

1. Does the prosecution service of your country have any competences outside the field of criminal justice?

Yes, the public prosecution service has various competences outside the field of criminal justice.

2a. If so, what are these competencies (with regard to, for example, administrative, civil, social and commercial law and/or the functioning and management of the courts)?

The functions of the public prosecution service in Civil Law are as follows;

•Under Article 146 of the Turkish Civil Code, to file a case before the family court when one of the following absolute annulment grounds enumerated in Article 145 of this Code exists;

- 1) where at the date of the marriage one of the parties is already married
- 2) where at the date of the marriage one of the parties lacks discretion duty a permanent cause.
- 3) where one of the parties is insane to a degree that prevents the marriage.
- 4) where the parties are within the prohibited degrees of relationship by blood marriage.

•To file lawsuits as respects to filiation of a child. Under Article 291 of the aforesaid Code the prosecutor can file a refusal of filiation case as set out in Article 286 and also the prosecutor can file a case with a view to object to the establishment of lineage specified in Article 294 as well as he/she can ask from the family court to annul the acknowledgement of a child.

•If the objects of an association are not compatible with legislation and ethics, a court may give judgement for the dissolution of the association upon request of the public prosecutor or any other concerned person (Article 89 of the Turkish Civil Code). Similarly, under Article 90, associations must operate in accordance with their charters and where they do not the public prosecutor can apply to a court for an order that the association must cease operation

When necessary, the Ministry of Interior or public administration officer may audit an association which appears to be conducting activities outside its charter and may audit associations for compliance with bookkeeping and recordkeeping obligations. Law enforcement officers cannot participate in the audits. During the audits, upon the request of the assigned officers, any information, document, and record must be presented and full access to premises must be provided. If any offence is detected during an audit the authority notifies the public prosecutor's office and the association.

•The cases, brought before the civil first instance courts in order to correct the errors deriving from registration of age, name and surname, and the other registration information

are tried before the presence of the public prosecutor and personal status officer pursuant to Article 36(a) of the Personal Status Code (Law No: 5490).

-the functioning and management of the courts

•The administrative tasks of the public prosecutors stemming from the Law on Judges and Public Prosecutors (law No : 2802)

The public prosecutors are responsible for the supervision of the court budget. They act as an authorising officer to this effect. They are also empowered to monitor and supervise the court staff.

•-under the Law on Execution and Bankruptcy (Law No: 2004)

All execution and bankruptcy offices are regularly monitored and supervised by the public prosecutors each year in January pursuant to articles 13 and 13(a) as well as articles 102 and 103 of the Implementing Regulation of the aforementioned law.

-Other functions of the Prosecutors

•under the Law on Lawyers,

The public prosecutors are entitled to request from the bar association to initiate a disciplinary procedure against a lawyer. In this respect, they are entitled to appeal the decision of the bar association in case the association determines not to investigate the discipline offence of the lawyer in question.

•under the Law on Notaries,

The public prosecutors act as a supervisory authority over the notaries. In cases where the Ministry of Justice permits, the public prosecutors can bring a public case against the notary before the competent court.

-Miscellaneous competencies of the public prosecutors

•Public prosecutors are empowered to conclude investigations against a Member of Parliament (MP) as well as file a case against a MP after his/her parliamentary immunity is lifted (Article 83 of the 1982 Turkish Constitution).

•under the Law on Trial of Civil Servants and Other Public (Servants) (Law No : 4483)

Prosecutors are empowered to bring a public case against any public servant who commits an offence in the course of the performance of public service. The public prosecutor seeks from the competent authority to be granted the permission to investigate prior to bring a case against the public servant. They are further entrusted to carry out investigations and file a case against the governors and sub-governors upon being granted permission to investigate from the Prime Ministry or the Ministry of Interior.

•under the international conventions to which Turkey is a party;

-The public prosecutor service in Turkey acts as an agent with respect to implementing international conventions to which Turkey is a party, namely the New York Convention on the “Recovery of Maintenance Obligations”, Convention of 2 October 1973 on the Recognition and Enforcement of Decisions relating to Maintenance Obligations, Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children and 1980 Hague Convention on Civil Aspects of International Child Abduction. To this effect, the public prosecutors are, if necessary, empowered to bring an action before the competent family courts upon the request of the Central Authority of Turkey designated under these conventions.

•under the Law of 2247

Similarly, the public prosecutors are entitled to file a case against the members of the Turkish Higher Education Board after being granted the permission to investigate from the aforesaid Board.

•under the Law on Political Parties (Law No : 2820)

Upon the notification of the information as to the acts of the political parties giving rise to their closure, the public prosecutor shall transmit promptly all relevant information to the Ministry of Justice and the relevant documents to the Chief Public Prosecution Office of Court Cassation.

•to participate security meetings held in cities.

Public prosecutors participate in the security oriented meetings held by the security commission of each city in accordance with the Circular issued by the General Directorate of Penal Affairs of the Ministry of Justice (Circular No : 43).

•in administrative law:

A sufficient number of prosecutors exists at the Council of State under the law on Council of State (Law No : 2575).

2 b. Please indicate the background explaining their existence.

Please note that all relevant information have already been above mentioned.

2 c. Please indicate the role played by the public prosecutor in exercising these competencies; advisory role-ex officio or upon request-, supervisory or decision-making role.

Public prosecutors play an ex officio role in the course of performing their duties deriving from the civil law, constitution, trial of civil servants and other public (Servants) law, law on political parties, law of 2247, law on lawyers, law on notaries, and finally law on the Council of State.

On the one hand they play a supervisory role when they are exercising their duties arising from the law on Judges and Public Prosecutors (law No : 2802), law on Execution and Bankruptcy (Law No: 2004), on the other hand they act upon request when they are implementing international conventions.

Finally, they play an advisory role when they participate in security meetings held in the cities.

2 d. Where public prosecutors have decision-making powers, can their decisions be challenged by in a legal remedy? Please indicate the legal remedies provided for.

In Turkey, public prosecutors have no decision-making powers.

3. Please give an indication (statistics, if available) of the effective use of these competencies and the work load they entail for the prosecution service as a whole.

No data is available as to the effective use of these competencies. However, please find below a statistical data regarding the work load for the prosecution service as a whole.

The overall number of preparatory investigation files in 2005 is: 4342365;

The overall number of work relating to the execution of the final judgements is; 1391630.

4. Does your country envisage any reform in the above-mentioned competencies of the public prosecutor?

No, there is no reform study for the time being.

PART II

5. Does the public prosecutors have a separate internal organization when it acts outside the field of criminal justice? Please specify.

No, it does not have a separate internal organization.

6. Which powers does the public prosecution service enjoy when acting outside the criminal justice?

a. Is it vested with a specific authority or does it enjoy the same powers as the other party(ies) to the trial?

Since the public prosecutors represent the public order and public interest when they act outside the criminal justice, they do not enjoy the same powers as the other parties to the trial. They are vested with a specific authority.

b. Are there specific rules governing the exercise of these functions? What is the basis of such rules (the law, custom or practice)?

They exercise their functions under the specific rules set out in various laws as mentioned under the reply for question 1(a).

c. Does it enjoy other rights and duties? Please specify.

All rights and duties of the public prosecutors are already explained in details.

7. Regarding the role of the public prosecution service outside the criminal justice.

a. has the European Court of Human Rights taken decisions or handed down judgements on that matter in respect of your country? If so please indicate the number of the applications and the date of the decision or judgement.

No statistical data or search is available on this issue.

b. In your country has the constitutional court or another court with this authority to rule on the constitutionality of laws taken decisions or handed down judgments on the compatibility of such a role with the constitution or the basic law? If so, please indicate the references of such decisions and their main thrust?

No information is available on this issue.

8. Amongst the competences of the public prosecution service acting outside the system of criminal justice which are, in your view, the most important for the reinforcement of rule of law and protection of human rights?

Though it is difficult to distinguish between its competencies from the point of whether they serve the aim of reinforcement of rule of law or protection of human rights, it may not be wrong to claim that the amongst competences where the public prosecutors play an ex officio role mostly aimed at reinforcing the rule of law. Generally speaking, when they act ex officio, it is considered that they act for the benefit of public order and public interest. Nevertheless, when they act ex officio, their acts may in some cases be related to the protection of human rights indirectly. To illustrate, the public prosecutors are entrusted to request the closure of a political party which acts contrary to the unity of the country and basic law. However, the public prosecutors have to take into account Article 11 of the European Convention on Human Rights as well as its relevant case law prior to initiate proceedings against that political party. So, from this point, in some cases its competences may serve to the aim of protection of human rights.

IV. QUESTIONNAIRE

1. Concerning the legal framework does your country follow a system of mandatory or discretionary prosecution? Has the situation changed during the last two years or is a change envisaged in your country, what is the percentage of criminal law responses to offences perpetrated by identified offenders in the years 2005 and 2006? Amongst those what is the proportion of alternative to prosecution responses?

Under the current criminal law procedure in Turkey, Turkey, as a general rule, follows a system of mandatory prosecution. Accordingly, Article 170, paragraphs 1 and 2 laid down in the Code of Criminal Procedure read as follows;

Duty to bring a public prosecution

Article 170

(1) The duty to bring a public prosecution rests with the public prosecutor.

(2) If the evidence collected at the end of the investigation phase creates sufficient suspicion that a crime has been committed; then the public prosecutor shall prepare an indictment.

In the light of the wording of the aforementioned article, it is clear that the public prosecutor has to bring a public prosecution on being informed that an offence has been committed. So, as a general rule he/she has no discretionary power whether or not to prosecute. However, discretion in bringing a public prosecution has been specifically established in article 171 of this Code. Article 171 reads as follows;

Right of discretion in bringing a public prosecution

Article 171.- *(1) In the presence of conditions calling for the implementation of effective repentance provisions as a personal reason requiring the dismissal of the punishment or in the presence of personal impunity, the public prosecutor may not bring a public prosecution.*

Apart from this, pursuant to article 171, paragraph 2, for offences that may be investigated and prosecuted only upon a complaint and their upper limits require an imprisonment of 1 year or less than a year, although there is a sufficient suspicion, public prosecutor may determine the suspension of bringing a public prosecution for five years.

Mediation has been introduced for certain crimes laid down in Article 253 of the Turkish Criminal Procedural Code which was adopted in 2005 (Law no: 5271). In case the crime falls within those crimes under mediation, the public prosecutor has to first initiate mediation proceedings. Moreover it is not possible to commence mediation proceedings for heavy crimes.

Concerning the proportion of alternative to prosecution responses, no statistical data is available.

2. In the event of an offence, are your judicial authorities able to choose between criminal law measures and other responses? If so, please specify which. Is that choice definitive or can it be challenged?

Article 50 of the Turkish Penal Code provides alternative responses to criminal law measures in certain conditions. Article 50 reads as follows:

Sanctions precedent for sentence to short-term imprisonment

Article 50 (1) *Short-term imprisonment may be converted to following punishments according to the personality, social and economical status of the convict, repentance shown by him during the trial period and qualifications of the offence;*

- a) *Administrative fine,*
- b) *Reimbursement of overall loss encountered by the aggrieved party or public, reinstatement or compensation of damages,*
- c) *Admittance to an education institution for a period of at least two years to improve professional skills or to learn art by providing shelter,*
- d) *Prohibition from travelling to certain places and to conduct certain activities for a period up to half of the imposed punishment.*
- e) *In case of commission of an offence by misuse of rights and powers or by failing to take proper care and necessary precautions; seizure of driving license and other license certificates and prohibition from performance of certain profession or art for a period from one half up to one folds of the imposed punishment.*
- f) *Voluntary employment in a job performed for public interest for a period from one half up to one folds of the imposed punishment.*

This choice is not definitive, it can be challenged.

3. Who decides on this choice? What is the specific role of the prosecutor?

The relevant court, where the offence is tried has the full discretion to decide on this choice. The public prosecutor has no role in making this choice.

4. Are there criteria for abandoning the criminal prosecution approach?

According to Article 172 of the Criminal Procedural Code the public prosecutor may render in certain cases not to prosecute. Article 172 is as follows;

Decision not to prosecute

Article 172. - (1) *The public prosecutor shall decide not to prosecute in cases where at the end of the investigation phase the collected evidence does not support a suspicion sufficient to justify bringing a public prosecution or where there is no possibility for prosecution. This decision shall be notified to the person injured by the crime and the suspect who has given his statement and been interrogated. The decision shall indicate the right to object, time-limits for objection and the authority to apply to.*

(2) *After the decision not to prosecute has been made, no public prosecution can be brought on the basis of the same act, unless there is new evidence.*

Besides, for those crimes that may be investigated and prosecuted only upon complaint, the public prosecutor shall decide not to prosecute if the complainant renounces his/her complaint. And if the complainant renounces his/her complaint during the trial phase, the court shall drop the case.

5. Could it happen that a serious offence escapes any prosecution because of alternative measures?

Alternative measures are only applicable for those offences which require short-term imprisonment as set out in Article 50 of the Turkish Criminal Code. Therefore, it could not happen that a serious offence escapes any prosecution.

On the other hand, both the mediation proceedings and the suspension of bringing the prosecution cannot be applied for the perpetrators who committed heavy offences.

6. Are victims informed beforehand, consulted and can they challenge the decision in the case when criminal prosecution was dropped, and how are their rights preserved?

Article 173 of the Turkish Criminal Procedural Code regulates this situation. According to this article,

“Objection to decision of the public prosecutor

Article 173. - (1) The party injured by the crime may lodge an objection against the decision not to prosecute within fifteen days after he was notified of the decision to the president of the assize court nearest in the judicial district to the assize court to which the public prosecutor giving the decision is attached.”

Furthermore, the party injured by the crime may also lodge an objection against the decision of the public prosecutor concerning the suspension of bringing a public prosecution for five years as mentioned above in Article 171(2) of the Criminal Procedural Code.

7. Given that the response chosen gives rise to obligations in respect of the persons subjected to it - such as the reparation of damage - are they able to lodge an appeal with an impartial authority (for example, for validation by a judge of a restraining order or an obligation to undergo training proposed by way of settlement)?

The Court’s judgment which converts the short-term imprisonment into one of the sanctions enumerated under article 50 of the Penal Code is subject to appeal.

8. Can you give specific examples of alternatives to prosecution which you see as particularly well suited to the prevention of reoffending by the perpetrator and consideration of victims' interests?

No data is available.

9. Is there a method in your country for assessing the effectiveness of alternatives to prosecution and what is it?

For the time being there is not such a method in our legal system.

10. Can you provide the contact details (with their consent) of someone clearly identified as a specialist on these questions and supply examples of their work to back up your choice?

There is no specialist to provide examples of their work.