of peace

Article 163

- (1) In the condition of *flagrante delicto* and in conditions in which delays are unfavorable, in case the Republic prosecutor cannot be contacted or the case exceeds the force of authority of the Republic prosecutor due to its extent, a judge of the magistrate of the criminal court of peace can also administer all the investigative operations.
- (2) Security force supervisors and officers take the precautions and perform the investigations ordered by the magistrate of the criminal court of peace.

The judicial security force and its duties

Article 164

- (1) The judicial security force represents the security officers performing the investigative operations stated in Article 8, Article 9 and Article 12 of the Law on Security Organizations (Law No. 3201) dated 04.06.1937, Article 7 of the Law on the Organization, Functions and Authorities of the Gendarmerie (Law No. 2803) dated 10.03.1983, Article 8 of the Executive Order about the Organization and Functions dated 09.07.1982 and Article 4 of the Coastal Security Command Headquarters Law dated 09.07.1982.
- (2) Investigative operations are administered by the judicial security forces following the orders and directions of the Republic prosecutor. The judicial security forces perform the orders of the Republic prosecutor concerning all judicial affairs.
- (3) In services other than judicial duties, the judicial security forces are under the command of their immediate superiors.

The judicial security functions of other security units

Article 165

- (1) Other security units are obligated to perform the judicial security duties, if required or following the official request of the Republic prosecutor. Under such circumstances, the provisions of this Law are administered for the officers of the security units due to their judicial functions.

The duty to bring a public prosecution

Article 170

- (1) The duty to bring a public prosecution rests with the public prosecutor.
- (2) The public prosecutor shall prepare an indictment if at the end of the investigation phase the collected evidence supports a suspicion sufficient to indicate that the crime has been committed.
- (3) The indictment addressing the competent court in charge shall state;
 - a) Identity of the suspect,
 - b) Defense counsel for the suspect,
 - c) Identity of the murdered, victim of the crime, or the person injured by the crime,

	<p>d)Attorney or legal representative for the victim of the crime or the person injured by the crime, e)Identity of the informant provide that disclosure of identity would not be detrimental f) Identity of the person who filed the complaint g) Date when the complaint was made h) The crime charged and applicable articles of law, i) The place, date and time interval for the crime charged, j) Evidences of the crime, k) Statement of whether the suspect is under arrest; dates and durations for detention and arrest if he is under arrest</p> <p>(4) The indictment shall explain the actions that constitute the crime charged and relate them to evidences at hand .</p> <p>(5) The conclusion part of the indictment shall set out not only the points that are against the suspect but also those that are in his favor.</p> <p>(6) The conclusion part of the indictment shall state what criminal and safeguard measures set out in the law are sought for the crime committed; if the crime has been committed as part of an operation by a juristic person, the safeguard measure that are applicable to the juristic person concerned shall be openly stated.</p> <p>Discretion powers in bringing public prosecution Article 171 (1) The public prosecutor may not bring public prosecution in cases where there are conditions that require application of provisions governing effective repentance as a grounds at personal level for removal of the punishment.</p>
<p>Article 15 – Conditions and safeguards 1 Each Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Section are subject to conditions and safeguards provided for under its domestic law, which shall provide for the adequate protection of human rights and liberties, including rights arising pursuant to obligations it has undertaken under the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights, and other applicable international</p>	<p>Article 134 (decision of judge is required), Turkish Criminal Procedure Code no5271/2005</p> <p>Search in computers, computer programs and logs, copying and seizure Article 134 (1) In an investigation realized because of a crime, in case of no other means to exist for obtaining evidence, upon the request of the Republic prosecutor, the judge shall decide on searching the computer, computer programs and logs used by the suspect, to copy computer records and</p>

<p>human rights instruments, and which shall incorporate the principle of proportionality.</p> <p>2 Such conditions and safeguards shall, as appropriate in view of the nature of the procedure or power concerned, <i>inter alia</i>, include judicial or other independent supervision, grounds justifying application, and limitation of the scope and the duration of such power or procedure.</p> <p>3 To the extent that it is consistent with the public interest, in particular the sound administration of justice, each Party shall consider the impact of the powers and procedures in this section upon the rights, responsibilities and legitimate interests of third parties.</p>	<p>decode these records in order to prepare a text.</p> <p>(2) In case of failure to access to hidden information or decode the password to reach the computer programs and logs, in order to have necessary copies taken, it might be possible to seize the tools and equipment. After the decoding and taking of necessary copies, the seized devices shall be returned without further delay.</p> <p>(3) In the seizure of computer or computer logs, the entire data in the system shall be backed-up.</p> <p>(4) If requested, a copy of the back up shall be given to the suspect or his/her representative keeping a record of the issue.</p> <p>(5) Without seizing the computer or computer logs, it is also possible to copy the entire or some data in the system. Copied data shall be listed on a piece of paper, recorded and undersigned by the relevant authorities.</p>
<p>Article 16 – Expedited preservation of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to enable its competent authorities to order or similarly obtain the expeditious preservation of specified computer data, including traffic data, that has been stored by means of a computer system, in particular where there are grounds to believe that the computer data is particularly vulnerable to loss or modification.</p> <p>2 Where a Party gives effect to paragraph 1 above by means of an order to a person to preserve specified stored computer data in the person’s possession or control, the Party shall adopt such legislative and other measures as may be necessary to oblige that person to preserve and maintain the integrity of that computer data for a period of time as long as necessary, up to a maximum of ninety days, to enable the competent authorities to seek its disclosure. A Party may provide for such an order to be subsequently renewed.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige the custodian or other person who is to preserve the computer data to keep confidential the undertaking of such procedures for the period of time provided for by its domestic law.</p> <p>4 The powers and procedures referred to in this article shall be subject to</p>	<p>Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007</p> <p>The liabilities of the access providers</p> <p>ARTICLE 6 – (1) The access providers shall be liable for</p> <p>a) Blocking the access to the unlawful content published by any of its users provided that they are notified pursuant to the provisions of this Law hereby and to the extent that they have the possibility of blocking such access in technical terms,</p> <p>b) Saving the traffic information set forth in the regulation regarding the services they provide for a period of time to be no less than six months and no more than two years as to be determined by the regulation and ensuring the accuracy, integrity and confidentiality of such information,</p> <p>c) for notifying the case to the Authority, content providers and their customers at least three months before the date of terminating their activities and submitting the records regarding the traffic information to the Authority in line with the procedures and principles as provided for in the regulation.</p> <p>(2) The access providers shall not be liable for controlling whether the content of the information accessed via them is unlawful or requires responsibility or not.</p> <p>(3) An administrative fine from ten thousand New Turkish Liras up to fifty thousand New Turkish Liras shall be imposed by the Presidency to the access providers who do not fulfill the obligations provided for in the sub-paragraphs (b) and (c) of the first paragraph.</p>

Articles 14 and 15.	
<p>Article 17 – Expedited preservation and partial disclosure of traffic data</p> <p>1 Each Party shall adopt, in respect of traffic data that is to be preserved under Article 16, such legislative and other measures as may be necessary to:</p> <p>a ensure that such expeditious preservation of traffic data is available regardless of whether one or more service providers were involved in the transmission of that communication; and</p> <p>b ensure the expeditious disclosure to the Party’s competent authority, or a person designated by that authority, of a sufficient amount of traffic data to enable the Party to identify the service providers and the path through which the communication was transmitted.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007</p> <p>The liabilities of the access providers</p> <p>ARTICLE 6 – (1) The access providers shall be liable for</p> <p>a) Blocking the access to the unlawful content published by any of its users provided that they are notified pursuant to the provisions of this Law hereby and to the extent that they have the possibility of blocking such access in technical terms,</p> <p>b) Saving the traffic information set forth in the regulation regarding the services they provide for a period of time to be no less than six months and no more than two years as to be determined by the regulation and ensuring the accuracy, integrity and confidentiality of such information,</p> <p>c) for notifying the case to the Authority, content providers and their customers at least three months before the date of terminating their activities and submitting the records regarding the traffic information to the Authority in line with the procedures and principles as provided for in the regulation.</p> <p>(2) The access providers shall not be liable for controlling whether the content of the information accessed via them is unlawful or requires responsibility or not.</p> <p>(3) An administrative fine from ten thousand New Turkish Liras up to fifty thousand New Turkish Liras shall be imposed by the Presidency to the access providers who do not fulfill the obligations provided for in the sub-paragraphs (b) and (c) of the first paragraph.</p>
<p>Article 18 – Production order</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:</p> <p>a a person in its territory to submit specified computer data in that person’s possession or control, which is stored in a computer system or a computer-data storage medium; and</p> <p>b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider’s possession or control.</p> <p>2 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	<p>Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007</p> <p>The liabilities of the access providers</p> <p>ARTICLE 6 – (1) The access providers shall be liable for</p> <p>a) Blocking the access to the unlawful content published by any of its users provided that they are notified pursuant to the provisions of this Law hereby and to the extent that they have the possibility of blocking such access in technical terms,</p> <p>b) Saving the traffic information set forth in the regulation regarding the services they provide for a period of time to be no less than six months and no more than two years as to be determined by the regulation and ensuring the accuracy, integrity and confidentiality of such information,</p> <p>c) for notifying the case to the Authority, content providers and their customers</p>

<p>3 For the purpose of this article, the term “subscriber information” means any information contained in the form of computer data or any other form that is held by a service provider, relating to subscribers of its services other than traffic or content data and by which can be established:</p> <ul style="list-style-type: none"> a the type of communication service used, the technical provisions taken thereto and the period of service; b the subscriber’s identity, postal or geographic address, telephone and other access number, billing and payment information, available on the basis of the service agreement or arrangement; c any other information on the site of the installation of communication equipment, available on the basis of the service agreement or arrangement. 	<p>at least three months before the date of terminating their activities and submitting the records regarding the traffic information to the Authority in line with the procedures and principles as provided for in the regulation.</p> <p>(2) The access providers shall not be liable for controlling whether the content of the information accessed via them is unlawful or requires responsibility or not.</p> <p>(3) An administrative fine from ten thousand New Turkish Liras up to fifty thousand New Turkish Liras shall be imposed by the Presidency to the access providers who do not fulfill the obligations provided for in the sub-paragraphs (b) and (c) of the first paragraph.</p>
<p>Article 19 – Search and seizure of stored computer data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to search or similarly access:</p> <ul style="list-style-type: none"> a a computer system or part of it and computer data stored therein; and b a computer-data storage medium in which computer data may be stored in its territory. <p>2 Each Party shall adopt such legislative and other measures as may be necessary to ensure that where its authorities search or similarly access a specific computer system or part of it, pursuant to paragraph 1.a, and have grounds to believe that the data sought is stored in another computer system or part of it in its territory, and such data is lawfully accessible from or available to the initial system, the authorities shall be able to expeditiously extend the search or similar accessing to the other system.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to seize or similarly secure computer data accessed according to paragraphs 1 or 2. These measures shall include the power to:</p> <ul style="list-style-type: none"> a seize or similarly secure a computer system or part of it or a computer-data storage medium; b make and retain a copy of those computer data; c maintain the integrity of the relevant stored computer data; 	<p>Article 134 , Turkish Criminal Procedure Code no 5271/2005</p> <p>Search in computers, computer programs and logs, copying and seizure</p> <p>Article 134</p> <p>(1) In an investigation realized because of a crime, in case of no other means to exist for obtaining evidence, upon the request of the Republic prosecutor, the judge shall decide on searching the computer, computer programs and logs used by the suspect, to copy computer records and decode these records in order to prepare a text.</p> <p>(2) In case of failure to access to hidden information or decode the password to reach the computer programs and logs, in order to have necessary copies taken, it might be possible to seize the tools and equipment. After the decoding and taking of necessary copies, the seized devices shall be returned without further delay.</p> <p>(3) In the seizure of computer or computer logs, the entire data in the system shall be backed-up.</p> <p>(4) If requested, a copy of the back up shall be given to the suspect or his/her representative keeping a record of the issue.</p> <p>(5) Without seizing the computer or computer logs, it is also possible to copy the entire or some data in the system. Copied data shall be listed on a piece of paper, recorded and undersigned by the relevant authorities.</p>

<p>d render inaccessible or remove those computer data in the accessed computer system.</p> <p>4 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order any person who has knowledge about the functioning of the computer system or measures applied to protect the computer data therein to provide, as is reasonable, the necessary information, to enable the undertaking of the measures referred to in paragraphs 1 and 2.</p> <p>5 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	
<p>Article 20 – Real-time collection of traffic data</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to:</p> <ul style="list-style-type: none"> a collect or record through the application of technical means on the territory of that Party, and b compel a service provider, within its existing technical capability: <ul style="list-style-type: none"> i to collect or record through the application of technical means on the territory of that Party; or ii to co-operate and assist the competent authorities in the collection or recording of, traffic data, in real-time, associated with specified communications in its territory transmitted by means of a computer system. <p>2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of traffic data associated with specified communications transmitted in its territory, through the application of technical means on that territory.</p> <p>3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.</p> <p>4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.</p>	

Article 21 – Interception of content data

1 Each Party shall adopt such legislative and other measures as may be necessary, in relation to a range of serious offences to be determined by domestic law, to empower its competent authorities to:

a collect or record through the application of technical means on the territory of that Party, and

b compel a service provider, within its existing technical capability:

 i to collect or record through the application of technical means on the territory of that Party, or

 ii to co-operate and assist the competent authorities in the collection or recording of, content data, in real-time, of specified communications in its territory transmitted by means of a computer system.

2 Where a Party, due to the established principles of its domestic legal system, cannot adopt the measures referred to in paragraph 1.a, it may instead adopt legislative and other measures as may be necessary to ensure the real-time collection or recording of content data on specified communications in its territory through the application of technical means on that territory.

3 Each Party shall adopt such legislative and other measures as may be necessary to oblige a service provider to keep confidential the fact of the execution of any power provided for in this article and any information relating to it.

4 The powers and procedures referred to in this article shall be subject to Articles 14 and 15.

Article 135, Turkish Criminal Procedure Code no 5271/2005

Identification, interception and recording of communication**Article 135**

- (1) In an investigation or trial due to a crime, in case of serious reasons of doubt on commitment of a crime and no other means to obtain evidence, the judge, in cases which a delay is harmful, the Republic prosecutor may decide on identification, interception, recording or evaluating the signal information of a suspect or accused via telecommunication.
- (2) The communication between accused or suspect and individuals who might refrain from testifying shall not be recorded. If the situation is understood after the recording, the records shall be immediately annihilated.
- (3) In the decision made according to provision of the first paragraph, the type of the crime, identity of the individual, which such measure shall be implemented, type of communication tool, phone number or the code enabling the identification of communication link, type of measure, its term and scope shall be mentioned. The measure can at most be taken for three months with the possibility of extending the term for only once more. However, concerning the crimes committed within the framework of the activity of the organization, when deemed necessary, the judge might decide on extending the term for many times with the condition of not exceeding one month.
- (4) In order to identify the location of the mobile phone of a suspect or accused needed to be apprehended, the decision of the judge, in cases, which a delay is harmful, the decision of Republic prosecutor shall be necessary. In the mentioned decision, the phone number and term of such measure shall be indicated. Such measure can be implemented for at most three months with one more extension possibility.
- (5) The decision taken and operations realized in accordance with the provisions of the Article herein shall not be disclosed during the term of the measure.
- (6) Provisions on interception, recording, evaluating the signal information within the scope of the Article herein shall only be applicable for the below mentioned crimes:
 - a. In Turkish Criminal Code;

	<ol style="list-style-type: none"> 1. Migrant smuggling and trafficking in humans (Articles 79, 80) 2. Felonious homicide (Articles 81, 82, 83) 3. Torture (Article 94, 95) 4. Sexual Assault (Article 102 excluding paragraph one) 5. Sexual abuse of children (Article 103) 6. Production and trade of drugs and exhilarants (Article 188) 7. Forged currency (Article 197) 8. Establishing organization with the intention of committing crime (Article 220 excluding paragraph two, seven and eight) 9. Prostitution (Article 227, paragraph 3) 10. Fraudulent tender (Article 235) 11. Bribery (Article 252) 12. Laundering criminal assets (Article 282) 13. Armed organization (Article 314) and to provide arms for such organization (Article 315) 14. Crimes against State Secrets and Espionage (Articles 328, 329, 330, 331, 333, 334, 336, 337) <ol style="list-style-type: none"> b. Arms smuggling crimes (Article 12) defined in Law on Weaponry and Blades and Other Tools. c. Embezzlement crime defined in paragraphs (3) and (4) of Banking Law d. Crimes defined in Law on Fight with Smuggling necessitating imprisonment <p>(7) Except for the principles and procedures explained in the Article herein, no one shall intercept and record communication of another via telecommunication.</p>
Section 3 – Jurisdiction	
<p>Article 22 – Jurisdiction</p> <p>1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with Articles 2 through 11 of this Convention, when the offence is committed:</p> <ol style="list-style-type: none"> a in its territory; or b on board a ship flying the flag of that Party; or c on board an aircraft registered under the laws of that Party; or 	<p>Articles 8-13, Turkish Penal Code no 5237/2005</p> <p>Territorial Jurisdiction</p> <p>Article 8</p> <p>(1) Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey, or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.</p> <p>(2) If the criminal offence is committed:</p>

<p>d by one of its nationals, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State.</p> <p>2 Each Party may reserve the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1.b through 1.d of this article or any part thereof.</p> <p>3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in Article 24, paragraph 1, of this Convention, in cases where an alleged offender is present in its territory and it does not extradite him or her to another Party, solely on the basis of his or her nationality, after a request for extradition.</p> <p>4 This Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with its domestic law.</p> <p>When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.</p>	<p>c) within Turkish territory, airspace or in Turkish territorial waters;</p> <p>d) on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;</p> <p>e) in, or by using, Turkish military sea or air vehicles;</p> <p>f) on or against a fixed platforms erected on the continental shelf or in the economic zone of Turkey</p> <p>then this offence is presumed to have been committed in Turkey.</p> <p>Conviction in a Foreign Country</p> <p>Article 9</p> <p>(1) Any person who is convicted in a foreign country for an offence committed in Turkey shall be subject to retrial in Turkey.</p> <p>Offences Committed During the Performance of a Duty</p> <p>Article 10</p> <p>(1) Any person who is employed as a public officer or is charged with a particular duty by the Turkish State and who, in the course of that employment or duty, commits a criminal offence shall be tried in Turkey, despite having been convicted in a foreign country in respect of his acts.</p> <p>Offences Committed by Citizens</p> <p>Article 11</p> <p>(1) If a Turkish citizen commits an offence in a foreign country that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than one year, and he is present in Turkey, and upon satisfying the conditions that he has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey, he shall be subject to a penalty under Turkish law, except in regard as to the offences defined in Article 13.</p> <p>(2) Where the aforementioned offence is subject to a penalty of imprisonment, the minimum limit of which is less than one year, then criminal proceedings shall only be initiated upon the making of a complaint by a victim or a foreign government. In such a case the complaint must be made within six months of the date the citizen entered Turkey.</p>
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Offences Committed by Non-Citizens

Article 12

- (1) Where a non-citizen commits an offence (other than one defined in Article 13), to the detriment of Turkey, in a foreign country, that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than 1 year, and he is present in Turkey, he shall be subject to penalty under Turkish law. Criminal proceedings shall only be brought upon request by the Minister of Justice.
- (2) Where the aforementioned offence is committed to the detriment of a Turkish citizen or to the detriment of a legal personality established under Turkish civil law and the offender is present in Turkey and there has been no conviction in a foreign country for the same offence then, upon the making of a complaint by the victim, he shall be subject to penalty under Turkish law.
- (3) If the victim is a non-citizen the offender shall be subject to criminal proceedings, upon the request of the Minister of Justice, provided the following conditions are fulfilled:
 - a) the offence is subject to a penalty of imprisonment under Turkish law where the minimum limit of imprisonment is not less than 3 years; and
 - b) there is no extradition agreement; or the government of the country in which the crime has been committed, or the State of which the offender is a national, has refused to grant extradition.
- (4) In relation to offences to which section one is applicable, if a non-citizen is convicted or acquitted in a foreign Court or has any criminal proceedings or penalty against him stayed or set aside respectively by such Court or the offence becomes one which cannot be the subject of a prosecution in a foreign Court then, upon the request of the Minister of Justice, criminal proceedings shall be brought in Turkey.

Miscellaneous Offences

Article 13

- (1) Turkish law shall apply to the following offences committed in a foreign country whether or not committed by a citizen or non-citizen of Turkey:
 - a) Offences defined in Chapter I, Volume II;

	<ul style="list-style-type: none"> b) Offences defined in Parts 3-8, Chapter IV, Volume II; c) Torture (Articles 94-95); d) Intentional Pollution of the Environment (Article 181); e) Production and Trade of Narcotics or Psychotropic Substances (Article 188); Facilitating the use of Narcotics or Psychotropic Substances (Article 190); f) Counterfeiting Money (Article 197), Manufacturing and Trading of Instruments used in the Production of Money and valuable Seals (Article 200); Counterfeiting a Seal (Article 202); g) Prostitution (Article 227); h) Bribery (Article 252); and i) Seizing control or hijacking of air, sea or rail transport vehicles (Article 223, sections 2 and 3) and offences relating to the damaging of such vehicles (Article 152). <p>(2) Except for offences defined in parts 3, 5, 6 and 7 of Chapter IV, Volume II, conducting criminal proceedings in Turkey for crimes within the scope of section one shall be subject to a request of the Ministry of Justice.</p> <p>(3) Even where a conviction or acquittal pursuant to the offences listed in section one subsections (a) and (b) have occurred in a foreign country, criminal proceedings in Turkey shall be conducted upon the request of the Ministry of Justice.</p>
Chapter III – International co-operation	
<p>Article 24 – Extradition</p> <p>1 a This article applies to extradition between Parties for the criminal offences established in accordance with Articles 2 through 11 of this Convention, provided that they are punishable under the laws of both Parties concerned by deprivation of liberty for a maximum period of at least one year, or by a more severe penalty.</p> <p>b Where a different minimum penalty is to be applied under an arrangement agreed on the basis of uniform or reciprocal legislation or an extradition treaty, including the European Convention on Extradition (ETS No. 24), applicable between two or more parties, the minimum penalty provided for under such arrangement or treaty shall apply.</p>	<p>Article 18, Turkish Penal Code no 5237/2005</p> <p>Extradition</p> <p>Article 18</p> <p>(1) A non-citizen, against whom a prosecution has been initiated or against whom there is conviction because of a crime committed, or alleged to have been committed in a foreign country, may be extradited, upon request, for the purpose of a prosecution or enforcement of a penalty. However, the extradition request shall not be accepted, if the act for which extradition is requested:</p> <ul style="list-style-type: none"> a) does not constitute a criminal offence in Turkish Law; b) is a criminal offence of a political or military nature, or is a crime of thought;

2 The criminal offences described in paragraph 1 of this article shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. The Parties undertake to include such offences as extraditable offences in any extradition treaty to be concluded between or among them.

3 If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any criminal offence referred to in paragraph 1 of this article.

4 Parties that do not make extradition conditional on the existence of a treaty shall recognise the criminal offences referred to in paragraph 1 of this article as extraditable offences between themselves.

5 Extradition shall be subject to the conditions provided for by the law of the requested Party or by applicable extradition treaties, including the grounds on which the requested Party may refuse extradition.

6 If extradition for a criminal offence referred to in paragraph 1 of this article is refused solely on the basis of the nationality of the person sought, or because the requested Party deems that it has jurisdiction over the offence, the requested Party shall submit the case at the request of the requesting Party to its competent authorities for the purpose of prosecution and shall report the final outcome to the requesting Party in due course. Those authorities shall take their decision and conduct their investigations and proceedings in the same manner as for any other offence of a comparable nature under the law of that Party.

7 a Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the name and address of each authority responsible for making or receiving requests for extradition or provisional arrest in the absence of a treaty.

b The Secretary General of the Council of Europe shall set up and keep updated a register of authorities so designated by the Parties. Each Party shall ensure

- c) is an offence against the security of the Turkish state or causes damage to the Turkish state, a Turkish citizen or legal entity established under Turkish law,
- d) is a criminal offence which falls under the jurisdiction of Turkey,
- e) has benefited from an amnesty or statute of limitation.

(2) Citizens shall not be extradited in respect of an offence he has committed, save in regard to the obligations arising from being a party to the International Criminal Court.

(3) The extradition request shall not be accepted if there are strong suspicious reasons that – upon extradition - the person will be prosecuted or punished on account of his race, religion, nationality, membership of a particular social group or political opinion or be exposed to torture or ill-treatment.

(4) The Serious Criminal Court responsible for the region of the concerned person shall decide on the extradition request on the basis of this article as well as the provisions of the related international conventions that Turkey is a party to. This decision may be appealed.

(5) If the extradition request is deemed to be acceptable by the Court, then the execution of such decision shall be at the discretion of the Council of Ministers.

(6) Security measures may be applied in respect of an individual who is requested for extradition in accordance with the provisions of international conventions which Turkey is a party to.

(7) If the extradition request is deemed to be acceptable, an arrest warrant may be issued according to the provisions of the Criminal Procedure Code or other security measure may be applied.

(8) In the event of extradition, the person is only to be prosecuted for the particular offence for which extradition has taken place and no penalty other than that related to such offence may be enforced.

2. Extradition

Article 90 of the Turkish Constitution provides that all international instruments which Turkey has ratified and approved have direct effect in Turkish law without the need for domestic enabling legislation. There is however limited domestic provision contained in Article 18 of the Turkish Criminal Code.

Various bodies are involved in the extradition procedure:

-The Ministry of Justice makes initial assessment whether the extradition

	<p>documents are in conformity with the relevant international conventions or bilateral agreements.</p> <ul style="list-style-type: none"> -Criminal Court of Peace, decides on the provisional arrest of the person concerned for the extradition purposes. -Felony court of the place where the person concerned is present, decides on the extradition request in accordance with Article 18 of the Turkish Criminal Code and according to the provisions of the relevant international conventions, -Court of Cassation, decides on the appeals made to the felony court, -The Council of Ministers decides on the execution of decision of the court, <p>Council of State examines the challenges lodged against the decision of the Council of Ministers.</p> <p>Article 38 of the Constitution 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.</p>
<p>Article 25 – General principles relating to mutual assistance</p> <p>1 The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.</p> <p>2 Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.</p> <p>3 Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.</p> <p>4 Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the</p>	<p>There is no specific law. Mutual legal assistance is executed referring to the bilateral agreements or international conventions.</p> <p style="text-align: center;">(IV) THE RELEVANT TURKISH LEGISLATION ON JUDICIAL COOPERATION IN CRIMINAL MATTERS:</p> <p>1. Constitution:</p> <p>In the Constitution, there are two provisions related to judicial cooperation in criminal matters.</p> <p>Article 90 regulates the relationship between the laws and international agreements inter alia on judicial cooperation in criminal matters.</p> <p>Under Article 90, international agreements duly put into effect carry the force of law.</p> <p>In accordance with Article 90, once an international agreement has been ratified, it becomes internal part of the national legal system and can directly be enforced.</p> <p>No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional.</p> <p>Article 38 of the Constitution provides that citizens shall not be extradited to a</p>

grounds on which the requested Party may refuse co-operation. The requested Party shall not exercise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5 Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court.

2. Code and Laws:

There is no specific law on judicial cooperation in criminal matters but the following laws include some provisions on judicial cooperation in criminal matters:

a) Turkish Criminal Code (TCC), Law no: 5237, dated September 26, 2004, Article 18 governs extradition:

b) Law on the Organization and Functions of the Ministry of Justice (Law No. 2992):

Article 13/A of this Law provides that General Directorate for International Law and Foreign Relations is the central authority for execution of all kinds of judicial assistance requests in criminal matters.

3. International Agreements:

The main sources of international judicial cooperation in criminal matters in Turkey are the bilateral agreements between Turkey and other countries and the multilateral agreements to which Turkey is a party.

Multilateral Conventions of the Council of Europe and United Nations to which Turkey is a party.

Turkey is a party to "OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions" dated 21 November 1997. On the other hand Turkey is a member of "The Financial Action Task Force (FATF)" that is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing.

If there is no bilateral and multilateral convention between Turkey and other country concerned, judicial cooperation in criminal matters is governed by international customs and principle of reciprocity.

4. Circulars

The subjects on the implementation of judicial cooperation in criminal matters are governed by the circulars issued by the General Directorate for the International Law and Foreign Relations of the Ministry of Justice.

	<p>As the recent TCC and TCPC came into force on 1 June 2005, a new circular no: 69 and dated 1/1/2006 has been issued. Mainly following issues are covered in this circular:</p> <ul style="list-style-type: none"> -Service of documents and letters rogatory including mutual legal assistance on the enforcement of the decisions on seizure and confiscation, -Extradition, requests for search of offenders with Interpol Red Notice, -Transfer of sentenced persons, -Researches of addresses in abroad and provision of birth and death certificates and judicial records of foreign nationals. <p>(V) JUDICIAL COOPERATION IN PRACTICE</p> <p>1. Mutual Legal Assistance</p> <p>Turkey does not have any legislation that specifically deals with MLA. Bilateral and multilateral conventions are the main instruments in MLA practice in Turkey. The Ministry of Justice of Turkey plays a central role in judicial co-operation at large. General Directorate of International Law and Foreign Relations as a central authority receives the requests for mutual legal assistance and then transmits them to the competent authorities for execution. According to the general legal system, the competent authority may be either the court or the public prosecutor depending on the type of the assistance sought.</p> <p>In cases of urgent requests under article 15 of the 1959 Convention (i.e. via Interpol), the Ministry of Interior will transmit the request to the Ministry of Justice for execution. Turkey has a positive approach to judicial co-operation, more precisely; incoming requests are carried out in a flexible and a cooperative manner. Turkey carries out requests of mutual assistance in criminal matters basically within the framework of "European Convention on Mutual Assistance in Criminal Matters."</p>
<p>Article 26 – Spontaneous information</p> <p>1 A Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation</p>	

<p>by that Party under this chapter.</p> <p>2 Prior to providing such information, the providing Party may request that it be kept confidential or only used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.</p>	
<p>Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements</p> <p>1 Where there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and requested Parties, the provisions of paragraphs 2 through 9 of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 a Each Party shall designate a central authority or authorities responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.</p> <p>b The central authorities shall communicate directly with each other;</p> <p>c Each Party shall, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, communicate to the Secretary General of the Council of Europe the names and addresses of the authorities designated in pursuance of this paragraph;</p> <p>d The Secretary General of the Council of Europe shall set up and keep updated a register of central authorities designated by the Parties. Each Party shall ensure that the details held on the register are correct at all times.</p> <p>3 Mutual assistance requests under this article shall be executed in accordance with the procedures specified by the requesting Party, except where incompatible with the law of the requested Party.</p> <p>4 The requested Party may, in addition to the grounds for refusal established in Article 25, paragraph 4, refuse assistance if:</p> <p>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or</p> <p>b it considers that execution of the request is likely to prejudice its</p>	<p>If there is no bilateral and multilateral convention between Turkey and other country concerned, judicial cooperation in criminal matters is governed by international customs and principle of reciprocity.</p>

sovereignty, security, *ordre public* or other essential interests.

5 The requested Party may postpone action on a request if such action would prejudice criminal investigations or proceedings conducted by its authorities.

6 Before refusing or postponing assistance, the requested Party shall, where appropriate after having consulted with the requesting Party, consider whether the request may be granted partially or subject to such conditions as it deems necessary.

7 The requested Party shall promptly inform the requesting Party of the outcome of the execution of a request for assistance. Reasons shall be given for any refusal or postponement of the request. The requested Party shall also inform the requesting Party of any reasons that render impossible the execution of the request or are likely to delay it significantly.

8 The requesting Party may request that the requested Party keep confidential the fact of any request made under this chapter as well as its subject, except to the extent necessary for its execution. If the requested Party cannot comply with the request for confidentiality, it shall promptly inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

9 a In the event of urgency, requests for mutual assistance or communications related thereto may be sent directly by judicial authorities of the requesting Party to such authorities of the requested Party. In any such cases, a copy shall be sent at the same time to the central authority of the requested Party through the central authority of the requesting Party.

b Any request or communication under this paragraph may be made through the International Criminal Police Organisation (Interpol).

c Where a request is made pursuant to sub-paragraph a. of this article and the authority is not competent to deal with the request, it shall refer the request to the competent national authority and inform directly the requesting Party that it has done so.

d Requests or communications made under this paragraph that do not involve coercive action may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party.

e Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, inform the Secretary General of the Council of Europe that, for reasons of efficiency,

<p>requests made under this paragraph are to be addressed to its central authority.</p>	
<p>Article 28 – Confidentiality and limitation on use</p> <p>1 When there is no mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the requesting and the requested Parties, the provisions of this article shall apply. The provisions of this article shall not apply where such treaty, arrangement or legislation exists, unless the Parties concerned agree to apply any or all of the remainder of this article in lieu thereof.</p> <p>2 The requested Party may make the supply of information or material in response to a request dependent on the condition that it is:</p> <p>a kept confidential where the request for mutual legal assistance could not be complied with in the absence of such condition, or</p> <p>b not used for investigations or proceedings other than those stated in the request.</p> <p>3 If the requesting Party cannot comply with a condition referred to in paragraph 2, it shall promptly inform the other Party, which shall then determine whether the information should nevertheless be provided. When the requesting Party accepts the condition, it shall be bound by it.</p> <p>4 Any Party that supplies information or material subject to a condition referred to in paragraph 2 may require the other Party to explain, in relation to that condition, the use made of such information or material.</p>	
<p>Article 29 – Expedited preservation of stored computer data</p> <p>1 A Party may request another Party to order or otherwise obtain the expeditious preservation of data stored by means of a computer system, located within the territory of that other Party and in respect of which the requesting Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the data.</p> <p>2 A request for preservation made under paragraph 1 shall specify:</p> <p>a the authority seeking the preservation;</p> <p>b the offence that is the subject of a criminal investigation or proceedings and a brief summary of the related facts;</p> <p>c the stored computer data to be preserved and its relationship to the offence;</p>	

d any available information identifying the custodian of the stored computer data or the location of the computer system;

e the necessity of the preservation; and

f that the Party intends to submit a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of the stored computer data.

3 Upon receiving the request from another Party, the requested Party shall take all appropriate measures to preserve expeditiously the specified data in accordance with its domestic law. For the purposes of responding to a request, dual criminality shall not be required as a condition to providing such preservation.

4 A Party that requires dual criminality as a condition for responding to a request for mutual assistance for the search or similar access, seizure or similar securing, or disclosure of stored data may, in respect of offences other than those established in accordance with Articles 2 through 11 of this Convention, reserve the right to refuse the request for preservation under this article in cases where it has reasons to believe that at the time of disclosure the condition of dual criminality cannot be fulfilled.

5 In addition, a request for preservation may only be refused if:

a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence, or

b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests.

6 Where the requested Party believes that preservation will not ensure the future availability of the data or will threaten the confidentiality of or otherwise prejudice the requesting Party's investigation, it shall promptly so inform the requesting Party, which shall then determine whether the request should nevertheless be executed.

4 Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.

<p>Article 30 – Expedited disclosure of preserved traffic data</p> <p>1 Where, in the course of the execution of a request made pursuant to Article 29 to preserve traffic data concerning a specific communication, the requested Party discovers that a service provider in another State was involved in the transmission of the communication, the requested Party shall expeditiously disclose to the requesting Party a sufficient amount of traffic data to identify that service provider and the path through which the communication was transmitted.</p> <p>2 Disclosure of traffic data under paragraph 1 may only be withheld if:</p> <p>a the request concerns an offence which the requested Party considers a political offence or an offence connected with a political offence; or</p> <p>b the requested Party considers that execution of the request is likely to prejudice its sovereignty, security, <i>ordre public</i> or other essential interests.</p>	
<p>Article 31 – Mutual assistance regarding accessing of stored computer data</p> <p>1 A Party may request another Party to search or similarly access, seize or similarly secure, and disclose data stored by means of a computer system located within the territory of the requested Party, including data that has been preserved pursuant to Article 29.</p> <p>2 The requested Party shall respond to the request through the application of international instruments, arrangements and laws referred to in Article 23, and in accordance with other relevant provisions of this chapter.</p> <p>3 The request shall be responded to on an expedited basis where:</p> <p>a there are grounds to believe that relevant data is particularly vulnerable to loss or modification; or</p> <p>b the instruments, arrangements and laws referred to in paragraph 2 otherwise provide for expedited co-operation.</p>	
<p>Article 32 – Trans-border access to stored computer data with consent or where publicly available</p> <p>A Party may, without the authorisation of another Party:</p> <p>a access publicly available (open source) stored computer data, regardless of where the data is located geographically; or</p> <p>b access or receive, through a computer system in its territory, stored computer data located in another Party, if the Party obtains the lawful and voluntary consent of the person who has the lawful authority to disclose the</p>	

<p>data to the Party through that computer system.</p>	
<p>Article 33 – Mutual assistance in the real-time collection of traffic data</p> <p>1 The Parties shall provide mutual assistance to each other in the real-time collection of traffic data associated with specified communications in their territory transmitted by means of a computer system. Subject to the provisions of paragraph 2, this assistance shall be governed by the conditions and procedures provided for under domestic law.</p> <p>2 Each Party shall provide such assistance at least with respect to criminal offences for which real-time collection of traffic data would be available in a similar domestic case.</p>	
<p>Article 34 – Mutual assistance regarding the interception of content data</p> <p>The Parties shall provide mutual assistance to each other in the real-time collection or recording of content data of specified communications transmitted by means of a computer system to the extent permitted under their applicable treaties and domestic laws.</p>	
<p>Article 35 – 24/7 Network</p> <p>1 Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:</p> <ul style="list-style-type: none"> a the provision of technical advice; b the preservation of data pursuant to Articles 29 and 30; c the collection of evidence, the provision of legal information, and locating of suspects. <p>2</p> <ul style="list-style-type: none"> a A Party’s point of contact shall have the capacity to carry out communications with the point of contact of another Party on an expedited basis. b If the point of contact designated by a Party is not part of that Party’s 	

authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.

3 Each Party shall ensure that trained and equipped personnel are available, in order to facilitate the operation of the network.

Article 42 – Reservations

By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Article 4, paragraph 2, Article 6, paragraph 3, Article 9, paragraph 4, Article 10, paragraph 3, Article 11, paragraph 3, Article 14, paragraph 3, Article 22, paragraph 2, Article 29, paragraph 4, and Article 41, paragraph 1. No other reservation may be made.