

# **JUDICIAL COOPERATION IN CRIMINAL MATTERS**

## **IN TURKEY**

### **I. SOURCES OF LAW ON THE INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS:**

Turkey adopted the continental law system. Turkey's hierarchy of laws comprises the Constitution, laws and international treaties, decree-laws, decrees of the Council of Ministers, by-laws, regulations and communiqués. Other sources of law are precedents, doctrine, customs and general principles of law.

Brief information on the relevant legislation on judicial cooperation in criminal matters is as follows:

#### **1) Constitution:**

There is no specific provision on judicial cooperation in criminal matters in the Constitution. However, article 90 regulates the relationship between the laws and international agreements inter alia on judicial cooperation in criminal matters. It provides that international agreements duly put into effect carry the force of law. No appeal to the Constitutional Court can be made with regard to these agreements on the ground that they are unconstitutional. In case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.

According to this Article, when an international agreement has been ratified, it becomes internal part of the national legal system and can directly be enforced.

Furthermore 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) Laws and Regulations:**

There is no specific law regulating judicial cooperation in criminal matters in Turkish legal system. However, the following laws include the provisions on judicial cooperation in criminal matters:

**a) Turkish Criminal Code numbered 5237, dated September 26, 2004, Article 18 governs extradition:**

## **“Extradition**

**Article 18-(1)** *A foreigner, about whom a prosecution is initiated or who is convicted because of an offence committed or alleged to have been committed in a foreign country, may be extradited on a request for the purpose of carrying out prosecution or executing the sentence. However if the act based on extradition request is;*

- a) Not an offence under the Turkish Law,*
  - b) An offence of political or military nature or an offence opinion,*
  - c) Against security of the Turkish State, committed to the detriment of a Turkish citizen or a legal person established under Turkish law,*
  - d) Under the jurisdiction of Turkey,*
  - e) Barred or subjected to amnesty,*
- extradition request shall be refused.*

**(2)** *Citizens shall not be extradited to a foreign country except for the obligations arising under being party to the International Criminal Court.*

**(3)** *Extradition request shall not be accepted if there is strong suspicion that the person will be tortured or inhumanly treated or punished or prosecuted because of his political opinions or his membership of a particular social group, nationality, religion or race in case of his extradition to the requesting State .*

**(4)** *Felony court of the place where the person is present, shall decide on the extradition request in accordance with this article and the provisions of the relevant international conventions to which Turkey is a party. This decision is subject to appeal.*

**(5)** *If the court finds the extradition request admissible, execution of this decision is on the discretion of the Council of Ministers.*

**(6)** *Application of protective measures for requested person may be held under the relevant international conventions to which Turkey is a party.*

**(7)** *In case the extradition request is found admissible, detention order may be issued or other protective measures may be taken under the Code of Criminal Procedure.*

**(8)** *When extradition is granted, requested person shall be tried or punished only for the offences based on the extradition decision.”*

**b) Law numbered 2992 on the Organization and Functions of the Ministry of Justice:** Article 13/A of this Law provides that General Directorate of International Law and Foreign Relations is the central authority for execution of all kinds of mutual assistance requests in criminal matters.

**c) The Law on Prevention of Money Laundering numbered: 4208 dated November 19, 1996:**

Article 10, 11, 12 and 13 are the provisions regulating the controlled delivery.

“The Regulation Regarding the Implementation Procedures and Methods of Controlled Delivery” (published in the Official Gazette on September 15, 1997, No:23111) regulates the implementation of the Law on the above mentioned provisions.

d) The Law on the Execution of Convictions Given by the Foreign Courts concerning the Turkish Nationals and Convictions Given by the Turkish Courts concerning the Foreign Nationals” numbered 3002 and dated 1984

### 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.

In this context Turkey is party to the basic important multilateral conventions of the United Nations, the Council of Europe and OECD in this area. The lists of these conventions are as follows:

#### 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

### 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

## 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.

**List of bilateral agreements on MLA and extradition are as follows:**

<b>LIST of COUNTRIES with WHICH TURKEY has CONCLUDED TREATIES on MLA and EXTRADITION</b>	<b>MUTUAL ASSISTANCE</b>	<b>EXTRADITION</b>
<b>ALGERIA</b>		<b>X</b>
<b>AUSTRALIA</b>		<b>X</b>
<b>BOSNIA-HERZEGOVINA</b>	<b>X</b>	<b>X</b>
<b>CHINA</b>	<b>X</b>	
<b>EGYPT</b>	<b>X</b>	<b>X</b>
<b>INDIA</b>	<b>X</b>	
<b>IRAN</b>	<b>X</b>	<b>X</b>
<b>IRAQ</b>	<b>X</b>	<b>X</b>
<b>JORDAN</b>	<b>X</b>	<b>X</b>
<b>KAZAKHSTAN</b>	<b>X</b>	<b>X</b>
<b>KUWAIT</b>	<b>X</b>	<b>X</b>

<b>LEBANON</b>	<b>X</b>	<b>X</b>
<b>LIBYA</b>		<b>X</b>
<b>MOROCCO</b>	<b>X</b>	<b>X</b>
<b>PAKISTAN</b>		<b>X</b>
<b>SYRIA</b>	<b>X</b>	<b>X</b>
<b>TAJIKISTAN</b>	<b>X</b>	<b>X</b>
<b>THE TURKISH REPUBLIC OF NORTHERN CYPRUS</b>	<b>X</b>	<b>X</b>
<b>TUNISIA</b>	<b>X</b>	<b>X</b>
<b>UNITED STATES</b>	<b>X</b>	<b>X</b>
<b>UZBEKISTAN</b>	<b>X</b>	<b>X</b>

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

#### **4. Circulars**

The Ministry of Justice may issue circulars for the proper implementation of the international conventions on legal cooperation matters. In this regard, the Circular numbered 69 dated 01/01/2006 on criminal legal cooperation matters issued by the General Directorate of International Law and Foreign Relations is currently in force. The circular, the outline of which is signified below, is in the nature of the procedure.

Mainly the following issues are covered in this circular:

**a.** Service of documents and letters rogatory including mutual legal assistance on the enforcement of the decisions on seizure and confiscation,

- b.** Extradition, Requests for search of offenders with Interpol Red Notice,
- c.** Transfer of sentenced persons,
- d.** Researches of addresses in abroad and provision of birth and death certificates and judicial records of foreign nationals.

## **II. 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:**

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.

### **3. Transfer of Sentenced Persons:**

Legal base of the proceedings in relation to transfer of sentenced person is the “Law on the Execution of Convictions Given by the Foreign Courts concerning the Turkish Nationals and Convictions Given by the Turkish Courts concerning the Foreign Nationals” numbered 3002 and dated 1984 along with multilateral conventions such as “Convention on the Transfer of Sentenced Persons” and bilateral agreements. In case of non-existence of an agreement, principle of reciprocity is applied.

New Law on the Execution of Sentences and Security Measures came into force on 1 June 2005. In its Article 107 conditional release of the convicts is prescribed. According to this Article offenders who had served two thirds of an imprisonment may conditionally be released. The amount of imprisonment to be served for conditional release is 24 years for life imprisonment and 30 years for heavy life imprisonment.

Upon the approval by the Minister of Justice on the transfer of the concerned person, a decision is taken by the competent Ankara Court on the conversion of the foreign judgment. Afterwards, the surrender procedure is carried out in collaboration with the Ministry of Justice and Interior.

#### **4. Restraint, Confiscation and Seizure**

1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 2000 United Nations Convention Against Transnational Organized Crime, 2003 United Nations Convention Against Corruption, the European Convention on the International Validity of Criminal Judgments of 26 July 1974, the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and its Additional Protocol of 17 March 1978 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 are the main instruments in judicial cooperation requests regarding restraint and confiscation of assets.

When Ministry of Justice receives a request for restraint or confiscation of assets containing sufficient information as to the assets and the offence, it examines the declarations and reservations made by the state concerned to the relevant Conventions such as 1988 UN Convention or the European Convention on MLA to which Turkey and the requesting Country are a party to, and the domestic law are taken into consideration while evaluating the requests.

If the Ministry is of the opinion that the request is eligible, it transmits this request to the competent Public Prosecutor's Office.

The Prosecutor who deals with the request sends it to the competent criminal court in order to obtain a court order. In cases of drug related offences, organized crimes, corruption offences or money laundering, the special provisions regulated in the Criminal Procedural Law is applied for the proceeds of these crimes.