

March 2006

TURKEY

- 1. Which are the procedures for the incorporation of Security Council resolutions imposing sanctions into the internal legal order of your State? Are they incorporated through legislation, regulations or in any other way? Has the implementation given rise to any constitutional or other legal problems at national level? Is there any relevant case-law?**

Article 90/4 of the Turkish Constitution reads as follows:

“International treaties duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these treaties on the ground that they are unconstitutional. In case of a conflict between international treaties in the area of fundamental rights and freedoms duly put into effect and the laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail.”

According to the above mentioned constitutional rule and other relevant laws, international treaties ratified by Turkish Government constitute integral part of Turkish Law.

As regards the incorporation of UN Security Council (UNSC) resolutions imposing sanctions into the internal legal order, Turkish laws do not provide any specific procedure. However, scope of the recent UNSC resolutions which impose sanctions on real and legal persons and organisations necessitated further actions to incorporate them for the purpose of informing relevant governmental-private institutions and the public as well. Therefore, by virtue of article 90 of the Constitution and article 25 of the UN Charter, the Council of Ministers took decisions (Decrees) to incorporate the UNSC sanctions and appended lists of them, which were then published in the Official Gazette.

Since the Council of Ministers is competent to take necessary measures for the implementation of treaties, the implementation of UNSC resolutions has not given rise to constitutional or other legal problems. Nevertheless, Decrees of the Council Ministers are of administrative character and article 125/1 of the Constitution lays down the rule that *“all acts and actions of the Administration are subject to judicial review”*.

There is no relevant case law.

- 2. Does the choice depend on the content and the legal nature of the Security Council resolution?**

The choice depends on the legal nature of the UNSC resolutions imposing sanctions which are of binding nature as well as their content necessitating further actions for effective implementation.

- 3. When sanctions are imposed for a fixed period of time which is not renewed, are they tacitly repealed within your domestic legal order or is any normative action required?**

When sanctions are imposed for a fixed period of time, as a rule the Council of Ministers Decrees also prescribe an expiration date concerning the implementation of the sanctions.

4. **When a Security Council resolution imposing an export embargo provides for exceptions while not establishing a committee to authorise such exceptions, does the incorporating act appoint a national authority which is competent to authorise export?**

As a rule, appointment of a national authority to authorise the exports is not necessary , since the Under secretariat of Foreign Trade attached to the Prime Ministry has an overall competence to authorise exports. However, Decrees of the Council of Ministers incorporating the UNSC Resolutions 1267/1999, 1333/2000 and 1373/2001 appointed the Ministry of Finance to take all measures and give the necessary permissions.

5. **Are Sanctions Committee decisions specifying Security Council sanctions or setting conditions for their activation incorporated into domestic law?**

Amendments to the appendix lists of the UNSC resolutions are incorporated through Council of Ministers additional Decrees which were also published in the Official Gazette.

6. **Have there been cases where the act incorporating sanctions in the domestic legal order was challenged in court for being in violation of human rights?**

There have been two cases until present time challenging the incorporation acts. One litigant is an individual and the other one is an entity. The claimants commenced suits before the Council of State (the highest administrative court mainly with appellate jurisdiction) which may assume jurisdiction over the Council of Ministers Decrees. All two complainants alleged inter alia that their fundamental rights were violated and requested the Court to issue stay orders of the relevant Decrees until the final decisions were rendered and the annulment of the Decrees. The Court rejected to issue stay orders on the ground that requirements for such measure did not exist.

The Turkish Government has given information on these actions to the UNSC Counter-Terrorism Committee.

7. **Are there decisions of national courts or state practice concerning the relationship between sanctions directed towards individuals and the human rights of these individuals?**

The actions referred above, are still pending in the Council of State.