



ICLG

The International Comparative Legal Guide to: **Business Crime 2017**

7th Edition

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Turkey

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Ç. Olgu Kama



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1 General Criminal Law Enforcement

1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

Turkish civil courts handle civil cases. Turkish criminal courts handle criminal cases, and have the power, if necessary, to issue interim orders and injunctions.

The prosecution of corporate or business fraud and money laundering, however, ultimately rests with the public prosecutors.

In Turkey, there is no distinction between enforcement authorities at the national level and those at the regional level.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

Administrative authorities investigate the financial and tax crimes prior to the prosecution. In particular, the Financial Crimes Investigation Board (*MASAK*) has the general role of developing policies and improving legislation, and collecting specific data to analyse and evaluate suspicious transaction reports in the context of financial crime. The Prime Ministry Inspection Board, as authorised by and on behalf of the Prime Minister, has the authority to inspect the finances and the alleged corrupt conduct of all public and private institutions.

In the context of tax evasion, it is necessary to obtain the opinion of the relevant tax authorities before prosecuting tax crimes.

In the context of financial crimes, the Capital Markets Board of Turkey monitors all participants in the capital markets industry to reduce the risk of non-compliance with laws and regulations.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

Under Turkish law, business crime can be investigated criminally or, as described under question 1.2, administratively. As for civil enforcement, those who have suffered losses can always ask for the civil judge to rule for a compensation amount.

2 Organisation of the Courts

2.1 How are the criminal courts in your jurisdiction structured? Are there specialised criminal courts for particular crimes?

There are three types of criminal courts in Turkey: criminal peace judgeships; criminal courts of first instance; and the high criminal courts.

As of June 2014, criminal peace courts were abolished under the Turkish legal system to be replaced with criminal peace judgeships. Criminal peace judgeships were established to take decisions that should be taken by a judge during investigations, and examine the objections against these decisions, aside from other situations where the laws empower the criminal peace judgeships to take decisions. Other authorities of the criminal peace judgeships include objections to apprehension and being taken under into custody, the drawing-up of arrest warrants under certain situations, and apprehension decisions. Among the cases tried by the high criminal courts are cases of looting, malversation, forgery on official documents, qualified forgery, and fraudulent bankruptcy, as well as crimes that are penalised with aggravated life imprisonment, life imprisonment and imprisonment for more than 10 years. Criminal courts of first instance try cases that do not fall within the duties of the criminal peace judgeship and high criminal courts. Aside from the foregoing three types of criminal courts, there are also specialised criminal courts, such as the criminal courts for intellectual and industrial property rights and military criminal courts.

2.2 Is there a right to a jury in business crime trials?

No. There is no right to a jury in business crime trials in Turkish criminal adjudication.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

o Securities fraud

Turkish Criminal Code No. 5237 (the Criminal Code) defines fraud as “deceiving someone by fraudulent acts and

obtaining benefit for itself or for another person's benefit to the detriment of the deceived person or another person".

Misrepresentation in connection with sales of securities occurs in the form of "insider information". Please see "Insider trading" below.

o **Accounting fraud**

Tax Procedure Law No. 213 (Law No. 213), as well as the General *Communiqué* on Tax Procedure Law (Series No. 229), sets out penalties for fraudulent conduct in the context of financial records, such as false invoices and not issuing a retail sales certificate.

o **Insider trading**

Under the Capital Markets Law No. 6362 (Law No. 6362), it is illegal to use "inside information" to purchase or sell securities such as stocks, bonds, options, etc.

o **Embezzlement**

Under the Criminal Code, embezzlement is defined as the transfer of the propriety of a property to its possessor or to another person, whose possession belongs to a public official due to his duty or a property that a public official is in custody of or has the duty to protect.

o **Bribery of government officials**

The Criminal Code defines bribing as providing a benefit to a public official for the performance or omission of an act contrary to the requisites of the duties of the official.

Pursuant to the Criminal Code, bribery is deemed to be committed when a person and a public official agree to exchange a benefit for the performance or omission of an act contrary to the requisites of the duties of the official. The actual transfer of money or another benefit is not an element of the crime.

o **Criminal anti-competition**

Administrative monetary fines are imposed for individuals and undertakings violating Turkish competition laws. While the Turkish competition law regime is of a civil and an administrative nature, an act in connection with competition law which would constitute a criminal act pursuant to the Criminal Code would be subject to a separate criminal investigation, which would then be adjudicated in the criminal courts.

o **Cartels and other competition offences**

As competition law is subject to administrative enforcement under Turkish law, there are no criminal offences for cartels or other competition law issues.

o **Tax crimes**

Law No. 213 requires taxpayers to keep documentation for a period of five years after the end of the financial year to which they relate.

Publicly traded companies are obliged to keep interim financial statements and income statements on a quarterly basis. For non-public companies, each shareholder of a company has the right to request the auditing of the company records and books, as well as the right to request information on the company actions.

o **Government-contracting fraud**

Certain actions and behaviour are prohibited during the preparation, execution and finalisation of tender contracts, including bid-rigging and fraud. Intent is required to conclude that an act in tenders constitutes fraud and bid-rigging.

o **Environmental crimes**

Pursuant to Article 181 (1) of the Criminal Code, individuals who intentionally damage soil, water or air by disposing of waste or residuals which damage the environment, and which are against the technical procedures set out in the relevant laws, are penalised with six months to two years of imprisonment.

Negligently polluting the environment, noise pollution and pollution as a result of construction are other forms of environmental crimes punishable under the Criminal Code.

o **Campaign-finance/election law**

Article 11(1) of Law No. 2839 on the Selection of the Members of Parliament prohibits individuals who have committed crimes, including bribery and fraud, from being elected as a Member of Parliament.

Aside from the above, the general provisions under the Criminal Code for forgery and bribery are also applicable to Members of Parliament.

o **Market manipulation in connection with the sale of derivatives**

Article 107 of Law No. 6362 defines market manipulation as making sales or purchases, giving/annulling/amending orders or realising account activities or providing false or misleading information, spreading rumours, announcing news, making comments, and drafting or spreading reports for the purpose of creating a false or misleading impression on the prices of capital market instruments or fluctuation thereof, on supply-demand parameters or for affecting the prices and values of capital market instruments or the investors' decision.

The accused shall act with the purpose of realising manipulative transactions in the stock market in order for the foregoing act to constitute the crime of market manipulation.

o **Money laundering or wire fraud**

Money Laundering: the following items mentioned below constitute the anti-money laundering legislation in Turkey:

- Law No. 5549 on the Prevention of Laundering Proceeds of Crime.
- Regulation on the Implementation of the Law No. 5549.
- The Criminal Code.

Article 282 of the Criminal Code stipulates that a person is guilty of an offence if, in relation to a crime that is punishable by imprisonment of six months or more, he either:

- transfers the proceeds value to a foreign company; or
- subjects the proceeds to various transactions to:
 - conceal their source; or
 - create the impression that the money was legitimately obtained.

Wire Fraud: According to Article 17 of the Criminal Code, the commission of fraud through the use of information systems, banking or credit institutions as tools or through the provision of a credit that should not be provided by banks or other credit institutions are deemed as aggravating factors for fraud, and are punishable with three to seven years of imprisonment and a criminal fine of up to 5,000 days. However, the fine cannot be lower than two times the benefit derived from the crime.

o **Any other crime of particular interest in your jurisdiction**

Bid-Rigging

According to Article 235 of the Criminal Code, a person who conspires to rig bids in an auction for purchase, sale or lease of goods or services carried out on behalf of public entities will be sentenced to three to seven years of imprisonment.

3.2 Is there liability for inchoate crimes in your jurisdiction? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Inchoate crimes are regulated under Article 35 of the Criminal Code, which provides that “[a] person who acts with the intention of committing crime but fails to perform the acts necessary to commit the crime due to a cause beyond his control, is considered to have attempted to commit crime”.

A person can be liable for attempting to commit a crime. Article 35(2) provides that “[i]n case of an attempt to commit a crime, the offender is sentenced to imprisonment from 13 years to 20 years instead of heavy life imprisonment according to the seriousness of the damage or danger; and imprisonment from nine years to 15 years instead of life imprisonment. In other cases, the punishment is abated from one-quarter to up to three-quarters”.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee’s conduct be imputed to the entity?

The general principle under Turkish criminal law is that penal sanctions cannot be imposed on legal entities.

On the other hand, the Criminal Code provides that if a bribe creates an unlawful benefit to a legal entity, security measures may be imposed on the relevant entity: (i) invalidation of the licence granted by a public authority; (ii) seizure of the goods which are used in the commitment of, or the result of, a crime by the representatives of a legal entity; or (iii) seizure of pecuniary benefits arising from or provided for the committing of a crime.

As of 2009, Article 43/A of the Law on Misdemeanours No. 5326 stipulates that in cases where, among others, the crime of bribery or bid-rigging is committed by a representative of a legal person or by persons who are discharging duties within the scope of the activities of the legal person even though s/he is not a representative, to the benefit of that legal person, the said legal person will be punished by an administrative fine.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime? Under what circumstances?

As outlined in question 4.1 above, the general principle under Turkish criminal law is for managers, officers and directors of legal entities to be personally held accountable for a criminal act.

Under certain limited conditions, directors, managers and officers of a company may be held personally liable for the non-payment of public debt, such as taxes, charges, and administrative levies. Such liability is a second degree liability, which means that the precondition is to first apply to the company, and at the second stage, apply to the directors for the outstanding debt. According to Article 553 of the Turkish Commercial Code No. 6102, the founders and members of the board of directors, in addition to the managers and liquidators of a company, are liable to the company and the shareholders in cases where they breach their obligations arising from the law and the articles of incorporation at their fault. Such liabilities could, of course, include the commission of misdemeanours, leading to administrative fines against the company.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

Authorities will directly pursue an individual and, if deemed necessary, pursue the legal entity itself in order to impose relevant security measures or the administrative fine mentioned under question 4.1.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

Enforcement-limitations periods are calculated by the relevant laws applicable to each case, and commence as of the date on which the respective crime was committed.

Article 66 of the Criminal Code specifically sets out the applicable limitations periods as follows:

“(1) Unless otherwise provided by law, public action is dismissed upon lapse of:

- a) Thirty years in offences requiring punishment of aggravated life imprisonment;
- b) Twenty-five years in offences requiring punishment of life imprisonment;
- c) Twenty years in offences requiring punishment of imprisonment for no fewer than 20 years;
- d) Fifteen years in offences requiring punishment of imprisonment for more than five years and fewer than 20 years; and
- e) Eight years in offences requiring punishment of imprisonment or a punitive fine for no more than five years.”

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

Crimes occurring outside the limitations period may not be prosecuted even if they are part of a pattern or practice, or ongoing conspiracy. The Turkish Criminal Procedure Law No. 5271 (Criminal Procedure Law) provides that limitations periods will be cut in certain circumstances (such as instances where the initiation of a public lawsuit has been postponed (Article 171(4) of the Criminal Procedure Law), in which case, crimes committed outside the limitations period may not be prosecuted.

5.3 Can the limitations period be tolled? If so, how?

Limitations periods can be suspended or vacated.

In cases where the proceeding of investigation and prosecution is bound to a permission or a decision, or the result of a matter which needs to be solved by another authority, the statute of limitations is suspended until such permission or decision is obtained, or the matter is resolved, or the court decision declaring that the offender is a fugitive is abated pursuant to the law.

The statute of limitations is vacated:

- a) If any one of the suspects or offenders is brought before the court in order to give their statement or for interrogation purposes.

- b) If a decision is given to arrest any one of the suspects or offenders.
- c) If an indictment in relation to the committed offence is prepared.
- d) If a decision for conviction is given (even if it is with respect to some, but not all of the offenders).

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Enforcement agencies do not have jurisdiction to enforce their authority outside their jurisdiction's territory.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

The Criminal Procedure Law provides that upon learning that a crime has been committed, the public prosecutor, *ex officio*, starts conducting a search to determine the existence of a crime. If the public prosecutor decides that there is sufficient doubt for an investigation to be launched, it initiates a fully-fledged investigation.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

Yes. Mutual legal assistance procedures are conducted on the basis of bilateral or multilateral treaties that Turkey is a party to. Turkey is a party to the European Convention on Mutual Assistance in Criminal Matters and the European Convention on Extradition. Mutual assistance with foreign prosecutors is governed pursuant to the provisions of the former.

Other conventions setting out rules concerning cooperation among foreign prosecutors in criminal cases and which Turkey is a party include: the OECD Convention of Combatting Bribery of Foreign Public Officials in International Business Transactions; the Convention on the Transfer of Sentenced Persons; the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; the Criminal Law Convention on Corruption; the European Convention on the International Validity of Criminal Judgments; the European Convention on the Transfer of Proceedings in Criminal Matters; the European Convention on the Suppression of Terrorism; the European Agreement on the Transmission of Applications for Legal Aid; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

Public prosecutors generally have the following powers to gather information when investigating criminal matters, including business crimes:

- The power to conduct all types of searches, either directly or through police enforcement working under the public prosecutor *ex officio*, or upon being informed of a crime.
- The power to request any kind of information from all public officials in order to determine the facts of a case and in order to conduct adjudication.
- The power to issue orders to judicial police enforcement officials in writing and, in cases of emergency, verbally, to obtain the requested information. These public enforcement officials are obliged to provide the necessary information and documents post-haste.
- The power to gather information regarding civil registries and criminal records, summoning and interrogating the relevant parties.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

Public prosecutors are authorised to conduct any research, either directly or through the use of the police force, and request information from public authorities.

- Searches can be conducted on a suspect's body, dwelling place or place of business. It is necessary to obtain a search order for searches conducted on premises, workplaces and closed areas not accessible by the public from:
 - a judge;
 - a public prosecutor in cases where it is disadvantageous to wait for a judge; or
 - the police, pursuant to a written order issued by the police, if the public prosecutor cannot be reached.
- If there is reasonable suspicion that criminal evidence exists, the public prosecutor can:
 - conduct on-site searches and pursue an investigation; or
 - pursue public prosecution if, at the end of the investigation phase, the evidence gathered gives rise to sufficient doubt that a crime was committed.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel? Do the labour laws in your jurisdiction protect personal documents of employees, even if located in company files?

Public prosecutors can issue interim injunctions (such as freezing orders, confidentiality and disclosure orders, orders for stay of

execution, etc.) during the investigation phase only. A lawyer's offices and house may only be searched with a court order and in connection with the case that is indicated in the decision, under the inspection of a public prosecutor and a representative from the relevant bar association.

According to the general principles applicable to attorney-client privilege, a material is deemed to be privileged if it has been prepared by an independent attorney (i.e. without an employment relationship with her/his client) and to the extent that it aims at the client's right of defence.

An employer is obliged to use the information obtained about its employee befitting the rules of good faith and the law, and is obliged to refrain from disclosing information for which the employee has a rightful interest in its confidentiality. In its decision dated 24 March 2016, the Turkish Constitutional Court held that an employer could monitor its employees' corporate email accounts, even if such accounts contain information pertaining to the employee's private life, given that such monitoring is proportionate to the employer's legitimate purpose. Then again, the employer's entitlement in that regard is not boundless, and the employer shall conduct a target-driven review on an employee's business computer, considering the exact purpose of such monitor. In other words, the employer should, in any case, refrain from an unnecessary invasion.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

Please see question 7.2 above.

7.5 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?

Please see question 7.2 above.

Questioning of Individuals:

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

The public prosecutor can question an individual during the prosecution phase of a criminal case (i.e. when the public prosecutor has proceeded to initiate a prosecution after its investigation of the relevant case file).

The procedure under which a suspect may be questioned is regulated under Article 147 of the Criminal Procedure Law. Accordingly:

- The suspect's identity must be determined and the suspect is obliged to answer these questions truthfully.
- The relevant allegations are to be explained to the suspect.
- The suspect is informed about his right to choose counsel, and if he is unable to choose counsel but would like to be represented by a counsel, the relevant bar association will appoint a counsel for him.
- The suspect is informed that he has the right to remain silent.
- The suspect is reminded that he could request that substantive evidence to exonerate him from the allegations could be collected.

- Information on the personal and economic condition of the suspect is gathered.

The date and place of the questioning, plus the identities of the individuals present during the questioning, are all noted down, and the individual who has been questioned signs the questioning record and acknowledges that he has read the written record.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

A third person can be questioned as a witness under Turkish criminal law.

Witnesses may be summoned for questioning to the court, and the Criminal Procedural Law sets out the procedure with which witnesses may be summoned and the consequences of not complying with such summoning.

Each witness is questioned separately and alone, without the next witness being present during the respective questioning. Each witness must also take an oath, swearing to the accuracy and verity of his statements.

7.8 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

The person being questioned has the right to be represented by an attorney, as well as the right to remain silent. According to Article 38 of the Turkish Constitution, nobody can be forced to make statements or provide evidence incriminating themselves. This privilege cannot be deemed as inference of guilt.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

After the investigation phase of a criminal matter, criminal courts may accept the indictment concerning the criminal charges and may pursue prosecution, in which case, a public lawsuit is initiated.

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

According to Article 160 of the Criminal Procedure Law, the public prosecutor is authorised to initiate an investigation in order to find the material truth, ensuring a fair adjudication. Once the public prosecutor learns of a matter which creates the impression that a crime has been committed, either through the report of a crime or any other way, the public prosecutor initiates an investigation to find out whether there is a need to file a criminal lawsuit. Article 170 of the Criminal Procedure Law states that in cases where the evidence gathered through the investigation creates adequate suspicion regarding a crime committed, the public prosecutor prepares an accusation addressing the court in charge.

The public prosecutor may postpone the prosecution, and in cases where there is not enough evidence to create adequate suspicion, the public prosecutor may decide that there is no need for prosecution.

After the court accepts the indictment, the prosecution process is initiated. The judge makes its decision based on the general principles defined in the Criminal Code and the Criminal Procedural Law.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

Article 253 of the Criminal Procedure Law provides a “pre-trial diversion” in the form of an “agreement” between the suspect and the aggrieved person or the real person who has been damaged as a result of the respective act. Article 253 can only be applicable in cases of certain crimes as set out in Article 253. This includes the crime of disclosure of documents or information with the qualification of commercial, banking or customer secrets.

At the end of the process, the negotiator prepares a report and submits this report to the public prosecutor. If an agreement is reached between the parties, a detailed explanation as to how an agreement was reached is written out in the report, which must also include the parties’ signatures.

If, at the end of the agreement, the suspect fulfils his obligation, then the public prosecutor decides not to prosecute. If the fulfilment of such an obligation is promised to be made at a later date, or is divided into instalments, or is to be made for a continuous period of time, then the filing of a public lawsuit will be postponed. If, after such a postponement, the relevant obligations as per the agreement reached are not fulfilled, then the public lawsuit will be filed.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.

Non-prosecution agreements or deferred prosecution agreements are not available in Turkey.

8.5 In addition to, or instead of, any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies may apply.

A criminal investigation or a criminal proceeding does not bring any civil penalty or remedy on the defendant. All sanctions connected to criminal investigation or criminal proceedings are regulated under criminal law.

9 Burden of Proof

9.1 For each element of the business crimes identified above in Section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

The public prosecutor bears the burden of proving that a certain crime was committed by the defendant.

9.2 What is the standard of proof that the party with the burden must satisfy?

Evidence should not have been obtained illegally, evidence should not be brought if it has no impact on the circumstance for which a decision will be given, and evidence brought only in order to prolong the case is not allowed. Accordingly, anything could be considered as evidence, so long as it is legal, has an effect on proving the relevant case, and has not been introduced to prolong the process.

The suspect is given the benefit of the doubt if there is no evidence that falls within the scope of this standard.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The judge in a criminal trial is the arbiter of fact, and determines whether the party has satisfied its burden of proof.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

Conspiring is regulated as “solicitation” under the Criminal Code, whereby a person soliciting another person to commit a crime (e.g. a business crime) is punished according to the degree of crime committed.

A person encouraging another person to commit a crime is sentenced to imprisonment for a period of between 15 years and 20 years if subject to aggravated life imprisonment, and from 10 years’ to 15 years’ imprisonment if the crime requires life imprisonment. Article 39 of the Criminal Code stipulates that a person is kept responsible under the following conditions for committing crimes as the party encouraging the offender:

- a) To solicit a person to commit a crime, to support his decision to commit a crime, or to guarantee help after committing a crime.
- b) To give an idea about how the crime shall be committed, or to supply the necessary tools to be used while committing the crime.
- c) To render support before and during the commission of an offence in order to facilitate the execution of the intended act.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

No. While the Criminal Code seeks “intent” as the primary element of numerous crimes, a crime may also have been committed with “negligence”, which is also punishable under the law.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, i.e., that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant’s knowledge of the law?

Article 4 of the Criminal Code provides that “not knowing the criminal laws is not an excuse” (“*ignorantia juris non excusat*”). The exception to this rule is the existence of a “legal mistake”, which is stipulated under Article 30(4) of the Criminal Code, and which provides that an individual who has inescapably erred in the fact that the act which he committed has caused injustice shall not be punished.

“Legal mistake” relinquishes an individual from being at fault. In other words, even if the act may have been intentionally committed, because the act itself is “faulty”, the individual having committed that act will not be punished.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts, i.e., that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant’s knowledge of the facts?

Please see questions 11.1 and 11.2 above.

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government?

Previously, the provision stipulating that an individual who fails to report a crime when he becomes aware of the existence of such a crime which is still being committed may be punished under Turkish criminal law was annulled by the Turkish Constitutional Court in 2011. Currently, as per Article 278 of the Criminal Code, an individual who does not report a crime that is still being committed is sentenced to imprisonment for up to one year. Should the individual neglecting to report this be a public officer, the sentence of imprisonment for that individual is between six months and two years. Pursuant to the general Turkish law principle that penal sanctions cannot be imposed on legal entities, there are no provisions foreseeing criminal liability for the entities regarding this matter.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government’s ability to offer leniency in exchange for voluntary disclosures or cooperation?

The penalty is determined by the judge based on how the crime was committed, the equipment used to commit the crime, the date and the place where the crime was committed, the significance and the value of the crime, the gravity of the damage or the danger resulting from the crime, the suspect’s fault, and the suspect’s intention.

Disclosure of criminal conduct may be taken into consideration by a judge as a mitigating factor when determining the penalty.

Aside from the general rule above, the Criminal Code provides leniency to be provided to those who committed bribery and embezzlement under certain circumstances. If the person who has accepted a bribe informs the competent authorities about the particular act of bribery before the relevant authority becomes aware of the situation, then that person will not be punished for bribery. The same is true for the person (i) who has agreed with someone to accept bribery, (ii) who has bribed the public official or agreed with the public official on the bribe, and (iii) who has been complicit in the crime and who informs the competent authority, before the relevant authority learns about the situation. However, this rule is not applicable to the person who gives a bribe to foreign public officials.

A leniency procedure is also available for the crime of embezzlement if the embezzled goods are returned, or if the damages resulting from the crime are compensated in full before the criminal investigation commences. In this case, the perpetrator’s sentence will be reduced by two-thirds. If the embezzled goods are returned voluntarily or the damages are compensated in full before the prosecution commences, the perpetrator’s sentence will be reduced by half. In cases where the leniency occurs before the verdict, the perpetrator’s sentence will be reduced by one-third.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.

The extent of cooperation that a prosecutor or a judge may seek from a person involved in a criminal case ultimately rests with the relevant judge’s discretionary authority and will be handled on a case-by-case basis, depending on the crime in question.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed-upon sentence?

The judge overseeing the case will ultimately determine whether the charges of a defendant who voluntarily declines to contest criminal charges can be reduced in exchange for a conviction.

14.2 Please describe any rules or guidelines governing the government's ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

The Turkish adjudication system does not recognise any plea bargaining mechanism.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court's imposition of a sentence on the defendant? Please describe the sentencing process.

Law No. 5275 on the Execution of Punishments and Security Measures sets out the procedure and principles for which punishments and security measures are to be executed. Accordingly, the public prosecutor produces a warrant of arrest, followed by the arrest of the suspect to be transferred to the relevant execution institution (e.g. the prison). Individuals who are close to the suspect are informed verbally, as well as in writing.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

Please see question 13.1 above.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Any decision, unless it is an annulment of the decision of the regional court, can be appealable, and can be appealed on the basis

of illegality (in other words, based on not applying or misapplying a legal provision).

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

A criminal sentence following a guilty verdict is appealable (please see question 16.1 above). The criminal sentence can be appealed by either the public prosecutor or the defendant.

16.3 What is the appellate court's standard of review?

The Supreme Court of Appeals conducts its review based not only on the case file, but also on other matters that the relevant laws may have envisioned and stipulated in order for a party to appeal a case. The Supreme Court of Appeals does not confine itself with the reasons of appeal presented by the party appealing the case. As an example, such matters may include the legality of the decision given by the first instance court, the lawful application of the relevant legal provisions to the case by the first instance court, and the legality of the evidence submitted during the course of the case.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

The Supreme Court of Appeals can rectify the illegality in the decision given by the first instance criminal court on the following occasions:

- if the case merits an acquittal or the case should be dismissed;
- if the minimum sentence should be applicable to the convicted individual;
- if the number of the legal provisions has been misstated, even though the elements of the crime, the nature of the crime and the penalty imposed are all stated correctly;
- if the sentence was not reduced; or
- if a material error was made in the determination of the term of the penalty or the amount thereof.

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