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# WHITE COLLAR CRIME

Crime is often perceived as something which occurs at the low end of the social spectrum, taking place among the poorer section of the world's society. However, this is not the case, as white collar crime is a considerable problem among even some of the world's biggest corporate entities and is actually one of the most common kinds of crime. To find out more, *Lawyer Monthly* speaks to Mr. Gönenç Gürkaynak, Esq. from ELIG, Attorneys-at-Law, an eminent, independent Istanbul law firm founded in 2005. ELIG is committed to providing its clients with high-quality legal services in an effective and business-minded manner. The firm focuses on the interests of its clients and combines a solid knowledge of Turkish law to develop legal solutions that meet the ever-changing needs of the clients in their international and domestic operations. The firm builds and maintains close working relationships with a number of international law firms and collaborates with them to serve mutual clients on a range of transactions.

**White collar crime – such as fraud, corruption and accounting fraud, continues to be a major concern for businesses of all sizes regardless of the industry they operate in. What industries are perceived to be the most susceptible to these types of crime, in your experience?**

In order to determine the industry that perceives itself to be the most susceptible to corruption, the results of TUSIAD's (Turkish Industry and Business Association) survey, publicized in November 2014, could be examined, which aimed to capture corruption perceptions in the Turkish business world. One of the questions asked during this project was with regard to the perception of the frequency of corruption encountered in different sectors. The results demonstrated that of the manufacturing, construction, wholesale and retail, transport, accommodation industries and other services, the construction sector perceived corruption to be the most frequent. Accordingly, 54% of the construction sector communicated their perception that they either encountered corruption frequently or very frequently.

**Why do you think this is?**

As a matter of course, one would expect corruption and corruption-related crimes to occur most frequently where there is the most interaction with bureaucracy in the form of obtaining licenses, permits etc. Therefore, one would expect industries that heavily rely on the results of their interactions with bureaucracy to complete their operations, e.g. energy, mining and construction, to encounter corruption the most. Unsurprisingly, the TUSIAD project mentioned above found that the construction sector with the highest perception of corruption frequency,

**What is the current landscape in Turkey regarding white collar crime?**

During the last two decades as the fight against corruption grew more popular globally, so did Turkey's interest in this fight. Accordingly, Turkey has signed all territorially applicable international anti-corruption conventions. Turkey frequently updates its legislation in accordance with the trends in the international arena, as well as in accordance with the criticism it receives from the Working Group on Bribery. The last of these amendments were realized during July 2012, when the definition of bribery was broadened and private commercial bribery was introduced into the Turkish criminal law system. Even though corporate criminal liability is against the Turkish criminal law system, in 2009, a provision was introduced into the law on misdemeanors, providing that the crimes of bid-rigging and bribery should result in administrative fines for legal persons.

**How does the Turkish government shape legislative policies to fight white collar crime?**

One can observe that the Turkish government's efforts of shaping the legislative landscape have increased in the last decade. The first of these efforts was the National Anti-Corruption Strategy, which was accompanied with an action plan. This strategy focused on preventive measures, law enforcement measures and measures to raise awareness. Turkey's participation in the Open Government Initiative is also one of such efforts which promotes transparency and raising awareness. Finally, one of the most important issues discussed by the G20/B20 2015, under Turkish presidency, is anti-corruption. Through these efforts, the government creates discussions in

the civil platforms and consequently could aim to turn these discussions into legislations.

**How would you change the law, if you could?**

The OECD Phase 3 Report on Turkey ("Report") mentions several criticism points with regard to Turkish legislation. One of such points is that Turkey, still, has not introduced any separate legislation on whistleblower protection. Currently, general provisions of Turkish labor law apply to whistleblower protection. However, according to the Report more adequate protection should be provided for whistleblowers. Another point of criticism was with regard to the enforcement of anti-corruption legislation and that such implementation should be free of political considerations. Pursuantly, whistleblower protection and ensuring the enforcement of the anti-corruption laws would be what we would change about anti-corruption legislations.

**Is there anything else you would like to add?**

In 2014, Transparency International dropped Turkey 19 points in its annual Corruption Perceptions Index. Since one of the sources Transparency International uses when evaluating the country ranks is their Freedom House ranks, Turkey's drop to a "not free" status in the Freedom House statistics could be one of the reasons for such a stark decline. This is not without merit. Transparency and anti-corruption efforts go hand in hand. Currently, although Turkey has a sufficient legal structure to fight corruption, one observes little or no enforcement of corruption legislations. However, the combination of freedom of information and expression along with a political will to prosecute corruption related crimes could carry Turkey to better Corruption Perception Index scores. **LM**