



SCREENING CHAPTER 23 JUDICIARY AND FUNDAMENTAL RIGHTS

AGENDA ITEM II: ANTI-CORRUPTION POLICY

**Country Session: Republic of TURKEY
12-13 October 2006**



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- 1. OVERALL ANTI-CORRUPTION POLICY IN TURKEY**
- 2. INTERNATIONAL INSTRUMENTS**
- 3. LEGAL FRAMEWORK**
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- 5. ONGOING PROJECTS AND STUDIES**



1.OVERALL ANTI-CORRUPTION POLICY IN TURKEY

- a. Commitment to the fight against corruption
- b. Anti-corruption strategies
- c. Efforts towards fighting corruption and improving governance
- d. Institutions engaged in the fight against corruption
- e. Protection of EC Financial Interests



a. Commitment to the fight against corruption

- Turkey recognizes that corruption as a phenomenon is a significant issue that needs to be tackled
- Corruption not only undermines the efficiency and effectiveness of public sector but also has a major impact on public trust against government
- High public awareness and sensitivity for corruption allegations
- Political will and commitment is in place for fighting fraud and corruption
- Anti-corruption has been a high priority on the political agenda of recent governments
- Efforts on tackling corruption have been key to the falling rates of corruption perception in recent years (TI-CPI and WB-BEEPS)
- Eurobarometer 2006 indicates higher trust for institutions in Turkey than EU-25

b. Anti-corruption strategies

- 2002 Action Plan on Enhancing Transparency and Improving Governance in the Public Sector

Issued in the form of Cabinet Decree on 12 January 2002. A multi-pronged approach to corruption—handles five key aspects of the issue i.e. political system, judiciary, public administration, private sector and civil society

Some of the main objectives: a) Effectiveness and timeliness in public service delivery b) Improved judiciary, inspections and audits, accountability, transparency and access to information c) Efficient personnel system and health care d) Strengthened fight against money laundering e) Transparent campaign finance and asset disclosure

A Ministerial Committee to coordinate the implementation of the Plan was established in March 2003 by a Prime Ministerial Circular, No.2003/17, and is still actively working

A Technical Commission chaired by the Prime Ministry Inspection Board is assigned to assist the Ministerial Committee

b. Anti-corruption strategies

- Urgent Action Plan, January 2003

58. Government's strategy for bringing governance and transparency to public service provision

Includes a separate section devoted to anti-corruption identifying three priority areas:

- a) Improving public services
- b) Strengthening agencies engaged in the fight against corruption
- c) Enhancing public awareness



b. Anti-corruption strategies

- Parliamentary Investigation Committee on Causes and Dimensions of Corruption

The Committee's comprehensive final report was issued in July 2003

Portrayed all aspects of corruption

Provides remedies for a number of problematic issues related to corruption

30 cases of corruption have been investigated by task forces led by the Prime Ministry Inspection Board upon the request of the Committee



c. Efforts on Fighting Corruption and Improving Governance

- Law on Declaration of Assets and the Fight Against Corruption, No.3628

Entered into force in 1990

Ensures the disclosure of assets on a regular basis by a wide range of elected officials, ministers, public servants, owners of media institutions and so on.

Provides power to authorities to examine declarations

Defines certain penalties for false declaration, illicit enrichment and proceeds of corruption such as imprisonment and seizure. Further penalties for criminal offences are provided within the Turkish Criminal Code

Cases of corruption are directly handled by public prosecutors



c. Efforts on Fighting Corruption and Improving Governance

- Law on Access to Information, No.4982

Entered into force on 24 October 2003

All public information is open to public unless clearly exempted

Institutions are given 15 days to respond to petition

Objections go to the “Council of Review of Access to Information”, whose members are appointed by the Council of Ministers, for its final decision

2005	Applications in total	Information provided	Information partially provided	Information not provided	Information not provided (classified)
In numbers	626.789	542.364	21.712	54.234	5.979
%	100%	87%	3.4%	%8.6	1%



c. Efforts on Fighting Corruption and Improving Governance

- Law on the Establishment of the Public Servants' Ethics Board, No.5176, 8 June 2004

The Board is in charge of setting the `Code of Ethics` and overseeing the compliance of public employees with it. Accepting gift or benefit is banned as a general rule

Regulation on Principles of Ethical Behaviour for Public Servants was published on 13 April 2005. Primary benchmarks for ethics: Integrity, impartiality, honesty, respect, and conflict of interest



c. Efforts on Fighting Corruption and Improving Governance

- Law on the Establishment of the Public Servants' Ethics Board, No.5176, 8 June 2004 (cont'd)

Financial and administrative resources of the Board are provided by the Prime Minister's Office

In 2005, 77 applications in total relating to fraud in tenders, corruption, misuse of power and personnel issues were concluded by the Board

As for increasing awareness, 25 May has been announced as the Day of Ethics, and a series of training programs have been implemented

A project funded by EC is underway which aims to ensure effective implementation of the Ethics Code in order to contribute to the prevention of corruption



c. Efforts on Fighting Corruption and Improving Governance

- Law on Public Procurement, No.4734

Entered into force on 1 January 2003

Public Procurement Authority, which is autonomous, has the power to examine complaints for public tenders, and to report fraud and misuses to public prosecutors

Complaints are concluded in one of three ways: a) corrective action
b) termination of procurement c) irrelevant appeal

Procurement by central government and local government organizations is subject to review of the Authority

Transparency, competition, equal treatment and public supervision are ensured

Open procedure is the primary tool for procurement. In 2005, 90.7% of all tenders were based on open procedure in terms of total value of all procurement



c. Efforts on Fighting Corruption and Improving Governance

- Law on Public Financial Management and Control, No.5018

Entered fully into force on 1 January 2006

Accountable and transparent public finance management

Analytical budgeting and medium-term expenditure framework are in place

Internal control system developed

Strict internal and external audits

- Draft Law on Turkish Court of Accounts

Under discussion at the Parliament

Redesigns TCA and external audit in line with the INTOSAI standards



c. Efforts on Fighting Corruption and Improving Governance

- Press Law, No.5187

Entered into force on 26 June 2004

Penalties for offences committed through press such as imprisonment, temporary shutdown, seizure of press devices, etc. are completely abolished

Limited fines

Newsmakers cannot be forced to reveal the source of news

These were also ensured with the necessary amendment in the Constitution in May 2004



c. Efforts on Fighting Corruption and Improving Governance

- Banking Law, No.5411

Entered into force on 26 June 2004

Oversight and audit mechanisms are strengthened

Undertaking of bankrupt banks and its subsidies by the state facilitated

Clearly defined responsibilities for bank owners and shareholders so as to minimize fraud

The independent “Banking Regulatory and Supervision Authority” is invested with power to directly convey fraud and corruption cases to public prosecutors



c. Efforts on Fighting Corruption and Improving Governance

- Turkish Criminal Code, No.5237

Entered into force on 01 June 2005

Clear provisions on corruption offences and proceeds of corruption

Longer periods of statute of limitations

Aims to ensure alignment with international standards

- Criminal Procedure Code, No.5271

- Law on Misdemeanours, No.5326



c. Efforts on Fighting Corruption and Improving Governance

- Law on Public Inspection Authority (Ombudsman)

Adopted by the Parliament pending the approval of the President.

Provides power to the Ombudsman to evaluate petitions by real and legal persons with regard to deficiencies in public administration.



c. Efforts on Fighting Corruption and Improving Governance

- Law on Metropolitan Municipalities, No.5216, 23 July 2004
- Law on Municipalities, No.5393, 23 July 2004
- Law on Provincial Administrations, No.5302, 24 December 2004

These laws aim to ensure:

Efficient and effective local governance

Transparent and accountable expenditure management

Strong internal controls and external audit, reporting and accounting

Sound legislative oversight



c. Efforts on Fighting Corruption and Improving Governance

- Reducing Red Tape and Formalities

Law on Encouraging Foreign Investment - Far better environment for investment with minimised formalities and financial requirements

Law No.4884 - Number of formalities to set up an investment reduced from 19 to 3

Automation in Customs - Electronic flow of import and export documents, efficient monitoring processes

Significant headway in e-Government projects (National Judicial Network Project , e-signature, electronic prescription procedures, etc.)



c. Efforts on Fighting Corruption and Improving Governance

- Civil Service

Recruitment of civil servants is based on an objective test which is done nationwide by the Centre of Student Selection and Placement since 1999

Room for nepotism is extremely narrow

Promotion to medium-level managerial positions generally requires a competitive exam

c. Efforts on Fighting Corruption and Improving Governance

- Political Parties

Article 69 of the Constitution

Income and expenditures of political parties should be consistent with their objectives. The Constitutional Court is empowered to audit political parties with assistance of the Court of Accounts and other authorities. The audit of the Constitutional Court is final.

Law on Political Parties, No.2820

Political parties are obliged to hold accounts of incomes and expenditures.

Incomes are clearly defined. Parties are prohibited from doing business activities, lending and borrowing. Grants are limited to approximately €1300 a year and should be evidenced with receipt.

Inappropriate incomes are seized by the Treasury.



c. Efforts on Fighting Corruption and Improving Governance

- Election Campaign Finances

A preliminary draft Law Amending the Law on Basic Rules of Elections, No.298 is under consideration



d. Institutions engaged in the fight against corruption

- Role of the Parliament
- Presidency (State Supervisory Council)
- Law Enforcement Authorities

Public Prosecutors

Ministry of Interior (Turkish National Police, Gendarmerie and Coast Guard)

Customs

- Administrative Bodies

Inspectorates

Ministry of Finance (Financial Crimes Investigation Board-MASAK)



d. Institutions engaged in the fight against corruption

- Role of the Parliament

The Parliament has the power to set up special investigation commissions on various issues (from banking to smuggling)

Parliamentary Investigation Commission on Causes and Dimensions of Corruption

Parliamentary Commission on State Owned Enterprises (SOEs)

Reviews annual audit reports of the High Auditing Board's Reports on every single enterprise

Provides advice to fix inefficiencies and shortcomings

May request relevant institution to launch investigations



d. Institutions engaged in the fight against corruption

- The Presidency (State Supervisory Council)

The Council is empowered by the Constitution and a separate Law (No.2443) to conduct evaluations and audits in all public institutions (except armed forces)



d. Institutions engaged in the fight against corruption (cont'd)

- Law Enforcement Authorities

Public Prosecutors

Organised in provinces, each headed by a Chief Prosecutor

The Ministry of Interior

Responsible for the maintenance of internal security and public order

Duties fulfilled through the Directorate General of the National Police which is responsible for urban areas, and the General Command of Gendarmerie for rural areas. Both have preventive as well as detective police authority and have units dealing with corruption cases



d. Institutions engaged in the fight against corruption (cont'd)

- Law Enforcement Authorities

Customs

Organized as undersecretariat connected to the Prime Ministry

Authorized to coordinate and operate smuggling investigations

Customs Enforcement Officers deal with smuggling cases



d. Institutions engaged in the fight against corruption (cont'd)

- Administrative Bodies

Inspectorates

Prime Minister's Office, all line ministries and major agencies have inspectorates

Misuse of public expenditures and revenues falls into the purview of the investigation scope of the inspection system

Inspectors have professional independence through a presidential appointment decree co-signed by the Prime Minister and related Minister



d. Institutions engaged in the fight against corruption (cont'd)

- Administrative Bodies

Inspectorates

The Prime Ministry Inspection Board is in charge of setting principles of the inspection system, and reviews by-laws of inspectorates and amendments to them

Inspectors collaborate closely with other relevant national authorities such as public prosecutors and other law enforcement bodies

Specialised ad hoc investigation teams may be formed from relevant inspectorates for multi-disciplinary investigations



d. Institutions engaged in the fight against corruption (cont'd)

Ministry of Finance

MASAK (Financial Crimes Investigation Board)

Established in accordance with Law No. 4208 on Prevention of Money Laundering and became active on 17 February 1997

Financial intelligence unit of Turkey which is also in charge of prevention and investigation of money laundering

Has functions of data collection and analyzing, regulation and coordination, administrative investigation and control of obliged parties on money laundering and terrorism financing

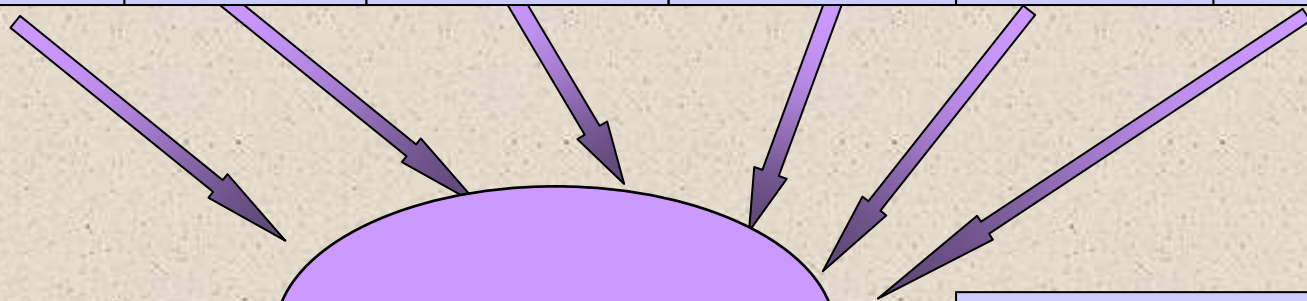
Revenue Administration

Revenue Administration issued a guideline for finance inspectors, tax inspectors, revenue comptrollers and tax auditors regarding combating bribery in 2006.



d. Institutions engaged in the fight against corruption (cont'd)

Administrative Bodies Inspectorates, MASAK, Banking Authority, Public Procurement Authority, Revenue Administration)	Individual Complaints	External Audit (Court of Accounts)	Presidency	Parliament	Law Enforcement Agencies (Police, Gendarmerie, Customs)
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Public Prosecutors *

- Keeping and seizure of property and assets
- Appointment of curator for the company management
- Search of computers and computer programs and archives, copying and provisional seizure
- Recording, interception and detecting of communications
- Monitoring by technical devices

Ruling of Judge

Trial Process

Public prosecutors can launch investigations on their own

e. Protection of EC Financial Interests

- Control and Audit in DIS (Decentralized Implementation System)

The current system has been put in place to ensure that EU rules, regulations and procedures pertaining to procurement, reporting and financial management are respected, and that a proper reporting and project information system is functioning

The National Authorising Officer (NAO) has set up an internal control system

Internal and external audit bodies have been empowered for performing necessary audits

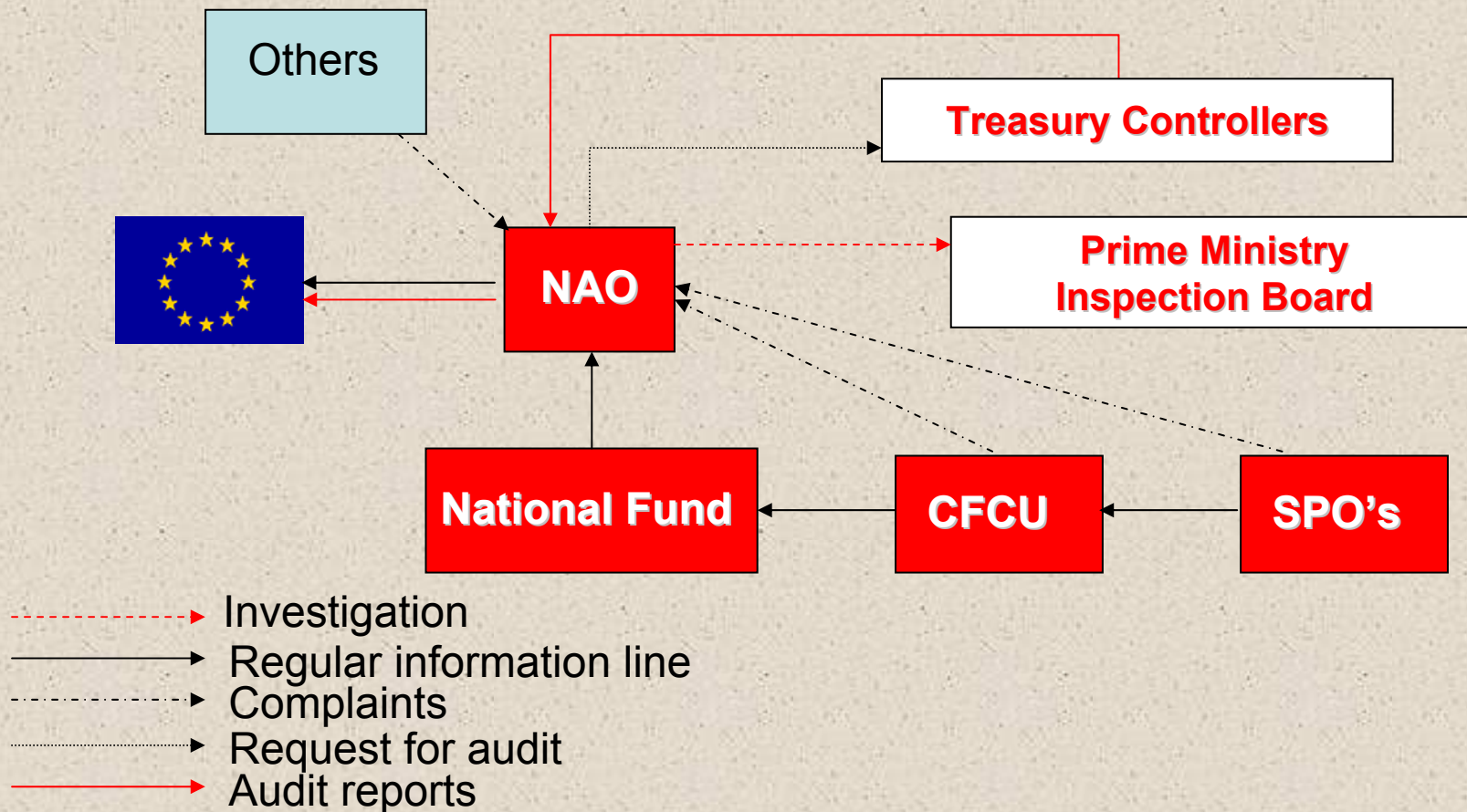
In case of suspicion or existence of irregularities or fraud, EU is informed and an investigation is initiated

- AFCOS

Prime Ministry Inspection Board is the counterpart of OLAF in Turkey since August 2006

e. Protection of EC Financial Interests (cont'd)

FLOW OF INFORMATION RELATED WITH IRREGULARITIES





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2. INTERNATIONAL INSTRUMENTS

- a) Status of International Instruments in Turkish Legislation
- b) United Nations
- c) Council of Europe
- d) OECD



a) Status of International Instruments in Turkish Legislation

- Under Article 90 of the Constitution:

“International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional.”

Thus, the agreements duly put into effect become part of our domestic law and bear the force of law and are implemented directly.



b) United Nations

1. UN Convention against Transnational Organised Crime
 - Signature : 13 December 2000
 - Ratification : 25 March 2003

- i. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
 - Signature : 13 December 2000
 - Ratification : 25 March 2003
- ii. Protocol Against the Smuggling of Migrants by Land, Sea and Air
 - Signature : 13 December 2000
 - Ratification : 25 March 2003
- iii. Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition
 - Signature : 28 June 2002
 - Ratification : 4 May 2004



b) United Nations (cont'd)

2. UN Convention against Corruption

Turkey signed the Convention on 10 December 2003. Ratification Law was adopted by the Turkish Grand National Assembly on 18 May 2006 and Council of Ministers' decree was published at the Official Gazette on 2 October 2006. Turkey is about to present the ratification document to the depository.

c) Council of Europe

1. Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No: 141)
 - Signature : 27 September 2001
 - Ratification : 6 October 2004
 - Entry into force : 1 February 2005

2. Criminal Law Convention on Corruption (ETS No: 173)
 - Signature : 27 September 2001
 - Ratification : 29 March 2004
 - Entry into force : 1 July 2004

3. Civil Law Convention on Corruption (ETS No: 174)
 - Signature : 27 September 2001
 - Ratification : 17 September 2003
 - Entry into force : 1 January 2004



d) OECD

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- Signature : 17 December 1997
- Ratification : 9 March 2000
- Entry into force : 24 September 2000



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3. LEGAL FRAMEWORK

- a) Substantial and Procedural Criminal Law
- b) Money Laundering
- c) Public Procurement
- d) Civil Service

a) Substantial and Procedural Criminal Law

Turkey adopted a new Criminal Code in September 2004. Active and passive corruption and other relevant offences are addressed in various provisions:

Offences set out by the Turkish Criminal Code are:

- Extortion
- Bribery
- Fraud
- Embezzlement
- Fraud in public tenders
- Corruption in private sector
- Other relevant offences

a) Substantial and Procedural Criminal Law (cont'd)

- Extortion

TCC Article 250(1) Extortion through coercion

Any public officer; forces a person to provide a benefit for himself or others, or to make a pledge

By virtue of office

Punished to imprisonment from five to ten years.

TCC Article 250 (2) Extortion through persuasion

Any public officer; persuades a person to provide a benefit for himself or others, or to make a pledge

By virtue of office

Punished to imprisonment from three to five years.



a) Substantial and Procedural Criminal Law (cont'd)

- Bribery (Active and Passive)

Article 252-(1) of TCC, *Elements and sanction*

Any public officer

Who accepts bribe

Punished to imprisonment from four to twelve years

The parties negotiate (distinctive element of the offence) on a bribe are punished as if the offence is completed. The person offering bribe is punished likewise the public officer.



a) Substantial and Procedural Criminal Law (cont'd)

- Bribery (Active and Passive) (cont'd)

Article 252-(2) of TCC, *Aggravating cause*

If the public officer is a judge, arbitrator, expert, notary or sworn public accountant, the punishment is increased by up to one third

Article 252-(3) of TCC, *Definition*

Bribe is a benefit illegally secured by a public officer

In negotiation with a person

To perform or not to perform a task



a) Substantial and Procedural Criminal Law (cont'd)

- Fraud

Article 157 of TCC

Any person

Deceives another to his or others' harm

In order to obtain any benefit

By means of deceptive acts

Sentenced both to;

One to five years of imprisonment

Judicial fine of up to 5,000 days

Aggravated form of fraud with a penalty of two to seven years of imprisonment is envisaged in Article 158.



a) Substantial and Procedural Criminal Law (cont'd)

- Embezzlement

Article 247-(1) of TCC, *Definition and sanction*

Any public officer

Embezzles or converts

Property entrusted to him, or under his custody or control

To his own or others' use

By virtue of his office

Punished to imprisonment from five to twelve years



a) Substantial and Procedural Criminal Law (cont'd)

- Embezzlement (cont'd)

Article 247-(2) of TCC, *Aggravating Cause*

Involvement in fraudulent acts

With the intention of concealing the embezzlement

Sentence is increased by one half

Article 247-(3) of TCC, *Mitigating Cause*

In case the commission of the offence with intention to return the property after being used, sentence may be reduced by up to one half of the principal sentence

a) Substantial and Procedural Criminal Law (cont'd)

- Fraud in public tenders

Article 235 of TCC

Any person

Involved in fraudulent activities during the tenders

Relating to purchase or sale of goods and services on behalf of public institutions or corporations

Sentenced to imprisonment from five to twelve years

The second paragraph of the article enumerates various forms of fraud in tendering procedures



a) Substantial and Procedural Criminal Law (cont'd)

- Other relevant offences

- Fraudulent bankruptcy (TCC Art.161-162) (3-8 years imprisonment)
- Misinformation about companies (TCC Art.164) (6 months-3 years imprisonment)
- Counterfeiting (TCC Art.197) (2-12 years imprisonment)
- Abuse of official power (TCC Art.257) (1-3 years imprisonment)
- Trading in Influence (TCC Art.158/2)(2-7 years imprisonment)
- Illicit Enrichment (Law No 3628 Art.13) (3-5 years imprisonment)
- Smuggling (Law No:4926 Art.3,4) (1-6 years imprisonment and fine)
- Embezzlement in Banks (Law No:5411 Art.160) (6-12 years imprisonment)



a) Substantial and Procedural Criminal Law (cont'd)

Commission of the offences in an organised manner (Article 220):

Establishment of an illegal organisation composed of at least three persons

With the aim of committing illegal acts punishable by law

Shall be sentenced to two to six years of imprisonment

If any offence is committed in an organised manner, the offence shall be punished in addition to the sentence for establishing an organisation



a) Substantial and Procedural Criminal Law (cont'd)

Criminal liability of heads of businesses

Failure to perform control duty

TCC Article 251-(1) Ignorance

Any public officer, responsible for control of an entity

Intentionally ignores the commission of embezzlement or extortion

Punished as the joint offender

TCC Article 251- (2) Facilitation

Any public officer

Facilitates commission of embezzlement or extortion

By failing to perform control duty

Sentenced to imprisonment from three months to three years

a) Substantial and Procedural Criminal Law (cont'd)

Criminal liability of heads of businesses (cont'd)

TCC Article 158-(h);

Where fraud is committed by;

- Traders,
- Heads of businesses (partnerships and corporations)
- Persons acting on behalf of the businesses within their functions
- Directors of cooperatives within cooperative activities,

Shall be

- Held criminally liable for aggravated fraud
- Sentenced to two to seven years of imprisonment and a judicial fine of up to 5.000 days.



a) Substantial and Procedural Criminal Law (cont'd)

Criminal liability of heads of businesses (cont'd)

Article 53

As a legal consequence of the conviction to imprisonment on the grounds of having committed an intentional crime, the person is deprived of being manager or auditor of;

- Legal entities
- Foundations
- Associations
- Labor unions
- Companies
- Cooperatives
- Political parties

a) Substantial and Procedural Criminal Law (cont'd)

Criminal liability of legal persons

Legal persons can be held responsible for offences of corruption, fraud and money laundering

If legal persons are involved in bribery and fraud offences, special security measures which are specifically pertinent to them shall be taken under Articles 253 and 169 of the TCC respectively.

If legal persons are involved in the laundering offences related to fraud and corruption, the security measures which are specifically pertinent to them shall be imposed (Article 282/4 of the TCC). Regardless of where the act of corruption is committed, money laundering is criminalized.

These security measures are outlined in Article 60 of the TCC.

a) Substantial and Procedural Criminal Law (cont'd)

Bribery of foreign public officials,

Article 252-5 of TCC

To offer or promise a benefit directly or indirectly or to provide with an unjust benefit to the officers;

Of the public institution or institutions performing legislative, administrative or judicial tasks

Of international bodies founded by states, governments or any other public institutions

Performing any duty related to international business activities

In order to facilitate performing or not performing a transaction, or acquire or keep illicit benefits



a) Substantial and Procedural Criminal Law (cont'd)

Corruption in the private sector

Article 252/4 of TCC: scope of the bribery

The provisions of “active and passive bribery” are applicable to the person/s acting on behalf of the institutions founded as:

Professional organizations with the status of public institution
(Chambers, Bars, Trade Unions, etc.)

Companies owned by public institutions and professional
organizations, and foundations within the purview of these entities

Associations serving the public interest

Cooperatives

Joint stock companies whose shares are traded on the Stock
Exchange



a) Substantial and Procedural Criminal Law (cont'd)

Corruption in the private sector (cont'd)

Breach of trust, Article 155-(1)

Any person,

to whom a property which belongs to another person is entrusted

to be used for a certain purpose

uses this property to his own or others' use for a purpose other than transfer of the possession

denies this transfer upon complaint of the injured party

sentenced to imprisonment from six months to two years and to an additional judicial fine



a) Substantial and Procedural Criminal Law (cont'd)

Corruption in the private sector (cont'd)

Failure to inform authorities for offences committed, Article 278

Any person,

Who fails to inform authorized institutions,

regarding an offence being committed,

punished to imprisonment by up to one year

a) Substantial and Procedural Criminal Law (cont'd)

Jurisdiction (TCC, Article 8,13).

Turkish courts have jurisdiction over the offences

- Committed within the Turkish territory

By

- Nationals
- Foreigners

This provision valid for all of the offences defined in TCC

a) Substantial and Procedural Criminal Law (cont'd)

Ne bis in idem

Article 9 of the TCC

- A person
- Sentenced in a foreign country
- In respect of an offence committed in Turkey
- Retried in Turkey

Article 12 of the TCC, (Upon the request of the Minister of Justice)

- A foreigner
- committed a crime against Turkey (minimum sentence one year)
- In another country
- Sentenced under Turkish law, (If he/she is present in Turkey)

a) Substantial and Procedural Criminal Law (cont'd)

Ne bis in idem (cont'd)

Article 12/4 of TCC (Upon the request of the Minister of Justice)

Foreigner;

- Convicted for a crime against Turkey
- The case or sentence is dropped or acquitted
- Retried in Turkey

Article 13/3 of the TCC (Upon the request of the Minister of Justice)

Foreigner;

- Retried in Turkey for the offences such as;
 - International crimes
 - Offences against the state

Irrespective of being acquitted or convicted by a foreign judgment

a) Substantial and Procedural Criminal Law (cont'd)

Confiscation and other deprivation of instruments and proceeds of crime

Article 54 of the TCC: Confiscation of property

(Provided it does not belong to *bona fide* third parties)

Property;

- Used in or allocated for a deliberate offence
- Derived from crime

And property;

- Intended to be used for criminal purposes and posing a threat to public security, public health or public morals

shall be confiscated.

a) Substantial and Procedural Criminal Law (cont'd)

Confiscation and other deprivation of instruments and proceeds of crime

Article 55/1 of the TCC : Confiscation of benefits
Benefits;

- Derived from
- Subject of a crime

Economic profits arising from;

- Exploitation
 - Conversion
 - Cannot be returned to the victim
- shall be confiscated



a) Substantial and Procedural Criminal Law (cont'd)

Confiscation and other deprivation of instruments and proceeds of crime

Article 55/2

When the property or benefits cannot be

- seized
- submitted to the competent authorities

An equivalent value of these assets shall be confiscated.

Value based confiscation is possible under Articles 54/2 and 55/2.

a) Substantial and Procedural Criminal Law (cont'd)

Confiscation and other deprivation of instrumentalities and proceeds of crime (cont'd)

Criminal Procedure Code

Article 123 : Subject assets and procedure

- Object considered as evidence
- Assets forming basis of the confiscation of property or benefit taken under protection.

Article 127 : Authority to issue seizure warrant

- Upon the order of the judge
- Law enforcement officials may execute the seizure
- In case of detrimental delay
- By the written order of public prosecutor



b) Money Laundering

Turkish Legislation Regarding Money Laundering

- Law No. 5237 Turkish Criminal Code
- Law No. 5271 Criminal Procedure Code
- Law No. 4208 on Prevention of Money Laundering
- By-law Regarding Implementation of Law No. 4208
- By-law of Working Procedures of the Coordination Board for Combating Financial Crimes
- Financial Crimes Investigation Board General Communiqué No. 1
- Financial Crimes Investigation Board General Communiqué No. 2
- Financial Crimes Investigation Board General Communiqué No. 3
- Financial Crimes Investigation Board General Communiqué No. 4

b) Money Laundering (Cont'd)

Laundering Proceeds of Crime

Article 282 of TCC

Subject of the offence

- Proceeds of crime (minimum punishment is one year or more)

Elements of the offence

- Transferring to abroad
- Subject to a series of transactions

For the purposes of;

- Disguising illicit sources thereof
- Misleading as if they have been derived from legitimate sources



b) Money Laundering (Cont'd)

Laundering Proceeds of Crime (Cont'd)

Perpetrator shall be

- Imprisoned from 2 years up to 5 years
- Fined up to twenty thousand days.

Mentioned penalties to be applied to the persons who committed the predicate offence.



b) Money Laundering (cont'd)

Laundering Proceeds of Crime (cont'd)

Corruption is one of the predicate offences for money laundering

In addition to previously recounted types of corruption

- Abuse of power
 - Illicit enrichment,
 - Involvement in fraudulent acts during fulfillment of obligations,
 - Trading in influence
- are predicate offences thereof.

b) Money Laundering (cont'd)

Aggravating Causes

When committed by;

- Public servants
- Persons having specific professions,
during the execution of their duties or businesses

The sentence to imprisonment shall be increased by half.

When committed in an organized manner, the sentence shall be doubled.



b) Money Laundering (cont'd)

Security Measures

With regard to committing money laundering, security measures pertinent to legal persons are taken.

TCC Art. 60: The permit to operate of a legal person which operates with a licence given by a public authority shall be cancelled in case of conviction for a deliberate offence which results in a benefit for the legal person and is committed with the participation of its organs or representatives and by abusing their power.

The confiscation provisions shall be applied.



b) Money Laundering (cont'd)

Search, Seizure and Confiscation of Proceeds of Crime

- Confiscation (TCC Art.54-55)
- Keeping and seizure of property and assets (CPC Art. 123)
- Seizure at the post office (CPC Art. 129)
- Search and seizure at lawyers' offices (CPC Art. 130)
- Appointment of curator for the company management (CPC Art. 133)
- Search of computers and computer programs and archives, copying and provisional seizure (CPC Art. 134)
- Recording, interception and detecting of communications (CPC Art. 135)
- Monitoring by technical devices (CPC Art. 140)
- Imposing precautionary measures (Article 9 of the Law No. 4208)
- Controlled delivery of laundered money is regulated in Articles 10 and 11 of the Law No. 4208



c) Public Procurement

Ineligibility

Article 11 of the Public Procurement Law, No.4734

Persons or entities who have been convicted of crimes mentioned in Anti-Terror Law No.3713 and organised crimes cannot participate in any procurement, directly or indirectly or as a sub-contractor, either on their own account or on behalf of others.



c) Public Procurement

Prohibited Acts or Conducts

Article 17 of the Public Procurement Law, No.4734

a) to conduct or attempt to conduct procurement fraud by means of fraudulent and corrupt acts, promises, threats, unlawful influence, undue interest, agreement, extortion, bribery or other actions,

b) to cause confusion among bidders, to prevent participation, to offer agreement to bidders or to encourage bidders to accept such offers, to conduct actions which may influence competition or tender decision,

c) to forge documents or securities, to use forged documents or securities or to attempt these

are prohibited in tender proceedings.

d) Civil Service

Law on Public Servants, No.657

Article 48/5

Those who have been sentenced to at least 6 months imprisonment and those who have committed crimes inter alia embezzlement, bribery, extortion, robbery, fraud, breach of trust, smuggling, fraud in public tenders and revealing declassified information are not eligible to be recruited into the public service. Such offences apply as a reason to fire a public servant



d) Civil Service

Law on Public Servants, No.657

Article 125 : Disciplinary Sanctions

Defines certain penalties for various misbehaviours: a) warning, b) condemnation, c) deduction from salary, d) halting promotion temporarily, and e) termination of employment

A disciplinary procedure does not prevent initiation of a criminal proceedings and vice versa. If a criminal proceedings ends with a conviction, a disciplinary sanction is often applied in addition.



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4. INTERNATIONAL COOPERATION

- a) Participation in International Organizations
- b) Bilateral and Regional Agreements
- c) Cooperation on Criminal Issues and Money Laundering

a) Participation in International Organizations

Turkey takes an active role and contributes to the efforts against corruption, organized crime, and money laundering of major international platforms such as;

- UN Office on Drugs and Organized Crime (UNODC)
- UN Commission on Crime Prevention and Criminal Justice
- Council of Europe's Group of States Against Corruption (GRECO)
- Financial Action Task Force (FATF)
- The Organization for Security and Co-operation in Europe (OSCE)
- Organisation of the Islamic Conference (OIC)
- EGMONT Group
- Stability Pact for South Eastern Europe
- South East European Cooperative Initiative (SECI)
- Black Sea Economic Cooperation (BSEC)
- INTERPOL



b) Bilateral and Regional Cooperation

Turkey has concluded bilateral security cooperation agreements and protocols with 68 countries. These agreements form the bases of bilateral cooperation against terrorism and other forms of organized crime. Turkey has appointed 5 liaison officers to Denmark, the Netherlands, Germany, the UK and Uzbekistan. In return, 39 liaison officers from 19 countries are stationed within their Embassies in Turkey. Liaison officers serve as channels of direct and swift communication between the related law enforcement agencies, especially in the fields of terrorism and organized crime.

Turkey has concluded prevention of double taxation agreements with 63 countries in order to ensure exchange of information on tax investigations as well as other issues.

Turkey exchanges information on customs issues with EU authorities in line with the provisions of the Customs Union.

c) International Cooperation on Criminal Issues and Money Laundering

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 party. There is no specific law governing judicial cooperation in criminal matters.

Requests for mutual assistance concerning fraud and corruption can be made on the basis of existing treaties.

1959 European Convention on Mutual Legal Assistance in Criminal Matters to which Turkey is party is the main international instrument implemented by Turkey in this field.



c) International Cooperation on Criminal Issues and Money Laundering (cont'd)

Directorate General of International Law and Foreign Relations of the Ministry of Justice is the central authority for execution of all kinds of mutual assistance requests in criminal matters (Law No. 2992, Article 13/A)

In cases of the absence of a treaty with the concerned country, Turkey does not refrain from fulfilling the requests for mutual legal assistance and provides legal assistance in compliance with the principle of reciprocity.



c) International Cooperation on Criminal Issues and Money Laundering (cont'd)

Extradition of Nationals

In line with Article 38 of the Constitution, Article 18 of TCC and Article 6 of the European Convention on Extradition, a Turkish national cannot be extradited to a foreign country for an offence committed (Except from the obligations arising from being party to the Rome Statute)

In a case where the request for extradition of a person involved in an offence is refused solely on the grounds that a Turkish national cannot be extradited to a foreign country, according to Article 6 of the European Convention on Extradition, the issue is then handled by relevant judicial authorities.



c) International Cooperation on Criminal Issues and Money Laundering (cont'd)

Interpol and Europol

Turkey became a member of INTERPOL in 1930.

Turkey is a technical and strategic partner of EUROPOL (Council Decision of Ministers for Justice and Home Affairs, 27 March 2000).

Interpol Department was assigned as the National Bureau by the Ministry of Interior on 6 January 2004, in line with the EU practices and with the contribution of all law enforcement units, to ensure communication, exchange of information and cooperation between the Turkish authorities and Europol, Schengen, Interpol, OLAF and other law enforcement units which may be established within the EU.



c) International Cooperation on Criminal Issues and Money Laundering (cont'd)

Exchange of information on money laundering

MASAK exchanges the intelligence on money laundering and terrorist financing with financial intelligence units of other countries through the EGMONT Secure Web

Council of Ministers authorized the Head of MASAK to prepare and sign memoranda of understanding with the financial intelligence units of 95 countries relating to the issues on money laundering and terrorism financing on 07.09.2005



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5. ONGOING PROJECTS AND STUDIES

- a) Twinning Projects of Turkish National Police
- b) Twinning Project of MASAK



a) Twinning Projects of Turkish National Police

i. Strengthening the Fight Against Organized Crime

Twining Partner is Criminal Department of Baden-Württemberg in Germany

The main purpose of the project is “to strengthen the law enforcement institutions of the Ministry of the Interior, National Police and Gendarmerie, dealing with the fight against organised crime

The project consists of 6 main components: a) Assistance in the development and promulgation of the Turkish Government’s policy on fighting organised crime, b) strengthening Institutions in their fight against organised criminal groups involved in the illicit use, c) production of trafficking in drugs, d) strengthening institutions in their fight against Internet and high tech crime, e) strengthening Police Institutions involved in International co-operation, f) strengthening the criminal analysis capability of the police institutions involved in the fight against organised crime and anti-corruption investigation programme.

The project ended in November 2005



a) Twinning Projects of Turkish National Police (cont'd)

ii. Strengthening the Struggle Against Money Laundering, Financial Sources of Crime and Financing of Terrorism

Twining Partner is Criminal Department of Baden-Württemberg in Germany

The main purpose of the project is “to strengthen the capacity of the anti-money laundering institutional system in Turkey in line with the EU Acquis and practices in its Member States”

The project consists of 4 main components: harmonisation of legislation with the acquis, policy development, strengthening the combating capacity, and national and international cooperation.

The project started in April 2005 and will end in Spring 2007



b) Twinning Project of MASAK

Twining Partner is Italian Ministry of Economy and Finance.

The main purposes of the project are “strengthening the data collection and analyzing capacity of MASAK” and “development of an efficient legal, institutional and technical framework for combating money laundering in line with the EU legislation and practice.”

The project consists of 3 main components; a Twinning Project and two procurement contracts (Service Contract for Technical assistance and Supply Contract for Investment).

Twining part was completed as of 31 July 2006. The investment component will be completed on 30 November 2006.



b) Twinning Project of MASAK (cont'd)

A draft law has been prepared taking into account the EU Acquis as well as other international norms relating to the prevention of money laundering. It is on the agenda of the Turkish Grand National Assembly.

A Suspicious Transaction Reporting Guideline for financial and non-financial sectors was prepared with the contribution of Italian twinning partner in order to improve the consciousness regarding preventing money laundering, terrorist financing and enhancing the suspicious transaction reporting capacity. It was disseminated in the web page of MASAK in July 2006 and also published as a booklet.

MASAK specifically arranged 21 training courses for banking staff in 17 cities covering all neighbouring cities with the collaboration of Turkish Banking Association and Italian Twinning partner. The number of banking staff who participated the training courses is 1396.

Thank you for your attention...