



Cybercrime legislation – country profile

TURKEY

This profile has been prepared within the framework of the Council of Europe's Project on Cybercrime in view of sharing information on cybercrime legislation and assessing the current state of implementation of the Convention on Cybercrime under national legislation. It does not necessarily reflect official positions of the country covered or of the Council of Europe.

Comments may be sent to:

Alexander Seger
Department of Technical Cooperation
Directorate General of Human Rights and Legal Affairs
Council of Europe, Strasbourg, France

Tel: +33-3-9021-4506
Fax: +33-3-9021-5650
Email: alexander.seger@coe.int
www.coe.int/cybercrime

Country:	TURKEY
Signature of Convention:	No
Ratification/accession:	No What measure are being undertaken in your country to become a Party? As the Convention consists of very detailed various provisions, our legislation studies are still pending in order to answer the requirements of the Convention. A new special Code numbered 5651 on the regulation of broadcasts existing in the internet space and combating the crimes committed by these broadcasts, has recently adopted and put into effect on 04/05/2007. What specific obstacles (legislative or other) prevent ratification/accession? There is no specific obstacle to prevent accession.
Provisions of the Convention	Corresponding provisions/solutions in national legislation <i>(pls quote or summarise briefly; pls attach relevant extracts as an appendix)</i>
<i>Chapter I – Use of terms</i>	
Article 1 – “Computer system”, “computer data”, “service provider”, “traffic data”	Article 2 of the Code no 5651/2007
<i>Chapter II – Measures to be taken at the national level</i> <i>Section 1 – Substantive criminal law</i>	

Article 2 – Illegal access	Article 243 paragraph 1, Turkish Penal Code no 5237/2005
Article 3 – Illegal interception	Article 243 paragraph 1, Turkish Penal Code no 5237/2005
Article 4 – Data interference	Article 244 paragraph 2, Turkish Penal Code no 5237/2005
Article 5 – System interference	Article 244 paragraphs 1, Turkish Penal Code no 5237/2005
Article 6 – Misuse of devices	_____
Article 7 – Computer-related forgery	Article 244 paragraphs 2, Turkish Penal Code no 5237/2005
Article 8 – Computer-related fraud	Article 158 paragraph 1 subparagraph (f), Turkish Penal Code no 5237/2005
Article 9 – Offences related to child pornography	Article 226 paragraphs 3-5, Turkish Penal Code no 5237/2005
Title 4 – Offences related to infringements of copyright and related rights	
Article 10 – Offences related to infringements of copyright and related rights	Articles 1/B, 2, 71-75, Turkish Law on Intellectual and Artistics Works ,no 5846/1951 (revised 2006)
Article 11 – Attempt and aiding or abetting	Articles 35, 37-40, Turkish Penal Code no 5237/2005
Article 12 – Corporate liability	Article 60, Turkish Penal Code no 5237/2005
Article 13 – Sanctions and measures	Prescribed in details in the above mentioned Articles
<i>Section 2 – Procedural law</i>	
Article 14 – Scope of procedural provisions	Articles 160-165,170-171, Turkish Criminal Procedure Code no 5271/2005
Article 15 – Conditions and safeguards	Article 134 (decision of judge is required), Turkish Criminal Procedure Code no5271/2005
Article 16 – Expedited preservation of stored computer data	Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007
Article 17 – Expedited preservation and partial disclosure of traffic data	Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007
Article 18 – Production order	Article 6 paragraph 1 subparagraph (b), Code Number 5651/2007
Article 19 – Search and seizure of stored computer data	Article 134 , Turkish Criminal Procedure Code no 5271/2005
Article 20 – Real-time collection of traffic data	_____
Article 21 – Interception of content data	Article 135, Turkish Criminal Procedure Code no 5271/2005
<i>Section 3 – Jurisdiction</i>	

Article 22 – Jurisdiction	Articles 8-13, Turkish Penal Code no 5237/2005
<i>Chapter III – International co-operation</i>	
Article 24 – Extradition	Article 18, Turkish Penal Code no 5237/2005
Article 25 – General principles relating to mutual assistance	There is no specific law. Mutual legal assistance is executed referring to the bilateral agreements or international conventions.
Article 26 – Spontaneous information	_____
Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements	If there is no bilateral and multilateral convention between Turkey and other country concerned, judicial cooperation in criminal matters is governed by international customs and principle of reciprocity.
Article 28 – Confidentiality and limitation on use	_____
Article 29 – Expedited preservation of stored computer data	_____
Article 30 – Expedited disclosure of preserved traffic data	_____
Article 31 – Mutual assistance regarding accessing of stored computer data	_____
Article 32 – Trans-border access to stored computer data with consent or where publicly available	_____
Article 33 – Mutual assistance in the real-time collection of traffic data	_____
Article 34 – Mutual assistance regarding the interception of content data	_____
Article 35 – 24/7 Network	_____
Article 42 – Reservations	

Appendix : **Solutions in National Legislation**

(I) TURKISH PENAL CODE, LAW NUMBER: 5237

Territorial Jurisdiction

Article 8

- (1) Turkish law shall apply to all criminal offences committed in Turkey. Where a criminal act is partially, or fully, committed in Turkey, or the result of a criminal act occurs in Turkey the offence shall be presumed to have been committed in Turkey.
- (2) If the criminal offence is committed:
 - a) within Turkish territory, airspace or in Turkish territorial waters;
 - b) on the open sea or in the space extending directly above these waters and in, or by using, Turkish sea and air vessels;
 - c) in, or by using, Turkish military sea or air vehicles;
 - d) on or against a fixed platforms erected on the continental shelf or in the economic zone of Turkeythen this offence is presumed to have been committed in Turkey.

Conviction in a Foreign Country

Article 9

- (1) Any person who is convicted in a foreign country for an offence committed in Turkey shall be subject to retrial in Turkey.

Offences Committed During the Performance of a Duty

Article 10

- (1) Any person who is employed as a public officer or is charged with a particular duty by the Turkish State and who, in the course of that employment or duty, commits a criminal offence shall be tried in Turkey, despite having been convicted in a foreign country in respect of his acts.

Offences Committed by Citizens

Article 11

- (1) If a Turkish citizen commits an offence in a foreign country that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than one year, and he is present in Turkey, and upon satisfying the conditions that he has not been convicted for the same offence in a foreign country and a prosecution is possible in Turkey, he shall be subject to a penalty under Turkish law, except in regard as to the offences defined in Article 13.
- (2) Where the aforementioned offence is subject to a penalty of imprisonment, the minimum limit of which is less than one year, then criminal proceedings shall only be initiated upon the making of a complaint by a victim or a foreign government. In such a case the complaint must be made within six months of the date the citizen entered Turkey.

Offences Committed by Non-Citizens

Article 12

- (1) Where a non-citizen commits an offence (other than one defined in Article 13), to the detriment of Turkey, in a foreign country, that would amount to an offence under Turkish law and that offence is subject to a penalty of imprisonment where the minimum limit is greater than 1 year, and he is present in Turkey, he shall be subject to penalty under Turkish law. Criminal proceedings shall only be brought upon request by the Minister of Justice.
- (2) Where the aforementioned offence is committed to the detriment of a Turkish citizen or to the detriment of a legal personality established under Turkish civil law and the offender is present in Turkey and there has been no conviction in a foreign country for the same

- offence then, upon the making of a complaint by the victim, he shall be subject to penalty under Turkish law.
- (3) If the victim is a non-citizen the offender shall be subject to criminal proceedings, upon the request of the Minister of Justice, provided the following conditions are fulfilled:
- a) the offence is subject to a penalty of imprisonment under Turkish law where the minimum limit of imprisonment is not less than 3 years; and
 - b) there is no extradition agreement; or the government of the country in which the crime has been committed, or the State of which the offender is a national, has refused to grant extradition.
- (4) In relation to offences to which section one is applicable, if a non-citizen is convicted or acquitted in a foreign Court or has any criminal proceedings or penalty against him stayed or set aside respectively by such Court or the offence becomes one which cannot be the subject of a prosecution in a foreign Court then, upon the request of the Minister of Justice, criminal proceedings shall be brought in Turkey.

Miscellaneous Offences

Article 13

- (1) Turkish law shall apply to the following offences committed in a foreign country whether or not committed by a citizen or non-citizen of Turkey:
- a) Offences defined in Chapter I, Volume II;
 - b) Offences defined in Parts 3-8, Chapter IV, Volume II;
 - c) Torture (Articles 94-95);
 - d) Intentional Pollution of the Environment (Article 181);
 - e) Production and Trade of Narcotics or Psychotropic Substances (Article 188);
Facilitating the use of Narcotics or Psychotropic Substances (Article 190);
 - f) Counterfeiting Money (Article 197), Manufacturing and Trading of Instruments used in the Production of Money and valuable Seals (Article 200); Counterfeiting a Seal (Article 202);
 - g) Prostitution (Article 227);
 - h) Bribery (Article 252); and
 - i) Seizing control or hijacking of air, sea or rail transport vehicles (Article 223, sections 2 and 3) and offences relating to the damaging of such vehicles (Article 152).
- (2) Except for offences defined in parts 3, 5, 6 and 7 of Chapter IV, Volume II, conducting criminal proceedings in Turkey for crimes within the scope of section one shall be subject to a request of the Ministry of Justice.
- (3) Even where a conviction or acquittal pursuant to the offences listed in section one subsections (a) and (b) have occurred in a foreign country, criminal proceedings in Turkey shall be conducted upon the request of the Ministry of Justice.

Extradition

Article 18

- (1) A non-citizen, against whom a prosecution has been initiated or against whom there is conviction because of a crime committed, or alleged to have been committed in a foreign country, may be extradited, upon request, for the purpose of a prosecution or enforcement of a penalty. However, the extradition request shall not be accepted, if the act for which extradition is requested:
- a) does not constitute a criminal offence in Turkish Law;
 - b) is a criminal offence of a political or military nature, or is a crime of thought;
 - c) is an offence against the security of the Turkish state or causes damage to the Turkish state, a Turkish citizen or legal entity established under Turkish law,
 - d) is a criminal offence which falls under the jurisdiction of Turkey,
 - e) has benefited from an amnesty or statute of limitation.
- (2) Citizens shall not be extradited in respect of an offence he has committed, save in regard to the obligations arising from being a party to the International Criminal Court.
- (3) The extradition request shall not be accepted if there are strong suspicious reasons that – upon extradition - the person will be prosecuted or punished on account of his race,

- religion, nationality, membership of a particular social group or political opinion or be exposed to torture or ill-treatment.
- (4) The Serious Criminal Court responsible for the region of the concerned person shall decide on the extradition request on the basis of this article as well as the provisions of the related international conventions that Turkey is a party to. This decision may be appealed.
 - (5) If the extradition request is deemed to be acceptable by the Court, then the execution of such decision shall be at the discretion of the Council of Ministers.
 - (6) Security measures may be applied in respect of an individual who is requested for extradition in accordance with the provisions of international conventions which Turkey is a party to.
 - (7) If the extradition request is deemed to be acceptable, an arrest warrant may be issued according to the provisions of the Criminal Procedure Code or other security measure may be applied.
 - (8) In the event of extradition, the person is only to be prosecuted for the particular offence for which extradition has taken place and no penalty other than that related to such offence may be enforced.

Attempt

Article 35

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

Jointly Committed Offences

Principal Involvement

Article 37

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

Incitement

Article 38

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

Assistance

Article 39

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

The Dependency Rule

Article 40

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

Security Measures Specific to Legal Entities

Article 60

- (1) Where there has been a conviction in relation to an intentional offence committed for the benefit of a legal entity, which is subject to civil law and operating under the license granted by a public institution, by misusing the permission conferred by such license and through the participation of the organs or representatives of the legal entity it shall cancel this license.
- (2) The provisions relating to confiscation shall also be applicable to civil legal entities in relation to offences committed for the benefit of such entities.
- (3) Where the application of the provisions in the above sections would lead to more serious consequences than the offence itself, the judge may not impose of such measures.
- (4) The provisions of this article shall only apply where specifically stated in the law.

Qualified Theft by Deception

Article 158

- (1) Where the offence of theft by deception is committed:
 - a) by exploiting the religious beliefs and emotions of a person;
 - b) by taking advantage of a person being in a dangerous or difficult circumstance;
 - c) by taking advantage of a weakness in the capacity to perceive;
 - d) by using, as an instrument, the legal personalities of: a public institution or corporation; public professional institution; political party; foundation or association;
 - e) by causing loss to a public institution or corporation;
 - f) by using as an instrument electronic data processing systems, a bank or lending institution;
 - g) by taking advantage of the facilitative capacity of the press and publication organs;

h) by executing acts during the commercial activities of a merchant or company manager or representative of a company or within the framework of activities of a co-operative by an administrator,
i) by a freelancer, who takes advantage of the trust generated by his profession;
j) by obtaining a loan which would not otherwise be obtainable from a bank or other finance institution, or
k) With the intention of collecting an insurance payment,
the offender shall be sentenced to a penalty of imprisonment for a term of two to seven years and a judicial fine of up to five thousand days. However, in section one (e), (f) and (j) the penalty of imprisonment shall not be less than three years and the judicial fine shall not be less than double the benefit obtained from the offence.

Obscenity

Article 226

- (1) Any person who:
- a) gives to a child obscene written or audio-visual material; or who reads or induces another to read such material to a child or makes a child watch or listen to such material;
 - b) makes public the content of such material in a place accessible or visible to a child, or who exhibits such material in a visible manner or who reads or talks about such material, or who induces another to read or talk about such material to a child;
 - c) offers such materials for sale or rent in such a manner as to reveal the content of that material;
 - d) offers for sale, sells or rents such materials, in any place other than a specified points of sale;
 - e) gives or distributes such materials along with the sale of other products or services as a free supplement; or
 - f) advertises such products
- shall be sentenced to a penalty of imprisonment for a term of six months to two years and a judicial fine.
- (2) Any person who broadcasts or publishes obscene written or audio-visual material or who acts as an intermediary for this purpose shall be sentenced to a penalty of imprisonment for a term of six months to three years and a judicial fine of up to five thousand days.
- (3) A person who uses children in the production of obscene written or audio-visual materials shall be sentenced to a penalty of imprisonment for a term of five to ten years and a judicial fine of up to five thousand days. Any person who conveys such material into the country, who copies or offers for sale such material or who sells, transports, stores, exports, retains possession of such material or offers such material for the use of others shall be sentenced to a penalty of imprisonment for a term of two to five years and a judicial fine of up to five thousand days.
- (4) Any person who produces, conveys into the country, offers for sale, sells, transports, stores or offers for the use of others written or audio-visual materials of sexual acts performed with the use of force, animals, a human corpse, or in any other unnatural manner shall be sentenced to a penalty of imprisonment for a term of one to four years and a judicial fine of up to five thousand days.
- (5) Any person who broadcasts or publishes the materials described in sections three and four or who acts as an intermediary for this purpose or who ensures children see, hear or read such materials shall be sentenced to a penalty of imprisonment for a term of six to ten years and a judicial fine of up to five thousand days.
- (6) Legal entities shall be subject to specific security measures for involvement in these offences.
- (7) The provisions of this article shall not apply to academic works. The provisions of this article shall not apply, except section 3, to artistic or literary works where children are prevented from accessing such.

Offences Related to Data Processing Systems

Accessing a Data Processing System

Article 243

- (1) Any person who unlawfully accesses, partially or fully, a data processing system, or remains within such system, shall be subject to a penalty of imprisonment for a term of up to one year or a judicial fine.
- (2) Where the act defined in the aforementioned section is committed in relation to a system which is only accessible with the payment of a fee then the penalty to imposed shall be decreased by up to one half.
- (3) Where any data within any such system is deleted or altered as a result of this act then the penalty to be imposed shall be a term of imprisonment of six months to two years.

Preventing the Functioning of a System and Deletion, Alteration or Corrupting of Data

Article 244

- (1) Any person who prevents the functioning of a data processing system or renders such useless shall be subject to a penalty of imprisonment for a term of one to five years.
- (2) Any person who deletes, alters, corrupts or bars access to data, or introduces data into a system or sends existing data to another place shall be subject to a penalty of imprisonment for a term of six months to three years.
- (3) Where this offence is committed in relation to a data processing system of a public institution or establishment, bank or institution of credit then the penalty to be imposed shall be increased by one half.
- (4) Where a person obtains an unjust benefit for himself or another by committing the acts defined in the aforementioned sections, and such acts do not constitute a separate offence, a penalty of imprisonment he shall be subject to a penalty of imprisonment from two years to six years and a judicial fine of up to five thousand days shall be imposed

Misuse of Bank or Credit cards

Article 245

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

Implementation of Security Measures on Legal Entities

Article 246

- (1) Where a legal entity obtains an unjust benefit arising from the commission of an offence in this Part it shall be subject to security measures.

(II) CODE OF CRIMINAL PROCEDURE, LAW NUMBER 5271

Search in computers, computer programs and logs, copying and seizure

Article 134

- (1) In an investigation realized because of a crime, in case of no other means to exist for obtaining evidence, upon the request of the Republic prosecutor, the judge shall decide on searching the computer, computer programs and logs used by the suspect, to copy computer records and decode these records in order to prepare a text.
- (2) In case of failure to access to hidden information or decode the password to reach the computer programs and logs, in order to have necessary copies taken, it might be possible to seize the tools and equipment. After the decoding and taking of necessary copies, the seized devices shall be returned without further delay.
- (3) In the seizure of computer or computer logs, the entire data in the system shall be backed-up.
- (4) If requested, a copy of the back up shall be given to the suspect or his/her representative keeping a record of the issue.
- (5) Without seizing the computer or computer logs, it is also possible to copy the entire or some data in the system. Copied data shall be listed on a piece of paper, recorded and undersigned by the relevant authorities.

Controlling Communication via Telecommunication

Identification, interception and recording of communication

Article 135

- (1) In an investigation or trial due to a crime, in case of serious reasons of doubt on commitment of a crime and no other means to obtain evidence, the judge, in cases which a delay is harmful, the Republic prosecutor may decide on identification, interception, recording or evaluating the signal information of a suspect or accused via telecommunication.
- (2) The communication between accused or suspect and individuals who might refrain from testifying shall not be recorded. If the situation is understood after the recording, the records shall be immediately annihilated.
- (3) In the decision made according to provision of the first paragraph, the type of the crime, identity of the individual, which such measure shall be implemented, type of communication tool, phone number or the code enabling the identification of communication link, type of measure, its term and scope shall be mentioned. The measure can at most be taken for three months with the possibility of extending the term for only once more. However, concerning the crimes committed within the framework of the activity of the organization, when deemed necessary, the judge might decide on extending the term for many times with the condition of not exceeding one month.
- (4) In order to identify the location of the mobile phone of a suspect or accused needed to be apprehended, the decision of the judge, in cases, which a delay is harmful, the decision of Republic prosecutor shall be necessary. In the mentioned decision, the phone number and term of such measure shall be indicated. Such measure can be implemented for at most three months with one more extension possibility.
- (5) The decision taken and operations realized in accordance with the provisions of the Article herein shall not be disclosed during the term of the measure.
- (6) Provisions on interception, recording, evaluating the signal information within the scope of the Article herein shall only be applicable for the below mentioned crimes:
 - a. In Turkish Criminal Code;
 1. Migrant smuggling and trafficking in humans (Articles 79, 80)
 2. Felonious homicide (Articles 81, 82, 83)
 3. Torture (Article 94, 95)
 4. Sexual Assault (Article 102 excluding paragraph one)
 5. Sexual abuse of children (Article 103)
 6. Production and trade of drugs and exhilarants (Article 188)

7. Forged currency (Article 197)
 8. Establishing organization with the intention of committing crime (Article 220 excluding paragraph two, seven and eight)
 9. Prostitution (Article 227, paragraph 3)
 10. Fraudulent tender (Article 235)
 11. Bribery (Article 252)
 12. Laundering criminal assets (Article 282)
 13. Armed organization (Article 314) and to provide arms for such organization (Article 315)
 14. Crimes against State Secrets and Espionage (Articles 328, 329, 330, 331, 333, 334, 336, 337)
 - b. Arms smuggling crimes (Article 12) defined in Law on Weaponry and Blades and Other Tools.
 - c. Embezzlement crime defined in paragraphs (3) and (4) of Banking Law
 - d. Crimes defined in Law on Fight with Smuggling necessitating imprisonment
- (7) Except for the principles and procedures explained in the Article herein, no one shall intercept and record communication of another via telecommunication.

The duties of the Republic prosecutor after being informed that an offense has been committed

Article 160

- (1) Immediately following being informed, through denunciation or by any other means, of a condition having the impression that an offense has been committed, the Republic prosecutor initiates an investigation to uncover the truth and to determine if the conditions demand the filing of a public court case.
- (2) The Republic prosecutor is obligated to collect and protect all the evidence in favor of or against the suspect and to protect the rights of the suspect, through the judicial security force under his or her authority, for the investigation of the material truth and for the execution of a fair trial.

The duties and authorities of the Republic prosecutor

Article 161

- (1) The Republic prosecutor can perform all types of investigations directly or through the judicial security forces under his command; can request any information from any public functionary to reach the results indicated in the above Article. The Republic prosecutor requests the execution of the said operations from the relevant Republic prosecutor responsible for the location, if a requirement to perform an operation outside the jurisdiction of the court arises due to his or her legal duties.
- (2) Judicial security force authorities are obligated to immediately inform the relevant Republic prosecutor under whom they function, of the cases they have taken charge of, of the people they have apprehended and the precautions practiced; and to carry out the orders concerned with the administration of justice given by this Republic prosecutor without delay.
- (3) The Republic prosecutor issues his or her orders to the judicial security force officers in paper; or orally or in case of emergencies. An order given orally is issued in paper as well, in the shortest time possible.
- (4) Other public functionaries are also obligated to provide the information and the documents required within the scope of the investigation being conducted, to the Republic prosecutor without delay.
- (5) Direct investigations are conducted by the Republic prosecutors, concerning public functionaries for whom improper exploitation or negligence in their duties or works related to the administration of justice appointed to them by the Law or required of them at the legal offices, and security force supervisors or officers for whom improper exploitation or negligence in the oral and written requests and orders given by the Republic prosecutors have been determined. The provisions of the Law about the Adjudication of Civil Servants and Other Public Officers are administered for governors and sub-governors; the procedures of exercise of jurisdiction judges are subject to due to the duties are administered concerning senior security force supervisors.

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

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

Article 162

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

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

Article 163

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

The judicial security force and its duties

Article 164

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

The judicial security functions of other security units

Article 165

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

The duty to bring a public prosecution

Article 170

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

- c) Identity of the murdered, victim of the crime, or the person injured by the crime,
 - d) Attorney or legal representative for the victim of the crime or the person injured by the crime,
 - e) Identity of the informant provide that disclosure of identity would not be detrimental
 - f) Identity of the person who filed the complaint
 - g) Date when the complaint was made
 - h) The crime charged and applicable articles of law,
 - i) The place, date and time interval for the crime charged,
 - j) Evidences of the crime,
 - k) Statement of whether the suspect is under arrest; dates and durations for detention and arrest if he is under arrest
- (4) The indictment shall explain the actions that constitute the crime charged and relate them to evidences at hand .
 - (5) The conclusion part of the indictment shall set out not only the points that are against the suspect but also those that are in his favor.
 - (6) The conclusion part of the indictment shall state what criminal and safeguard measures set out in the law are sought for the crime committed; if the crime has been committed as part of an operation by a juristic person, the safeguard measure that are applicable to the juristic person concerned shall be openly stated.

Discretion powers in bringing public prosecution

Article 171

- (1) The public prosecutor may not bring public prosecution in cases where there are conditions that require application of provisions governing effective repentance as a grounds at personal level for removal of the punishment.

(III) LAW ON INTELLECTUAL AND ARTISTIC WORKS, LAW NUMBER: 5846

Definitions

Article 1/B

The following terms have the following meanings:

- a) **Work:** Any intellectual or artistic product bearing the characteristic of its author, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.
- b) (Amendment: 3.3.2004 - 5101/28) **Author:** The person creating the work.
- c) **Adaptation:** Intellectual and artistic product bearing the characteristic of the adaptor, which is created by benefiting from another work but which is not independent of such work.
- d) **Collection:** Works such as encyclopedias and anthologies whose content consists of selection and arrangements, which are the results of intellectual creativity, provided that the rights on the original work are reserved.
- e) **Fixation:** The act of recording sounds or representation of sounds or sounds and images in an apprehensible, reproducible and transmittable manner.
- f) **Phonogram:** The physical medium that carries sounds in which sounds of a performance or other sounds or representations of sounds are fixed, excluding fixation of sounds that are comprised in audiovisual works such as cinematographic works.
- g) **Computer program:** A set of computer instructions arranged in a way that will make a computer system carry out a special process or task and the preparatory work that will lead to the creation and development of such set of instructions.
- h) **Interface:** The parts of a program that form the interaction and connection between the hardware and software elements of a computer.
- i) **Interoperability:** The ability of computer program parts to jointly function, to interact and to mutually use the exchanged information.
- j) **Related rights:** The rights that belong to holders of neighbouring rights and film producers that make the first fixation of films, provided that the moral and economic rights of the author are not prejudiced.
- k) **Neighbouring rights:** The rights that belong to performers who interpret, introduce, recite, sing, play and perform a work in various ways and in an original form with the permission of the author, phonogram producers that make the first fixations of sounds that are the result of a performance or other sounds and radio-television organizations, provided that the moral and economic rights of the author are not prejudiced.

l) (Amendment: 3.3.2004 - 5101/9) **Ministry:** The Ministry of Culture and Tourism.

B. Types of Intellectual and Artistic Works

I. Literary and Scientific Works

Article 2

The following are literary and scientific works:

1. (Amendment: 7.6.1995 - 4110/1) Works that are expressed by language and writing in any form, and computer programs expressed in any form together their preparatory designs, provided that the same leads to a computer program at the next stage.
2. (Amendment: 1.11.1983 - 2936/1) All kinds of dances, written choreographic works, pantomime and similar theatrical works without dialogue;
3. (Amendment: 7.6.1995 - 4110/1) All kinds of technical and scientific photographic works, all kinds of maps, plans, projects, sketches, drawings, geographical or topographical models and similar works, all kinds of architectural and urban designs and projects, architectural models, industrial, environmental and theatrical designs and projects, lacking in aesthetic quality.

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

Criminal Actions

I- Offenses

(1) Infringement of Moral Rights

Article 71 (Amendment: 1.11.1983- 2939/11)

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

1. Publishes a work or discloses it to the public, irrespective of whether it has been made public, without the written permission of the author or his successor;
2. Gives a title to a work or to the reproduced copies of the work without the written permission of the author or his successor;
3. Gives the appearance that the work of another person is his own or his own work is that of another person or who acts contrary to the provision of second paragraph of Article 15,
4. Fails to cite the source in the cases covered by Articles 32, 33, 34, 35, 36, 37, 39 and 40, or cites the source in a wrong, incomplete or misleading way,
5. (Addition: 21.2.2001- 4630/ 26) Modifies a work without the written permission of the author,

(Amendment: 3.3.2004- 5101/ 17) shall be sentenced to imprisonment from two years to four years, or a judicial fine between fifty billion TL. and one hundred and fifty billion TL, or both considering the severity of the damages.

(2) Infringement of Economic Rights

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

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

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

sounds, and/or images including digital transmission or acts as intermediary for such dissemination,
shall be sentenced to imprisonment from two years to four years or a judicial fine between fifty billion TL. and one hundred and fifty billion TL. or both considering the severity of the damages.

(3) Other Offenses

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

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

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

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

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

II. Offender

Article 74

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

Any person who, in the knowledge of the unlawful nature of the performance of a work, provides premises for such performance with or without consideration or takes a role or part in the performance, shall be punished as an accomplice.

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

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

III. Prosecution and Recidivism

Article 75 (Amendment:3.3.2004-5101/21)

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

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

1. The Ministry of Education and the Ministry of Culture in the cases covered by subparagraph (4) of Article 71 with respect to acts contrary to the obligation to cite the source as required by Article 35;
2. The Ministry of Culture and the Directorate General of Press and Publication and the institutions

representing the Turkish press in the cases covered by subparagraph (4) of Article 71 with respect to the acts contrary to the obligation to cite the source as required by Article 36.

3. The Ministry of Culture in the cases covered by the subparagraph (14) and (15) in the framework of the last paragraph of the Article 19.

4. Collecting societies for the fields in which they operate.

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

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

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

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

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

(IV) THE RELEVANT TURKISH LEGISLATION ON JUDICIAL COOPERATION IN CRIMINAL MATTERS:

1. Constitution:

In the Constitution, there are two provisions related to judicial cooperation in criminal matters. Article 90 regulates the relationship between the laws and international agreements inter alia on judicial cooperation in criminal matters.

Under Article 90, 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 internal part of the national legal system and can directly be enforced.

No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional.

Article 38 of the Constitution provides that citizens shall not be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court.

2. Code and Laws:

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

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

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

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

3. International Agreements:

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

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

a) COUNCIL OF EUROPE CONVENTIONS

No	Title	Opening of the treaty	Entry into force	Date of ratification	Entry into force
1	European Convention on Extradition	13/12/1957	18/4/1960	18/11/1959	26/11/1959
2	European Convention on Mutual Assistance in Criminal Matters	20/4/1959	12/6/1962	18/3/1968	16/10/1968
3	European Convention on the International Validity of Criminal Judgments	28/5/1970	26/7/1974	1/3/1977	1/6/1977
4	European Convention on the Transfer of Proceedings in Criminal Matters	15/5/1972	30/3/1978	1/3/1977	27/12/1977
5	European Convention on the Suppression of Terrorism	27/1/1977	4/8/1978	27/10/1980	26/3/1981
6	Second Additional Protocol to the European Convention on Extradition	17/3/1978	5/6/1983	8/5/1991	8/5/1991
7	Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters	17/3/1978	12/4/1982	18/5/1987	18/8/1987
8	Convention on the Transfer of Sentenced Persons	21/3/1983	1/7/1985	26/3/1987	26/6/1987
9	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime	8/11/1990	1/9/1993	16/6/2004	1/2/2005

b) UNITED NATIONS CONVENTIONS

No	Title	Date of ratification	Entry into force
1	Single Convention on Narcotic Drugs, 1954. (New York, 30 March 1954) amending with Protocol amending the Single Convention on Narcotic Drugs, 1954. (Geneva, 25 March 1954)	27/12/1966	27/3/1967
2	Convention on psychotropic substances. (Vienna, 21 February 1971)	27/10/1980	22/2/1996
3	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (Vienna, 20 December 1988)	22/11/1995	
4	United Nations Convention against Transnational Organized Crime (New York, 15 November 2000)	30/1/2003	25/3/2003
5	International Convention for the Suppression of the Financing of Terrorism (New York, 9 December 1999)	10/1/2002	28/7/2002
6	International Convention for the Suppression of Terrorist Bombings (New York, 15 December 1997)	11/1/2002	30/6/2002

c) OECD CONVENTIONS

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

d) BILATERAL AGREEMENTS

Countries Which Turkey Has Concluded Agreements on MLA and Extradition	MUTUAL ASSISTANCE	EXTRADITION
ALGERIA		X
AUSTRALIA		X
BOSNIA-HERZEGOVINA	X	X
CHINA	X	
EGYPT	X	X
INDIA	X	X
IRAN	X	X
IRAQ	X	X
JORDAN	X	X
KAZAKHSTAN	X	X
KUWAIT	X	X
LEBANON	X	X
LIBYA		X
MOROCCO	X	X
PAKISTAN		X
SYRIA	X	X
TAJKISTAN	X	X
THE TURKISH REPUBLIC OF NORTHERN CYPRUS	X	X

TUNISIA	X	X
UNITED STATES	X	X
UZBEKISTAN	X	x

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

4. Circulars

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

As the recent TCC and TCPC came into force on 1 June 2005, a new circular no: 69 and dated 1/1/2006 has been issued. Mainly following issues are covered in this circular:

- Service of documents and letters rogatory including mutual legal assistance on the enforcement of the decisions on seizure and confiscation,
- Extradition, requests for search of offenders with Interpol Red Notice,
- Transfer of sentenced persons,
- Researches of addresses in abroad and provision of birth and death certificates and judicial records of foreign nationals.

(V) JUDICIAL COOPERATION IN PRACTICE

1. Mutual Legal Assistance

Turkey does not have any legislation that specifically deals with MLA. Bilateral and multilateral conventions are the main instruments in MLA practice in Turkey. The Ministry of Justice of Turkey plays a central role in judicial co-operation at large. General Directorate of International Law and Foreign Relations as a central authority receives the requests for mutual legal assistance and then transmits them to the competent authorities for execution. According to the general legal system, the competent authority may be either the court or the public prosecutor depending on the type of the assistance sought.

In cases of urgent requests under article 15 of the 1959 Convention (i.e. via Interpol), the Ministry of Interior will transmit the request to the Ministry of Justice for execution. Turkey has a positive approach to judicial co-operation, more precisely; incoming requests are carried out in a flexible and a cooperative manner. Turkey carries out requests of mutual assistance in criminal matters basically within the framework of "European Convention on Mutual Assistance in Criminal Matters."

2. Extradition

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

Various bodies are involved in the extradition procedure:

- The Ministry of Justice makes initial assessment whether the extradition documents are in conformity with the relevant international conventions or bilateral agreements.
 - Criminal Court of Peace, decides on the provisional arrest of the person concerned for the extradition purposes.
 - Felony court of the place where the person concerned is present, decides on the extradition request in accordance with Article 18 of the Turkish Criminal Code and according to the provisions of the relevant international conventions,
 - Court of Cassation, decides on the appeals made to the felony court,
 - The Council of Ministers decides on the execution of decision of the court,
- Council of State examines the challenges lodged against the decision of the Council of Ministers.

Article 38 of the Constitution provides that citizens shall not be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court.