

# TURKEY



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## NATIONAL POLICY

Terrorism is a leading threat against international peace, security and stability. Turkey is committed to combating terrorism in all its forms, without distinction and takes a firm stance against associating terrorism with any religion, nationality, civilization or ethnic group.

Turkey continues to fight effectively and decisively with terrorist organizations including PKK/KCK/PYD/YPG, DEAŞ, FETÖ and DHKP/C threatening national security and public order and targeting the security of life and property of the citizens by considering fundamental rights and freedoms.

Based on its decades-old national experience in countering various forms of terrorism, and in line with relevant international instruments, including foremost the UN Global Counter Terrorism Strategy, Turkey has adopted a human right based, holistic and multidimensional counter-terrorism approach which contains the following salient elements:

### Respect for Human Rights and the Rule of Law

Any counter-terrorism campaign should be conducted with full respect for human rights and the rule of law, which constitute indispensable elements for sustainable success. Upholding the rule of law does not diminish, but rather strengthens the effectiveness of counter terrorism efforts. It is crucial to preserve the right balance between security measures which are restrictive in nature, and protecting fundamental rights for a well-functioning democratic system.

The latest development is the amendment of the Article 7 of Anti-Terror Law to further safeguard the freedom of expression and press by the first Judicial Package. (Article 7 of the Anti-Terror Law was amended to include the following "the expression of thought which do not exceed the limits of reporting or made for the purpose of criticism shall not constitute an offence.")

Moreover, in accordance with the provisions of the current legislation and within the framework of the policy of "zero tolerance against torture", modernization of the sound and video recording systems in detention and interview rooms of Provincial Police Directorates CT Units are reviewed every year.

Accordingly, while maintaining its determined stance against terrorism, Turkey has taken important steps with a view to enhancing democratic standards and expanding freedoms. These measures cover a wide spectrum and include, but are not limited to, the adoption of a new Criminal Code and Criminal Procedure Code, amendments to other relevant legislation aimed at furthering freedom of thought, expression and assembly. Turkey has taken various legal and administrative measures, including comprehensive training courses for law enforcement/judicial authorities on the protection of human rights, and the rehabilitation of detention centers and prisons. Constitutional amendments adopted by a referendum on 12 September 2010, and enactment of subsequent implementing laws in particular granting the right for individual applications to the Constitutional Court and the establishment of the institution of Ombudsman are the latest important milestones in this respect.

The Human Rights and Equality Institution of Turkey was established on 06/04/2016 under the Law no. 6701 in order to protect and promote human rights, safeguard individuals' right to equal treatment, prevent discrimination in the enjoyment of the rights and freedoms accorded by law, act in line with these principles, conduct an effective fight against torture and ill-treatment, and serve as a national prevention mechanism on the matter, all based on human dignity.

The [Human Rights Action Plan \(Action Plan\)](#) which stands as the basic policy document for the purpose of raising the human rights standards in line with the vision of "Free Individuals, Strong Society: More Democratic Turkey" was announced by the President on 2 March 2021.

The Action Plan includes 9 aims, 50 targets and 393 activities under 11 basic principles. It provides for

the institutions in charge for each activity listed in the Action plan and terms as short (1 to 3 months), medium (6 months to one year), long (2 years), and by its very nature, permanent terms. The Presidential Circular no. 2021/9 on the effective implementation of the Action Plan and the conduct of the monitoring, reporting and assessment processes with the participation, support and cooperation of all institutions was published on the Official Gazette dated 30 April 2021.

With the Action Plan, while making emphasis on its will to strengthen its democracy and its full commitment to the state of law principle, Turkey also underlines the significance it attributes to the development of all guarantees in relation to the human rights and the protection mechanisms.

### **Multidimensional Approach**

Based on the realization that relying solely on security measures does not produce a sustainable solution to the threat of terrorism, Turkey has gone through a paradigm shift in its counter terrorism strategy. Turkey has adopted a holistic counter-terrorism strategy which comprises political, cultural, social and economic dimensions, as well as a focused attention on international cooperation.

There can be no justifications for acts of terrorism. On the other hand, issues that bear the potential of being abused by terrorist groups, particularly in support of their narrative, require attention. The Turkish government is sensitive to the demands of all of its citizens, without exception. Thereby, it aims to eliminate issues of potential abuse by terrorists. Supporting victims of terrorist acts deserves particular attention. In recognition of the responsibility of the state in assisting the victims of terrorist acts, Turkey has enacted a specific legislation in this field.

Informing public and ensuring public support in relation to counter-terrorism are of great importance. In this context, multi-aspect activities and projects have been conducted with the participation and contribution of all relevant institutions.

In order to prevent terrorist recruitment, raise public awareness on terrorism and terrorist groups and provide public support in the field of combating terrorism, Public Awareness and Prevention Activities (PPA) are carried out under three main headings as "Public Awareness Activities", "Social Activities" and "Family Meetings".

### *Public Awareness Activities*

It is aimed to make Turkish citizens aware of propaganda activities of terrorist organizations through public awareness activities addressing all social segments, especially educational institutions in order to ensure that Turkish citizens, who are from the risk group in terms of terrorist propaganda, can make decisions in a prudent manner.

### *Social Activities*

Social activities are the ones planned based on social and cultural needs of individuals and include trips, sports and cultural activities. The purpose is to prevent social needs of the target group from being abused by terrorist organizations. Activities carried out within the scope of Social Activities are considered as tools for establishing communication channels for PPA.

### *Family Meetings*

Considering impact and importance of the family on the individual, meetings are held with the families of young people who are the targets of terrorist organizations and families are informed in order to increase their sensitivity on the protection of their children. Family meetings include interviews with individuals and their families during Anticipation, Investigation, Illegal and Penitentiary Levels.

Within the scope of efforts of persuasion teams established for professional progress of Public Awareness and Prevention Activities carried out by Counterterrorism Department of Turkish National Police, the number of organization members surrendered by persuasion was 14 in 2018, 273 in 2019 and 243 in 2020 (and 95% of whom were from PKK/KCK terrorist organization).

The persuasion teams ensure terrorist operatives getting in touch with family members surrender with their influence.

During family meetings, families are provided proper information about surrendering process and effective remorse provisions against unfolded terrorist propaganda (i.e. torture, threats).

### **Capacity Development**

Capacity development, both in terms of institutional and operational counter terrorism capabilities, is another pillar of Turkey's counter-terrorism strategy. It is of vital importance to evolve the institutional framework according to the pressing needs of counter terrorism work. It is equally important to ensure that security forces are highly advanced in

terms of technical infrastructure, qualified personnel, as well as data gathering and analysis capabilities. Witness Protection Board was established in accordance with the Law on Witness Protection, No. 5726, with the aim of taking the decisions on witness protection measures listed in paragraphs (d) to (h) of the first sub-paragraph of Article 5 upon the request of the witness coordinately in order to protect the live, corporal integrity or property of especially counter-terrorism criminal procedure witnesses or their relatives and to perform the duties indicated in law no.5726. Witness Protection Department was founded within the Ministry of Interior and dependent to General Directorate of Turkish National Police on 27.06.2008 to implement Public Prosecutors, courts and the Witness Protection Board protection measures taken for witnesses.

For an effective counter-terrorism, ensuring timely and effective coordination among various responsible bodies is of key importance. In this regard, Internal Security Strategies Department conducts studies to determine policies and strategies regarding internal security and monitors implementation of these policies and strategies. With the Law on the Prevention of Financing of Terrorism No.6415, the Assessment Commission on Freezing Assets has been set up. Under the chairmanship of the President of Turkish National Financial Intelligence Unit (MASAK), this Commission deals with asset freezing requests made by foreign countries and requests that will be made by Turkey to other countries as well as Turkey's freezing of assets on its own initiative and Turkey's designation proposal to the relevant Committees established pursuant to UNSCRs 1267 (1999), 1988 (2011), 1989 (2011) and 2253 (2015). Based on the Presidential Decision no. 1734 dated 5 November 2019, Division for Combating Terrorist Financing was established within the Counter-Terrorism Department of TNP. Furthermore, Offices for Combating Terrorism Financing was established within the Counter-Terrorism branches of 81 provincial directorates of TNP. In addition to the existing reporting methods, 140 Terrorism Hotline, established in order to carry out the work and transactions related to the notifications to be received within the scope of fight against terrorism more effectively and quickly within confidentiality rules, has offered 24/7 service from a single center under Counterterrorism Department of Turkish National Police since 30.10.2015.

### **International Dimension**

Ensuring effective bilateral, regional and global cooperation is another essential element of Turkey's counter terrorism strategy. In today's globalized world, terrorism has become a transnational enterprise.

Therefore, efforts to counter this threat need to be comprehensive and coherent on a global scale.

## **LEGAL FRAMEWORK**

### **General information**

Turkey has undergone a comprehensive penal reform in the last decade and enacted some pieces of legislation on the field of criminal law, including Turkish Criminal Code (TCC) No. 5237, Criminal Procedure Code No. 5271 and Law on Enforcement of the Punishments and Security Measures No. 5275 which are the products of modern criminal policy and in force since 2005.

The purpose and philosophy behind the new Criminal Code, as defined in its first Article, is "to protect the individual rights and freedom, public order and security, rule of law, public health and environment, and communal peace, as well as to discourage commitment of offences." Similarly, Criminal Procedure Code seeks to strike a balance between security and liberty and aims at truth discovery while upholding the procedural safeguards. Actually, Procedure Code, despite the country's public safety concerns and issues, took on the task of responding to the human rights issues that Turkey had faced for decades.

With respect to counter-terrorism, Turkey has enacted a special Counter-Terrorism Law of 1991, No.3713 and also introduced some relevant provisions in the Criminal Code and Criminal Procedure Code (CPC).

In Turkish criminal justice system, Article 170 of CPC establishes the principle of mandatory criminal prosecution. In accordance with Article 170 titled "The duty of filing a public prosecution", the duty to file a public prosecution rests with the public prosecutor and in cases where, at the end of the investigation phase, collected evidence constitute sufficient suspicion that a crime has been committed, the public prosecutor shall prepare an indictment. In Turkish law, prosecutors have a monopoly over initiating criminal proceedings and at the same time they exercise their functions in full independence.

### **Criminal law**

*Counter-Terrorism Law and the relevant provisions of the Turkish Criminal Code*

The main legal provisions concerning terrorism are set out in the Counter-Terrorism Law (CTL), No. 3713 of 12 April 1991 and the Turkish Criminal Code, No. 5237 which entered into force on 1 June 2005.

Since the enactment of the Counter-Terrorism Law, various amendments have been recently made to increase its effectiveness in counter-terrorism and to expand rights and freedoms in line with European Convention on Human Rights (ECHR).

A definition of terrorism was introduced into Turkish law by Law No. 3713. Article 1 paragraph 1 of the Law establishes three main criteria for defining a terrorist act:

The first criterion concerns the *modus operandi*: the Law stipulates that terrorism involves the use of coercion, violence, terror, intimidation or threats.

The second criterion concerns the purposes for which the act is perpetrated. These are listed in the aforementioned article:

- any act designed to impair the basic characteristics of the Republic, as specified in the Constitution, or the country's political, legal, secular and economic systems;
- any act designed to violate territorial or national integrity, and any act designed to jeopardize the existence of the Republic of Turkey;
- any act designed to impair or weaken government authority;
- any act designed to destroy fundamental rights and freedoms;
- any act designed to impair domestic and international security, public order or public health.

The final criterion is that, in order to be considered as a terrorist act, the act must have been committed by a person or persons belonging to an organization.

Terrorist offenders are defined by Article 2 of CTL. Accordingly, a member of a terrorist organization is a person belonging to an organization which fulfils the conditions listed in Article 1. Under paragraph 2, persons, who are not members of a terrorist organization, but commit a crime on behalf of the organization, are also deemed to be terrorist offenders.

Under the terms of the CTL, terrorism offences consist of a combination of a set of criminal offences defined in the Criminal Code (Article 3, CTL) and other group of offences in various laws which are committed for the purposes set out in Article 1 within the framework of a terrorist organization.

Article 3 of the Law refers to the section of the TCC entitled "offences against state security" and specifies that the acts described under Articles 302, 307, 309, 311, 312, 313, 314, 315 and 320 and first paragraph of 310 are terrorist acts.

Apart from the offences referred to in Article 3, Article 4 contains a list of certain offences which are committed under special circumstances to be considered terrorist offences. If the following offences are committed within the framework of activities of a terrorist organization founded for the purposes as

described in Article 1, they are considered as terrorist offences:

- a) Offences in Articles 79, 80, 81, 82, 84, 86, 87, 96, 106, 107, 108, 109, 112, 113, 114, 115, 116, 117, 118, 142, 148, 149, 151, 152, 170, 172, 173, 174, 185, 188, 199, 200, 202, 204, 210, 213, 214, 215, 223, 224, 243, 244, 265, 294, 300, 316, 317, 318 and 319 and second paragraph of Article 310 of the Turkish Criminal Code;
- b) Offences defined in the Law on Firearms and Knives and Other Tools dated 10/7/1953 and numbered 6136;
- c) Offences of deliberate forest fires defined in fourth and fifth paragraphs of Article 110 of the Law on Forest dated 31/8/1956 and numbered 6831;
- ç) Offences defined in the Anti-Smuggling Law dated 10/7/2003 and numbered 4926 which are punishable by imprisonment;
- d) In regions where state of emergency is declared in accordance with Article 120 of the Constitution, offences stemming from incidents which cause the declaration of state of emergency;
- e) Offences defined in Article 68 of the Law on the Protection of Cultural and Natural Property dated 21/7/1983. and numbered 2863.

Article 4 envisages a number of offences under various laws, namely Criminal Code, Law on Firearms and Knives and Other Tools, Law on Forest, Anti-Smuggling Law, Protection of Cultural and Natural Property.

Article 5 of the CTL provides for increased penalties for all the offences described in the above-mentioned articles. Sanctions imposed according to the respective laws for those committing crimes as described in Articles 3 and 4 above shall be increased.

Articles 6 and 7 criminalize the dissemination of terrorist propaganda as well as being a member of terrorist organization. In addition, acts of the offender, such as covering his/her face, wearing a uniform with the emblems, pictures or signs of the terrorist organization, carrying arms or explosives, are defined as qualified versions of it.

Article 8/A provides for the qualified form of offences within the scope of this Law. Accordingly, if offences covered by the Law are committed by public officials, the sentence shall be increased by half.

Article 8/B of the CTL envisages the liability of legal persons for criminal offences within the scope of this Law which are committed within the framework of the activity of a legal person.

## **Procedural Rules**

In the last paragraph of the Article 15 of the Law numbered 5235 on the Establishment, Duties and Jurisdiction of First Instance Civil and Criminal Courts and Regional Courts of Appeal, it is stated that the cases, filed for offences defined in the Book Two, Part Four, Chapters Four, Five, Six and Seven of Turkish Penal Code (excluding the Articles 318,

319, 324, 325 and 332) and for offences within the scope of the Law numbered 3713, shall be under the jurisdiction of the heavy penal court of the place, where the offence is committed.

*Seizure of immovable goods, rights and credits (Art. 128)*

The items belonging to the suspect or the accused may be seized in cases where there are strong grounds of suspicion tending to show that the crime under investigation or prosecution has been committed and that they have been obtained from this crime.

*Appointing a trustee for the administration of a firm (Art. 133)*

In cases where there are strong grounds of suspicion that the crime is being committed within the activities of a firm and it is necessary for revealing the factual truth, the judge or the court is entitled to appoint a trustee for the administration of the firm with the aim of running the business of the firm, for the duration of an investigation or prosecution.

*Search of computers, computer programs and transcripts, copying and provisional seizure (Art.134)*

The decision on the search of computers and computer programs and records used by the suspect, the copying, analyzing, and textualization of those records, shall be rendered by the judge or, in cases where there is peril in delay, by the public prosecutor. The decisions rendered by the public prosecutor shall be submitted for the approval of the judge within 24 hours. The judge shall render the decision within 24 hours at the latest. If the time runs out or the judge renders a counter decision, the copied records and the analyzed texts shall be immediately destroyed.

*Location, listening and recording of correspondence as part of interception of correspondence through telecommunication (Art.135)*

The judge or, in cases of peril in delay, the public prosecutor, may decide to locate, listen to or record the correspondence through telecommunication or to evaluate the information about the signals of the suspect or the accused.

*Appointing of the undercover investigator (Art. 139)*

The judge may decide to empower the public servants to act as undercover investigators.

*Surveillance with technical means (Art. 140)*

The activities of the suspect or the accused, conducted in fields open to the public and his working places, may be subject to surveillance by technical means, including voice and image recording. Surveillance with technical means shall be decided by the judge, and in cases where there is peril in delay, by the public prosecutor. The decisions rendered by the public prosecutor shall be submitted for the approval of the judge within 24 hours. The judge shall render the decision within 24 hours at the latest. If the time runs out or the judge renders a counter decision, the records shall be immediately destroyed.

*Seizure in order to compel and certificate of guarantee (Art. 248)*

With the aim of enabling the fugitive to apply to the Public Prosecutor or to come to the hearing, his/her properties in Turkey and his/her rights and credits may be seized, proportional to the aim, by the decision of a criminal judicature of peace or a court, and a trustee shall be appointed for their admiration, if necessary. The decision on seizure and on appointing a trustee shall be notified to his/her defense counsel.

#### **Other relevant legislation**

*Law on the Prevention of Financing Terrorism, No.6415*

The Law on the Prevention of Financing of Terrorism (No.6415) came into effect on 16 February 2013.

The law provides the principles and procedures on the implementation of the United Nations Security Council Resolutions 1267 (1999), 1988 (2011), 1989 (2011) and 2253 (2015) without any delay, through decision of the President. Furthermore, the aforementioned law regulates asset freezing requests made by foreign countries and requests that will be made by Turkey to other countries as well as Turkey's freezing of assets on its own initiative and Turkey's designation proposal to the relevant Committees established pursuant to UNSCRs 1267 (1999), 1988 (2011), 1989 (2011) and 2253 (2015).

In case of a request made by the government of a foreign country to Turkey on freezing of asset of a person, institution or organization, the decision on the request will be assessed by the "Assessment Commission" and then the President may decide on it. In addition to that, the Assessment Commission may also decide to propose to the President to request freezing of assets of persons, institutions or

organizations in foreign countries based on reasonable grounds that they have committed acts of terrorism or terrorist financing set out in the law. Moreover, upon a court decision holding that an organization is definitely a terrorist one, the Minister of Treasury and Finance and the Minister of Interior may issue, upon the proposal of the Assessment Commission, a freezing order, for the assets in Turkey of those individuals, institutions or organizations in respect of which there are reasonable grounds that they have committed the acts of terrorism or terrorist financing laid down in the Law and to lift such an order in the event that these reasonable grounds cease to be effective.

The Law has repealed Article 8 of the Counter-Terrorism Law no. 3713 which had previously defined financing of terrorism offence and redefined this offence so as to comply with the international standards. According to this definition, providing or collecting funds for a terrorist or terrorist organizations, willingly and so that or knowing that they would be, partially or wholly, used in the commission of those acts defined as offences in Article 3, even if not correlated with a specific act, is considered as financing of terrorism.

In accordance with Article 4/5 of the Law No. 6415, where the offence of financing of terrorism is committed within the scope of the activities of legal persons, the activity license of the legal person can be cancelled and/or the assets can be confiscated in accordance with Articles 60, 54 and 55 of the Turkish Criminal Law, No 5237. An administrative fine equivalent to 50 million Turkish Liras or two fold of the benefit identified can also be imposed upon the legal person concerned under Article 43/A-1-d of the Law on Misdemeanors, No. 5326.

Article 4/4 of the Law No. 6415 provides that, where the offence is committed within the scope of the activities of legal persons, security measures applicable to them shall be ruled. According to Article 60 of the Turkish Criminal Code no. 5237, these security measures are confiscation or revocation of license.

In addition to the above cited, pursuant to paragraph 1(d) of Article 43/A of the Misdemeanours Act no. 5326, where a person who is not an organ or representative of a legal person but undertakes a duty within the framework of that legal person's activities commits the offence of terrorist financing to the benefit of that legal person, the legal person shall also be penalized with an administrative fine of 10,000 (ten thousand) Turkish Liras to 2,000,000 (two million) Turkish Liras. However, the administrative fine may not be more than the double value of the interest due from the transaction or act. Conclusion of the investigation or prosecution conducted against the person who has committed

the act is not required for an administrative fine to be imposed against the legal person.

#### *Law on Compensation of Damages Arising from Terrorism and Combating Terrorism*

A special compensation law for victims of terrorism has been enacted in 2004, Law No. 5233 on Compensation of Damages Arising From Terrorism and Combating Terrorism which entered into force on 27.07.2004. The Law is intended to peacefully settle for the damages of natural or legal persons resulting from acts covered by Articles 1, 3 and 4 of CTL or activities within the scope of counter-terrorism.

In the course of the same year, the government issued further guidelines which regulate the procedural details. In each of the 81 provinces, a victim compensation committee has been established which is responsible for the compensation procedure. The committee is headed by the Deputy Governor; one of the five additional members is an elected member of the local bar association. Eligible for application are victims or, in case of death, relatives who are heirs of the victims. Once an application is made within the scope of this law, the committee has to convene within ten days. The nationality of the victim does not matter. Legal entities are eligible as well. The election of the members for the commissions, established in the provinces where there are more than one bar associations, is made on the basis of equal and rotating representation; and thereby, the formation of the commissions is more homogenous.

Based on the information filed by the applicant, it has to determine the concrete amount of the damage and to make a concrete proposal on the amount of compensation. Compensable are any kind of material damage, loss of income and maintenance, loss of use of real estate and farmland, bodily injury, temporal and permanent disability, medical care and funeral costs. In legal terms, the final proposal of the committee has the character of a settlement offer. If the applicant does not agree s/he can file a complaint to court.

The funds for this new compensation programme are borne by the Ministry of the Interior which allocates a special budget for this purpose. If the expenses exceed the budget the additional means are recovered by the general budget of the Government.

#### *Law on Execution of Sentence and Security Measures, No. 5275*

The Law covers provisions in Articles 59, 63 and 68 regarding special treatment of terrorist offenders in

terms of their placement in prison and their rights as prisoners.

Article 59/4 provides for the principle that the lawyer's documents and files in relation to defense and his records of the meetings with his client shall not be subject to examination. Article 59/5, in turn, introduces an exception to this principle. Accordingly, if there is any finding or evidence which indicates that lawyer serves as an intermediary among members of terrorist organization; an officer can be present in meetings and also documents, which are exchanged by lawyer and accused, can be examined for a period of three months upon the request of a public prosecutor and in accordance with the decision of a judge of execution. It is possible not only to extend but also to shorten the three-month period with a judge decision.

Regarding accommodation and bedding of sentenced persons, Article 63 principally states that terrorist offenders shall not be allowed to come together or to establish contact with each other. Regarding the sentenced persons' right to send and receive letters, Article 68 states that, letters, fax messages and telegrams serving for communication between members of terrorist organizations may be electronically recorded or stored. It is ensured that the records stored shall be destroyed within one year should they not be used in any investigation or prosecution.

#### *Law on Witness Protection, No. 5726*

This law envisages principles and methods regarding the protection of witnesses and their relatives whose lives, corporal integrity or property in serious and grave danger in criminal proceedings.

Under the terms of the Law, the provisions of this law can be applied regarding the crimes that are included in the Turkish Penal Code and in the special laws that contain criminal penalties and for which heavy life sentence, life sentence or a minimum of ten years or more prison sentence is required; and that are committed within the framework of the activities of an organization that was established to carry out actions deemed to be crimes according to the law and that require a minimum of two years or more prison sentence and the crimes that are committed within the framework of the activities of a terrorist organization.

The first sub-paragraph of Article 5 of the Law envisages the witness protection measures that can be implemented for the persons who are within the scope of this law are as follows: a) Recording and keeping secret of their identity and address information, and the determination of a separate address for the notifications to be made to them. b)

Obtaining the testification of these persons without the presence of those people who have a right to be present at a hearing, or obtaining the testification of these persons under special conditions by making alterations in their voices or appearances. c) Placing the arrested or sentenced ones in those penitentiaries and prisons that are appropriate for their situation. ç) Providing physical protection. d) Altering and arranging the identity and other related information and documents. e) Providing temporary financial assistance in order to make it possible for the person to make a living. f) Changing the work place or the work field of a person who works or changing of all kinds of training or educational institutions for those persons who are studying. g) Making it possible for the person to live somewhere else in the country. ğ) Making it possible for such a person to be settled in another country in accordance with international agreements and the principle of reciprocity. h) Changing of physiological appearance through cosmetic surgery or without cosmetic surgery and rearranging of the identity information accordingly.

Additionally, one or more of the measures written in this article may be implemented simultaneously. However, if the same result can be obtained through a lighter measure, this shall be taken into consideration.

#### *Law on Prevention of Laundering Proceeds of Crime*

In Turkey, the fight against laundering proceeds of crime was introduced into Turkish legal system by Law no. 4208 enacted in 1996 and this Law served as the legal basis of this fight until the enactment of Law No. 5549 on Prevention of Laundering Proceeds of Crime.

The Law No. 5549 drawn up considering international standards in combating laundering proceeds of crime entered into force on 18.10.2006, and gathering data, receiving, analyzing and evaluating suspicious transaction reports within the scope of terrorist financing have also been included among the duties of the Financial Crimes Investigation Board (MASAK) by this Law. As a part of its duty, MASAK also disseminates the results of the analysis conducted to the relevant competent authorities and exchanges information with its international counterparts. In this regard, to date, MASAK has signed 52 MoUs (memorandum of understanding) with foreign FIUs.

One of the most significant improvements introduced by the Law No. 5549 is the adoption of measures for the prevention of terrorist financing. The Law No. 5549 envisages that obliged parties are required to report to MASAK the transactions in

which there is a suspicion that the related assets were used for illegal purposes. Thus, it was aimed to take necessary measures against funds used for financing of terrorism and the relevant persons.

On 10.07.2018, Presidential Decree No.1 which has re-affirmed and further strengthened the duties and powers of MASAK been published on the Official Gazette.

On 31.12.2020, the Law No 5549 and related secondary legislation had also gone through significant improvements and amendments which among others included the inclusion of the lawyers among obliged parties, raise of the penalties with regard to the infringements related to AML/CFT measures and the inclusion of the "financial group" and new obligations were introduced with regard to DNFBPs (designated non-financial businesses and professions).

On the other hand, the money laundering offence which has been initially defined in Turkish legal system with Law No.4208, was re-regulated in Article 282 of Turkish Criminal Code No. 5237 titled "Laundering of Assets Acquired from an Offence" entered into force on 1 June 2006. (Amendment by Law No: 5918 of 26.06.2009).

#### *Association Law, No. 5253*

Law No 5253 which regulates the NPO sector entered in to force on 23.11.2004 and on 31.12.2020 major amendments have been made in this law which among others include the prevention of the misuse of the NPO sector for terrorist financing purposes, increase of the audit capacity towards NPOs and implement a risk-based approach during audits.

#### *Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction*

With the Law adopted on 27/12/2020, the amendments were made in order for the implementation of the United Nations Security Council Resolutions about the prohibition of financing of proliferation of weapons of mass destruction and in order for the freezing of the assets of the relevant persons with the decision of the President.

In addition, according to this Law, after it is decided and finalized by the courts that they are terrorist organizations, based on the reasonable grounds that the persons, institutions or organizations have committed the acts of financing of terrorism, it may be decided jointly by the Minister of Treasury and Finance and the Minister of Interior, upon the suggestion of the Assessment Commission, for freezing of their assets in Turkey. The decision for

freezing of assets shall be submitted for the approval of the court within 48 hours and the court shall render its decision within five days.

Law no. 7262 also introduced amendments to the Law no. 6415 on the Prevention to the Financing of Terrorism. Article 38 of Law no. 7262 amended Article 7 of the Law no. 6415, and the practice of "domestic freezing" entered into force in the new version of the said article. The regulation on freezing assets falls within the ambit of Article 7.

#### *Procedural Safeguards in the CPC*

Special procedural and investigative methods mentioned above shall be applied within the limits set by the CPC.

As a consequence of the absolute prohibition against torture and different forms of ill-treatment, under the first paragraph of Article 148 of CPC, any bodily or mental intervention that would impair the free will of the suspect or accused, such as misconduct, torture, administering medicine or drugs, exhausting, falsification, physical coercion or threatening, using certain equipment, is forbidden. Moreover, second paragraph prohibits offering any advantage against the law.

Lastly, third paragraph prescribes a rule governing the admissibility of evidence. Accordingly, statements by a suspect or accused obtained through the aforementioned forbidden procedures shall not constitute admissible evidence in criminal proceedings.

## **INSTITUTIONAL FRAMEWORK**

The main governmental bodies involved in combating terrorism are the Ministry of the Interior, the Ministry of Justice, the Ministry of Foreign Affairs, the General Staff of the armed forces and the intelligence services. In addition to these existing institutional structures, more recently, Internal Security Strategies Department was founded in 2018. Its mandate is proceeding works on addressing policies and strategies about internal security and following up the implementation of the policies and strategies.

The Law also established an Intelligence Assessment Centre to strengthen strategic-intelligence sharing between security institutions.

The Under secretariat functions under the Prime Ministry and also serves as the secretariat for the Counter-Terrorism Coordination Board.

The Counter-Terrorism Coordination Board is the high-level board that oversees the delivery of counter-terrorism activity in Turkey. It involves key



representatives from all the main organizations involved in tackling terrorism, namely: Undersecretaries of the Ministries of Foreign Affairs, Interior, Justice; the National Intelligence Organization (MIT) as well as the Commander of the Coast Guard, Deputy Chief of General Staff, Commander of the Gendarmerie General, and other officials concerned are attending the meetings of the board.

#### *National operational mechanisms*

The Government authorities that deal with counter-terrorism in operational terms are as follows:

1. Directorate General of Security (Turkish National Police), Ministry of Interior
2. Gendarmerie General Command, Ministry of Interior
3. Coast Guard Command, Ministry of Interior
4. National Intelligence Agency, Presidency

The first three organizations report to the Minister of Interior, whereby The National Intelligence Agency reports directly to the President.

There are four main departments in charge of counter-terrorism in the Directorate General of Security, namely Department of Counter-Terrorism Presidency of Intelligence Presidency of Special Forces and Department of Witness Protection.

Counter-Terrorism Department is responsible for coordinating the relevant departments, terrorist identification, screening, and tracking, searching for and gathering evidence and submitting an investigation report to Prosecution office.

Presidency of Intelligence is tasked with collecting and disseminating intelligence on known and suspected terrorists.

Presidency of Special Forces carries out operational supportive activities and lastly,

Witness Protection Department implements the decision of protection imposed by the Office of the Chief Public Prosecutor, courts and the Witness Protection Board under the Law on Witness Protection, No. 5726.

Regarding international judicial cooperation in relation to terrorist offences, the Directorate General for Foreign Relations and European Union Affairs of the Ministry of Justice is the Central Authority for the execution of all kinds of judicial assistance requests in criminal matters.

For international aspect of counter-terrorism, the Directorate General for Research and Security Affairs of the Ministry of Foreign Affairs is responsible for

following terrorism issues and cooperate with other relevant institutions in performing its duties.

Regarding financial intelligence, MASAK, which is part of the Ministry of Finance, receives, analyzes, and refers STRs for investigation. MASAK serves as Turkey's financial intelligence unit (FIU).

## **INTERNATIONAL CO-OPERATION**

### **Mutual assistance in criminal matters and extradition**

Turkey is party to the major instruments in this field, namely European Convention on Mutual Assistance in Criminal Matters and European Convention on Extradition under which most of the mutual assistance and extradition requests are exercised.

Adherence to and proper implementation of international instruments especially in the field of extradition and mutual legal assistance is of vital importance in combating terrorism effectively. One of the major difficulties encountered in this respect is the refusal to extradite perpetrators of terrorist acts claiming that the offence in question is of a political nature.

It is important to give a careful consideration to the difference between a political offence and a terrorist crime, since the Security Council Resolution 1373 clearly states that "claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists". The basic obligation to be undertaken by states under the extradition and prosecution regime of international instruments relating to terrorism is to bring perpetrators to justice either through extradition or prosecution before national courts.

Abuse of the refugee status by the perpetrators, organizers or facilitators of terrorist acts is another major problem in this struggle.

### **Measures at international level**

One of the crucial lessons Turkey has learnt in her long struggle against terrorism is that international cooperation and solidarity is key to success in counter-terrorism efforts.

Turkey has been actively supporting efforts aimed at strengthening international and regional cooperation to deny terrorists safe heavens, to improve border and customs controls, to bring the perpetrators to justice on the basis of the principle of extradite or prosecute and to exchange timely and accurate information concerning the prevention and combating terrorism.

Turkey takes active role in invigorating regional and bilateral efforts geared towards suppressing terrorism. Availability of adequate capacity is as important as having political determination to fight terrorism. Turkey contributes to capacity building efforts of the United Nations agencies and regional organizations as well as conducting extensive bilateral capacity building programs for countries in need of assistance. Turkey has also signed bilateral agreements with a significant number of countries on cooperation in combating terrorism, organized crime and drug trafficking.

Turkey has also put in place a broad array of mechanisms to disrupt or stop the flow of foreign terrorist fighters (FTFs). Turkey is enhancing security measures to stop and intercept FTFs at 81 provinces, crossing points of airports, sea and land borders and other border crossing points through Risk Analysis Units Bureaus established specifically for this purpose and other border security measures. The necessary proceedings have been launched in line with the instructions of Public Prosecution Offices against the foreign terrorist fighters captured during the operations conducted by the "Risk Analysis Units" in airports and city centers (bus stations etc.). Accordingly, those for whom there is an instruction by Public Prosecutors for starting proceedings due to the crime of "being a member of a terrorist organization" are prosecuted while those for whom the Public Prosecutors have not found it appropriate to launch proceedings or who are released at the end of the proceedings are referred to the Provincial Directorates of Migration Management to be deported. At the meantime, the relevant authorities of the country which the person is deported are informed about the person to take necessary precautions.

The necessary surveillance activities are conducted by establishing control points which operate 24 hours at the entrance and exit points especially in cities bordering Syria and Iraq. Furthermore, security measures have been increased at the border gates. Efforts are carried out for the detection and prosecution of foreign terrorist fighters by forming mixed teams.

Counter Terrorism Department of TNP directly contacts to foreign police liaison officers in Turkey

on terrorism related cases immediately when needed and carries out cooperation efforts. It also provides terrorism specialization trainings to law enforcement staff of allied countries for free to develop their security capacities.

Under Article 90 of the Constitution of the Republic of Turkey, international agreements duly put into effect carry the force of law. In accordance with Article 90, once an international agreement has been ratified, it becomes an internal part of the national legal system and can be directly enforced.

The legal framework for co-operation between Turkey and other countries therefore varies according to the country concerned and the bilateral or multilateral conventions, agreements or protocols that they have signed.

With regard to international co-operation, Turkey is bound by a multitude of United Nations and Council of Europe treaties which are listed below.

The Law on International Judicial Cooperation in Criminal Matters No. 6706 entered into force on 23 April 2016 to facilitate the implementation of the provisions of the international judicial agreements in criminal matters to which Turkey is a party and guide the implementors by gathering the related and disorganized provisions on this issue.

This Law defines the duties and powers of the Ministry of Justice, the circumstances under which the requests of foreign States may be rejected, the principles for using the information and documents received in the scope of judicial cooperation, the rules concerning requests of Turkish and foreign judicial authorities as well as judicial cooperation using visual and audio communication technique, the principles on the extradition from Turkey to foreign States, the conditions under which the extradition requests will not be granted, the principles for deportation, provisional arrest, protection measure, trial and surrender related to extradition, and the requests of Turkey and their terms; besides, the Law governs the issues related to principles on investigation, prosecution and transfer of execution in the framework of international cooperation as well as the transfer of sentenced persons.

<b>Relevant Council of Europe conventions – Turkey</b>	<b>Signed</b>	<b>Ratified</b>
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism [CETS No. 198]	28.03.2007	26.06.2016
Council of Europe Convention on the Prevention of Terrorism [CETS No. 196]	19.01.2006	23.03.2012
Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism [CETS No. 217]	22.10.2015	13.02.2018
Convention on Cybercrime [ETS No. 185]	10.11.2010	29.09.2014
Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems [ETS No. 189]	19.04.2016	
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS No. 141]	27.09.2001	06.10.2004
European Convention on the Compensation of Victims of Violent Crimes [ETS No. 116]	24.04.1985	
European Convention on the Suppression of Terrorism [ETS No. 90]	27.01.1977	19.05.1981
Protocol amending the European Convention on the Suppression of Terrorism [ETS No. 190]	15.07.2003	20.05.2005
European Convention on the Transfer of Proceedings in Criminal Matters [ETS No. 73]	26.04.1974	27.10.1978
European Convention on Mutual Assistance in Criminal Matters [ETS No. 30]	23.10.1959	24.06.1969
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 99]	04.02.1986	29.03.1990
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [ETS No. 182]	22.03.2016	11.07.2016
European Convention on Extradition [ETS No. 24]	13.12.1957	07.01.1960
Additional Protocol to the European Convention on Extradition [ETS No. 86]	22.03.2016	11.07.2016
Second Additional Protocol to the European Convention on Extradition [ETS No. 98]	16.07.1987	10.07.1992
Third Additional Protocol to the European Convention on Extradition [CETS No. 209]	22.03.2016	11.07.2016
Fourth Additional Protocol to the European Convention on Extradition [CETS No. 212]	22.03.2016	11.07.2016
<b>Relevant United Nations conventions – Turkey</b>	<b>Signed</b>	<b>Ratified</b>
Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo, 1963)	17.12.1975	16.03.1976
Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 1970)	16.12.1970	17.04.1973
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1971)	27.02.1972	23.12.1975
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 1988)	27.02.1988	07.07.1989
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 1973)		11.06.1981
International Convention against the Taking of Hostages (New York, 1979)		15.08.1989
Convention on the Physical Protection of Nuclear Material (Vienna, 1979)	27.08.1983	27.02.1985
Amendment to the Convention on the Physical Protection of Nuclear Material (Vienna, 2005)		
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (Rome, 1988)		06.03.1998
2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (London, 2005)		
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (Rome, 1988)		06.03.1998
2005 Protocol to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (London, 2005)		
Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1991)	07.05.1991	14.12.1994
International Convention for the Suppression of Terrorist Bombings (New York, 1997)	20.05.1999	30.05.2002
International Convention for the Suppression of the Financing of Terrorism (New York, 1999)		
International Convention for the Suppression of Acts of Nuclear Terrorism (New York, 2005)		