



## 3.3. PROCEDURAL SAFEGUARDS



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## I. DEFINITIONS

This glossary is intended to highlight some core legal terms used in this presentation and should not be viewed as an attempt to establish concrete definitions .

These terms have been defined by reference to the Turkish legislation.



## I. DEFINITIONS (CONT'D)

**Arrest:** Temporary and actual restriction of a person's freedom before the person is taken under detention or guard, where there is a present danger to public safety, public order or the life or body of a person or there are strong evidence, traces and signs indicating that he/she has committed a crime.

**Taking under guard:** In instances authorized by the law, those that are required to be brought before the authorized bodies until they are taken over by the relevant institutions or persons, in a way that will not bring any harm to their health and through restricting their freedom to the extent that is necessary.



## I. DEFINITIONS (CONT'D)

**Detention:** Detaining the arrested person through temporary restriction of his/her freedom in a way that does not bring any harm to the person's health within the legal period elapsing until the arrested person is brought before the competent judge.

**Pre-trial detention:** Depriving a person of liberty before trial which is exceptional and imposed only by the competent judge when strictly necessary under the conditions established by law.





## **II. TURKISH LEGAL FRAMEWORK FOR PROCEDURAL GUARANTEES DEFINED IN ARTICLES 5 & 6 OF THE ECHR**

### **A- PROCEDURAL GUARANTEES RELATING TO ARREST, DETENTION AND PRE-TRIAL DETENTION (Article 5 of the ECHR)**



# Constitution of Republic of TURKEY, Law no: 2709 (O.G. 09.11.1982, 17863)

## Article 19 - Personal Liberty and Security

Everyone has the right to liberty and security of person.

No one shall be deprived of his or her liberty except in the cases defined in this provision where procedure and conditions are prescribed by law:

- execution of sentences restricting liberty and the implementation of security measures decided by court order;
- arrest or detention of an individual in line with a court ruling or an obligation upon him designated by law;



## Article 19 (CONT'D)

- execution of an order for the purpose of the educational supervision of a minor or for bringing him or her before the competent authority;
- the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants ,
- arrest or detention of a person who enters or attempts to enter illegally into the country or for whom a deportation or extradition order has been issued.





## Article 19 (CONT'D)

### Rights under Article 19

- Information for the person arrested and detained about arrest and detention shall be provided.
- The person arrested or detained shall be brought before a judge at the latest within 48 hours and in the case of offences committed collectively at most within 4 days.
- The arrest or detention of a person shall be notified to next of kin immediately.



## Article 19 (CONT'D)

- Persons under detention shall have the right to request trial within a reasonable time or to be released during investigation or prosecution.
- A person who has been deprived of her/his liberty shall have the right to contest the lawfulness of her/his detention.
- A person who has been deprived of her/his liberty in contravention of the provisions contained in this Article shall have a right to compensation.



## - Constitution (CONT'D)

### Article 40

Damages incurred by any person through unlawful treatment by public officials shall be compensated by the state. The state reserves the right to claim reimbursement from the official responsible.



# Grounds for deprivation of liberty in criminal proceedings

## Preventive detention measures in Turkish Legislation

- Arrest
- Detention
- Pre-trial detention

Besides, following the judge's decision, a suspect may be taken under custody in a medical institution for mental status examination.(Article 74 of Criminal Procedure Code)



## - Specific provisions regarding “arrest”

**Criminal Procedure Code, No: 5271 (O.G.17.12.2004-25673)**

### **Article 90-Arrest procedures**

In the circumstances defined in this provision, law enforcement officials are authorized to arrest a person.

Besides, anyone may temporarily arrest a person, if the offence is committed in his presence and there is a possibility that offender may escape or it is not possible to establish his identity.





## Article 90 – (CONT'D)

In case of offences committed against children or persons with a physical or mental illness or disability, offender shall be arrested without the need for a complaint.

In accordance with this Article, law enforcement officials shall immediately inform the arrested person of his/her rights after taking measures to prevent him from fleeing the jurisdiction or harming himself or others.



## **Transfer of arrested or detained persons**

**Article 93** - Persons who have been arrested or detained and are to be transferred from one place to another may be handcuffed if there are indications that they may escape or that they pose a threat to their own lives or physical integrity or to those of others.

## **Transfer of the arrested to the court**

**Article 94** - If the person arrested upon a warrant of arrest issued by a court cannot be brought before the competent court at the latest within 24 hours, he/she shall be brought before the closest judge of the criminal court of peace; unless released, he/she shall be detained for referral to the competent court as soon as possible.



## Notification of the relatives of arrested or detained persons

**Article 95** – When the suspect or the accused is arrested, detained or when his detention period is extended, his relatives shall be notified without delay, by order of the public prosecutor.

If the person arrested or detained is a foreigner, the consulate of his country of citizenship shall be notified of his situation provided that he does not object to this situation in writing.



## Informing the complainant of the arrest of the suspect

**Article 96** – In cases where the suspect had been arrested for offences that may be investigated and prosecuted only upon a complaint, the person who has the right to lodge a complaint or if there are more than one at least one of them shall be informed of the arrest.

### Arrest record

**Article 97** – The arrest procedure shall be recorded in writing.

This record shall clearly indicate the offence for which the person has been arrested, under what circumstances, where and at what time he was arrested, who arrested him, which law enforcement official caught the suspect and that his rights have been fully explained to him.





## Grounds for issuing an arrest order

**Article 98** – (1) During the prosecution phase, if the suspect has failed to appear as required by a duly executed criminal summons,

(2) In cases where the suspect escapes from law enforcement officials after being arrested or the arrested person or a sentenced prisoner escapes from prison.

The arrest order shall contain a clear description of the suspect and shall indicate his identity if known as well as the offence he is charged with and where he is to be taken if he is arrested.





## Compensation of Unlawfully Arrested or Detained Persons

**Article 141**-Under the circumstances defined in this provision, persons who suffer damage during the investigation or prosecution of offences may request from the State compensation for material and non-material damages incurred.

**Article 142** – Compensation may be requested within 3 months of notification of the final decision or at all events within 1 year of the final decision.

The court shall conduct a hearing in deciding compensation claim in accordance with the general principles of the compensation law.



## By-law On Arrest, Detention and Statement Taking (O.G.01.06.2005-25832)

**Article 5-** This Article envisages the circumstances where law enforcement officials are authorized to arrest a person in line with Article 19 of the Constitution and Article 90 of the Criminal Procedure Code.

**Article 6 –** According to this Article, a person shall be arrested upon a court decision or order of the public prosecutor or by law enforcement officers under Article 5, or in case of *flagrante delicto*, by any one.



## Article 6 (CONT'D)

Pursuant to Article 6, the arrested person shall be informed of the reason for his arrest, the allegations against him and his right to remain silent and to refer to services of a defence lawyer, the right to object to arrest and other legal rights and rights to appeal, in writing under all circumstances, and verbally where it is not possible to immediately inform in writing, irrespective of the crime.



## Measures applicable to persons who are arrested or who will be transferred

**Article 7** – Persons who are arrested or who are arrested and transferred from one location to another may be handcuffed if there are indicators that they may escape or if they constitute a danger to the lives and physical integrity of others.

### Notifying the next of kin

**Article 8** – A next of kin or a designated person of the arrested shall be notified, without delay, that he/she has been arrested, detained or his/her detention period has been extended, upon the order of the public prosecutor.





## Health Control

**Article 9** – In cases where the arrested person is to be detained or was arrested by using force, he/she shall be examined by a physician and his/her health condition at the moment of arrest shall be documented.

## Appeal to court against arrest and detention procedures

**Article 15** – The arrested person, the defence lawyer or legal representative thereof, his/her spouse or first or second degree relatives may appeal to a judge of criminal court of peace for immediate release, against the written order of the public prosecutor for arrest, detention or extension of detention period.

The petition of the arrested person shall be communicated to the competent judge in the fastest way.





## Transfer of the arrested to the competent court

**Article 16** – If the person arrested at the phase of investigation or prosecution upon the warrant of arrest issued by a judge cannot be brought before the competent judge at the latest within 24 hours, he/she shall be brought before the closest judge of the criminal court of peace; unless released, he/she shall be arrested for referral to the competent judge as soon as possible.

## Prohibition of re-arrest

**Article 18** – A person detained and released upon the decision of the criminal court of peace or due to expiry of the detention period cannot be arrested for the same reason unless decided by the public prosecutor and unless there is new and sufficient evidence with regard to the act causing the arrest.



## Special provision for minors

**Article 19** – Minors between twelve and eighteen may be arrested for a crime.

Such minors shall immediately be referred to the public prosecutor after notifying their next of kin and defence lawyer; the prosecution related to minors shall be carried out personally by the public prosecutor.



## -Specific provisions regarding “detention”

### Criminal Procedure Code, No: 5271 (O.G.17.12.2004-25673)

#### Detention period

**Article 91-** In accordance with this Article, detention period, not including the time necessary for transfer to the judge or court closest to the place of arrest, shall not exceed 24 hours starting from the moment of arrest. The time necessary for transfer to the judge or court closest to the location of arrest cannot be more than 12 hours.

A person shall be taken into custody only if this measure is necessary in respect to the investigation and if there is circumstantial evidence suggesting that he has committed an offence.



## Article 91 (CONT'D)

In the case of collective offences, where there are difficulties in collecting evidence or where there are a large number of suspects, the public prosecutor may give a written order extending detention period for a period of 3 days provided that each time the extension ordered does not exceed 1 day.





## Article 91 (CONT'D)

### Right to contest the lawfulness of detention

The person detained or his lawyer or legal representative or his spouse or a relative of the first or second degree may apply to the competent judge against the written order by the public prosecutor to take the person into custody or to extend the custody period, in order to obtain immediate release from custody.

The judge shall immediately examine the file and shall decide on the request within 24 hours.



## Supervision of detention procedures

**Article 92**– As part of their judicial duties, chief public prosecutors or public prosecutors appointed by them shall inspect the holding cells where persons taken into custody are accommodated, the interview rooms if any, the situation of persons in custody, the reasons for and duration of custody, and all records and procedures relating to custody.



## The right to have someone informed of the detention

**Article 95.** – When the suspect is detained or when his detention period is extended, his relative or a person designated by the suspect shall be notified without delay, by order of the public prosecutor.



## By-law on Arrest, Detention and Statement Taking (O.G.01.06.2005-25832)

### Health Control

**Article 9** – In cases where the arrested person is to be detained or was arrested by using force, he/she shall be examined by a physician and his/her health condition at the moment of arrest shall be documented.

If the detained person is to be relocated due to any reason or if his/her detention period is to be extended or if he/she is to be released or referred to judicial authorities, the health condition of the person shall also be documented with a medical report before carrying out such procedures.





## Article 9 (CONT'D)

It is mandatory that the law enforcement officer interrogating the detainee or carrying out the investigation and the law enforcement officer taking the person to medical examination are different officers.

In case the physician, during the examination, encounters any findings indicating torture, he/she shall immediately notify the public prosecutor.



## Article 9 (CONT'D)

According to this Article, the physician and the examined person shall be alone, and the examination shall be carried out within the doctor-patient relationship.

However, the physician may claim personal security concerns and request that the examination be carried out under the supervision of the law enforcement officer. Such request shall be carried out after being documented. In such a case, the defence lawyer may also be present during the examination upon the demand of the detainee, provided that it does not result in any delays.



## Detention Room Procedures

**Article 11** – The person searched shall enter the detention room after the entry is established and documented in the "Detention Room Record Book" .

With regard to detention room procedures;

- Those involved in the same crime, those who are adversaries, and males and females shall not be placed together and the minors shall be kept separate from the adults.
- Unless necessary, there shall not be more than five persons in a detention room.
- Necessities such as toilet and hygiene shall be fulfilled under the supervision of the officer on duty.



## Detention Room Procedures (CONT'D)

**Article 11-** In accordance with this Article, costs related to the detainee's food, transfer, protection of his/her health and, when necessary, treatment, and costs related to notification of the arrest to the relevant next of kin shall be covered by the budget of the Ministry to which the relevant unit is attached.





## Book for recording those entering the Detention Room

**Article 12** – Detention procedures shall be established by recording into the book assigned for recording those placed into the detention room.

This book shall be subject to inspection, and shall include information about suspects' identity, particulars of detention, entry transactions, procedures related to the suspect and exit procedures.



## Detention Period

**Article 13** – The detention period, not including the time necessary for transfer to the judge or court closest to the place of arrest, shall not exceed 24 hours starting from the moment of arrest. The time necessary for transfer to the judge or court closest to the location of arrest cannot be more than 12 hours.

If the matter is under the competence of the courts that have jurisdiction over the crimes specified in paragraph one of Article 250 of the Criminal Procedure Code, this period shall be 48 hours.



## Extension of detention period

**Article 14** – In crimes committed collectively, the public prosecutor may give a written order for extension of the detention period for a total of 3 days due to difficulties in gathering evidence or due to high number of suspects, provided that each extension shall not be for more than 1 day.

The order to extend detention period shall be communicated immediately to the detained person.



## Extension of detention period (CONT'D)

**Article 14** – For the offences falling within the competence of the courts that exercise jurisdiction over the offences specified in paragraph one of Article 250 of the Criminal Procedure Code; detention period for the persons arrested in regions under state of emergency, may be extended by up to 7 days upon the request of the public prosecutor and with a court decision.





## Referral to authorized bodies or release

**Article 17** – Detention periods are maximum periods, and it is the principle that the procedures of the detainees be completed as soon as possible.

After completion of relevant procedures, the detainees shall immediately be referred to the relevant Public prosecutor's office by law enforcement forces, without waiting for the expiry of the detention period.

A decision to release given upon an appeal made to the court against the orders of the Public prosecutor for arrest, detention or extension of detention period, shall be executed immediately.



## Minimum standards for detention rooms and interrogation room

**Article 25** – Detention rooms shall be arranged as minimum 7 square meters in width and 2.5 meters in height, and with a distance of at least 2 meters between the walls.

Sufficient natural light and ventilation shall be provided.

Detention rooms shall feature adequate fixed and durable seating areas for detainees to sleep and sit.



## Inspection of Detention Rooms and Interrogation Rooms

**Article 26** – Authorized units of the law enforcement forces shall inspect the detention and interrogation rooms in order to ensure conformity to standards.

Public prosecutors assigned shall, as a part of their judicial duties, inspect detention rooms, interrogation rooms, if any, and the conditions of suspects, reasons for detention, and all records and procedures related to detention.



## **-Specific provisions regarding “pre-trial detention”**

### **Criminal Procedure Code, No: 5271**

#### **Article 100- Grounds for Pre-Trial Detention**

Decision for pre-trial detention may be given about a suspect or accused in case of the facts that show existence of strong suspicion for offence and ground for pre-trial detention.

Decision for pre-trial detention shall not be given if it is not proportionate to the seriousness of the case and expected sentence or security measure.

Decision for pre-trial detention cannot be given for the offences that require fine or imprisonment less than one year.



## Article 100- Grounds for Pre-Trial Detention (CONT'D)

### Grounds for pre-trial detention:

- a) Concrete facts that imply flight, hiding or flight suspicion of the suspect or accused.
- b) Certain behaviors of the suspect or accused that cause strong suspicion:
  - Eradication, hiding or changing of the evidence,
  - Attempt to apply pressure on the witness, victim or others.



## Article 100- Grounds for Pre-Trial Detention (CONT'D)

The commission of offences listed below may lead to a lawful pre-trial detention:

- Genocide and crimes against humanity
- Intentional homicide
- Torture
- Sexual assault
- Sexual abuse of children
- Producing or trading of drugs
- Establishing an organization for committing crime



## Article 100- Grounds for Pre-Trial Detention (CONT'D)

- Offences against state security
- Offences against the Constitutional order or functioning of the order
- Arms smuggling
- Embezzlement under the Law on Banks
- Intentional forest fire offence
- Offences under the Anti-Smuggling Law
- Offences under the Law on the Preservation of Cultural and Natural Heritage



## Article 101- Decision on Pre-trial Detention

(1) During the prosecution, the decision for pre-trial detention about a suspect is given by the judge of criminal peace court upon the request of the prosecutor.

In the trial phase, the decision is given about the accused by the court upon the request of the prosecutor or by the court on its own motion. In these requests exposition of reasons is obligatory and the reasons for the unavailability of judicial supervision should be determined.

(2) Lawful reasoning of the decisions regarding pre-trial detention, continuation of pre-trial detention and rejection for release request shall be given. Content of the decision shall be notified orally to the suspect or accused, besides one written copy shall be given to them and this matter shall be indicated in the decision.





## Article 102- Period for Pre-trial Detention

- (1) In cases which do not fall within the jurisdiction of the heavy criminal court, the maximum period of pre-trial detention is 6 months. However, where there are compelling reasons, such period may be extended for a period of 4 months by citing its justification.
- (2) In cases which fall within the jurisdiction of the heavy criminal court, the maximum period of pre-trial detention is 2 years. Where there are compelling reasons, such period may be extended by citing its justification; however, the extended period in total cannot exceed 3 years.
- (3) The decisions concerning the extension periods foreseen in this Article shall be given after hearing the public prosecutor, the accused or the suspect and the defense lawyer.



## Article 103- The Request from the Public Prosecutor on Withdrawal of Pre-trial Decision

(1) The public prosecutor may request from the criminal peace court judge to withdraw the pre-trial decision about the suspect for judicial supervision. The suspect about whom the decision was given and his/her lawyer may also lodge the same request.

(2) In the course of investigation if the public prosecutor considers the decision of judicial supervision or pre-trial detention as needless the suspect shall be released with prosecutors' own motion.



## Article 104 – Request for Release of the Suspect or the Accused

At all stages of prosecution and proceedings the suspect or the accused may request to be released.



## Article 107- Notifying suspect's relatives of his/her pre-trial detention

- (1) All orders for pre-trial detention or for an extension of the period of pre-trial detention shall be notified without delay, by order of the judge, to a relative or to a person designated by the person under pre-trial detention.
- (2) In addition, the person under pre-trial detention shall be permitted to notify his pre-trial detention in person to one of his/her relatives or to a person designated by him, provided that this does not jeopardize the aim of the pending investigation.
- (3) In cases where the suspect or accused is a foreigner, his pre-trial detention shall be notified to the consulate of his/her country of citizenship, provided that he does not object to this situation in writing.





## Article 108- Examination of Pre-trial Detention

During the prosecution, while the suspect is in prison and at intervals of no more than 30 days, the peace court judge shall, at the request of the public prosecutor, assess and decide whether to continue pre-trial detention, in the light of Article 100.

The judge shall also decide on its own motion at each hearing, or where necessary between hearings or during the period mentioned whether the pre-trial detention is necessary or not.

Moreover, suspect may also file a request for review of his/his pre-trial detention decision within the period mentioned.



## Alternative to pre-trial detention

### Article 109- Judicial Control

(1) In the presence of the pre-trial detention reasons defined in Article 100 of the Criminal Procedure Code and where a proceeding is conducted into an offence which requires imprisonment for a term of 3 years or less, a decision may be taken to place the suspect under judicial control instead of being kept in pre-trial detention.

(2) In cases where the law prohibits pre-trial detention, judicial control may also be carried out.



## Article 109- Judicial Control (CONT'D)

Judicial control may require the following obligations:

- a. Not going abroad,
- b. Applying regularly, within the time-limits indicated, to the places specified by the judge,
- c. Obeying the summons of the authorities or persons specified by the judge and where necessary complying with supervisory measures regarding the person's occupational activities or pursuit of his education,
- d. Not being able to drive any or certain vehicles and where necessary leaving his driving license with the registry in return for a receipt,



## Article 109- Judicial Control (CONT'D)

- e. Undergoing and accepting medical care or treatment or examination, including hospitalization for detoxification purposes particularly from drugs or psychotropic substances or from alcohol addiction,
- f. Depositing an amount of money as a guarantee, as determined by the judge at the request of the public prosecutor after taking into account the financial circumstances of the suspect and deciding if it is to be paid in more than one installment,





## Article 109- Judicial Control (CONT'D)

- g. Not possessing or carrying weapons and where necessary leaving the weapons owned with the judicial depositary in return for a receipt,
- n. Providing real and personal security for the money to secure the rights of the injured party of which the judge, at the request of the public prosecutor, shall specify the amount and the time-limit for payment,
- . Providing assurance that he will pay alimony regularly, pursuant to the court decisions, and that he will fulfill his obligations towards his family.



## Article 110 - Authorities Competent to Decide for Judicial Control

- (1) The suspect may be taken under judicial control at every stage of prosecution upon the request of public prosecutor by the judge of criminal peace court.
- (2) The judge, upon the request of the public prosecutor in the implementation of judicial control, may put the suspect under one or more obligations; may rescind, change or exempt the suspect to temporarily obey these obligations in whole or in part.



## **Article 111- Rescinding Judicial Supervision Decision**

Upon the request of the suspect or the accused and after taking the opinion of the public prosecutor the judge or the court may decide in accordance with Article 110 (2) within five days.

### **Implementing body of judicial control**

#### **Law on Probation and Help Centers and Safeguard Boards (Law no: 5402)**

According to Articles 13 and 14 of Law No.5402, the probation services are responsible for the implementation of judicial supervision.



# Twinning Project on Development of Probation Services in Turkey(2004 Financial Programming)

Twinning Partners: England and Wales

The new probation service will be a national service organized on a regional basis with probation officers based at the Office of the Chief Public Prosecutors at the 130 Heavy Penal Courts.

Within the framework of the project the foundation, organization and processing of Head of Department and whole probation centres, the establishment of computer network and database, the preparation of working programme and recruiting staff, training of the temporary and actual staff of probation centres, the preparation of the handbook for the staff and convicts are in progress.





# Compensation of Unlawfully Arrested or Detained Persons

**Article 141-(See above)**

**Article 142 – (See above)**



## - Circulars

The Circular of the Ministry of Justice, No:3 (01.01.2006) regarding “implementation of arrest, detention and statement taking legislation and prevention of human rights violations” is intended to highlight procedural rights of prosecuted persons in the context of the ECHR, ECtHR case-law and domestic law for public prosecutors.

It also asks public prosecutors to exercise due care in the right to liberty and security of persons and in their duty of inspection of detention rooms and interrogation rooms.

## - Circulars (CONT'D)

The Circular of the Ministry of Interior, No:67 (29.06.2005) highlights procedural and substantive rules governing investigation for law enforcement officials in the light of the new criminal legislation.

The Circular of the General Directorate of Security (GDS), No:56 (06.07.2005) instructs all police officers to sign Protocol on Ethics for Public Officials.



## - Circulars (CONT'D)

The Circular of the GDS, No:44 (02.06.2005) provides information that new criminal legislation and other laws which concerns the police have been made available in “Pol-Net Information System”.

The Circular of the GDS, No:62 (16.04.2003) highlights the procedural and substantive rules governing hand-cuffing and transferring suspects at the time of arrest.





## **B- RIGHT TO A FAIR TRIAL (Article 6 of the ECHR)**



## - Constitution

### Article 36

#### Freedom to claim rights

Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures.

No court shall refuse to hear a case within its jurisdiction.



## Article 37

### Guarantee of Lawful Judge

No one may be tried by any judicial authority other than the legally designated court. Extraordinary tribunals with jurisdiction that would in effect remove a person from the jurisdiction of his legally designated court shall not be established.



## Article 38

### Principles Relating to Offences and Penalties

No one shall be punished for any act which does not constitute a criminal offence under the law in force at the time committed; no one shall be given a heavier penalty for an offence other than the penalty applicable at the time when the offence was committed.

The provisions of the above paragraph shall also apply to the statute of limitations on offences and penalties and on the results of conviction.

Penalties, and security measures in lieu of penalties, shall be prescribed only by law.

No one shall be considered guilty until proven guilty in a court of law.





## Article 38 (CONT'D)

No one shall be compelled to make a statement that would incriminate himself/herself or his/her legal next of kin, or to present such incriminating evidence.

Findings obtained through illegal methods shall not be considered evidence.

Criminal responsibility shall be personal.



## Article 138

### Independence of the Courts

Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, law, and their personal conviction conforming to the law.

No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions.

No questions shall be asked, debates held, or statements made in the Legislative Assembly relating to the exercise of judicial power concerning a case under trial.



## Article 139

### Security of Tenure of Judges and Public Prosecutors

Judges and public prosecutors shall not be dismissed, or retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of court or post.

Exceptions indicated in law relating to those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties on account of ill-health and those determined as unsuitable to remain in the profession, are reserved.



## Article 140

### Profession of Judge and Public Prosecutor

Judges and public prosecutors shall serve as judges and public prosecutors of courts of justice and of administrative courts.

These duties shall be carried out by professional judges and public prosecutors.

Judges shall discharge their duties in accordance with the principles of the independence of the courts and the security of tenure of judges.





## Article 140 (CONT'D)

The qualifications, appointment, rights and duties, salaries and allowances of judges and public prosecutors, their promotion, temporary or permanent change in their duties or posts, the initiation of disciplinary proceedings against them and the subsequent imposition of disciplinary penalties, the conduct of investigation concerning them and the subsequent decision to prosecute them on account of offences committed in connection with, or in the course of, their duties, the conviction for offences or instances of incompetence requiring their dismissal from the profession, their in-service training and other matters relating to their personnel status shall be regulated by law in accordance with the principles of the independence of the courts and the security of tenure of judges.



## Article 140 (CONT'D)

Judges and public prosecutors shall exercise their duties until they reach the age of sixty-five; promotion according to age and the retirement of military judges shall be prescribed by law.



## Article 140 (CONT'D)

Judges and public prosecutors shall not assume official or public functions other than those prescribed by law.

Judges and public prosecutors shall be attached to the Ministry of Justice where their administrative functions are concerned.



## Article 141

### Publicity of Hearings and Verdict Justification

Court hearings shall be open to the public. It may be decided to conduct all or part of the hearings in closed session only in cases where absolutely required for reasons of public morality or public security.

Special provisions shall be provided in the law with respect to the trial of minors.

The decisions of all courts shall be made in writing with a statement of justification.

It is the duty of the judiciary to conclude trials as quickly as possible and at minimum cost.





## Article 142

### Establishment of Courts

The establishment, functions and jurisdiction of the courts, their functioning and trial procedures shall be prescribed by law.



## Right to a Fair Trial in Civil Law

### Civil Procedure Code (Law No: 1086, O.G: 4.7.1927, 622)

**Articles 28-37:** Under these provisions the conditions that the judges are prohibited to tackle the case and rejection of judges are set out. In order not to cause any independence and impartiality problem the provisions set forth certain methods.

**Article 73:** According to this Article the judge cannot give the judgment without hearing both sides.

**Article 149:** Trials are held publicly. However, in the interest of morals and national security the trials may be held wholly or partially in closed sessions.



**Article 155:** Copies of the trial record shall be given to the parties if they request.

**Article 157:** Both sides and their lawyers may examine the file.



## Right to a Fair Trial in Criminal Law

### Right to a Fair and Public Hearing within a Reasonable Time

Constitution: Articles 37, 138 and 141

Criminal Procedure Code No: 5271

#### Article 182 : Publicity of hearings

- (1) Hearings shall be open to the public.
- (2) Where it is strictly necessary in respect of public morality or public security, the court may rule that the hearing is to be conducted partially or entirely in close session.
- (3) The decision to exclude the public, which shall be furnished with reasons, as well as the judgment, shall be announced at a public hearing.





## Article 185: Compulsory closure

(1) Hearings concerning persons under the age of eighteen shall be conducted in closed session and the judgment shall be declared in closed session.



## **-Provisions contribute to speed up the trial**

### **Criminal Procedure Code**

#### **Article 160: Obligation of the Public Prosecutor Upon Being Informed of an Offence Having Been Committed**

(2) In order to investigate the material facts and ensure a fair trial, through the assignment of law enforcement agency under his command, the Public Prosecutor shall be obliged to collect and place in safe custody the evidence for and against the suspect and protect his rights.



## Article 174: Return of the indictment

(1) The trial court shall examine all the documents relating to the investigation phase within seven days of the delivery of the indictment and investigation file, and in cases where it is concluded that the indictment does not contain the issues specified in Article 170, the trial court shall decide to return the indictment to the public prosecutor's office, by pointing out the omissions and errors.

These provisions are quite important to speed up the procedures of the trial. According to above provisions the public prosecutor is obliged to collect the necessary evidence and then open the case, otherwise the indictment is returned by the court for compliance of the file. By this way, long delays during the trial stage is avoided.



## **Article 190: Interruption**

(1) The hearing shall be conducted without interruption until the judgment is given. However, where this is essential, the hearing may be interrupted so as to enable the trial to be completed within a reasonable time.

## **Article 141: Claim for compensation**

(1) Persons who suffer damage during the investigation or prosecution of offences may request from the State compensation for material and non-material damages incurred, if:

(d) notwithstanding that they were lawfully arrested, they were not brought before the trial court within a reasonable time and did not receive a judgment within a reasonable time,





## **- Independent and Impartial Tribunal Established by Law**

**Constitution: Articles 37, 138, 139, 140 and 142**

**Law on Establishment, Duties and Jurisdiction of First Instance and Appeal Courts of Justice (Law no: 5235 O.G: 7.10.2004, 25606)**

This law arranges the establishment, duties and jurisdiction of first instance and appeal courts of justice in Turkey. All the criminal and civil courts are regulated by this law.

The establishment, duties and jurisdiction of High Courts (Constitutional Court, Court of Cassation, Council of State, Court of Disputes) and administrative courts are arranged by their special laws.



## - Presumption of Innocence

**Constitution: Article 138/4**

### **Turkish Criminal Code**

#### **Article 285: Violation of confidentiality**

(4) Broadcasting the images of the persons during investigation and prosecution phases and causing them to be perceived as guilty requires imprisonment of 6 months to 2 years.



## **Article 286: Recording voices and images**

A person who records and transmits the voices and images during investigation and prosecution without authorization shall be sentenced to imprisonment of up to 6 months.

## **Criminal Procedure Code**

### **Article 223: End of the hearing and the judgment**

(5) In case the attributed offence is proved, the accused is convicted.

## **Article 183: Prohibition of use of sound and image recording devices**

Without prejudice to the provisions of the fifth paragraph of Article 180 and the fourth paragraph of Article 196, it shall be prohibited to use any device for sound or video recording or broadcasting in the court building and, once the hearing has started, in the courtroom. This provision shall also apply during the other judicial procedures conducted in or outside the court building.

## **Article 187: Presence at the closed hearing**

(2) The content of the closed hearing cannot be broadcast by means of any telecommunication device.





## **- The Right to be Informed Promptly in a Language Which the Person Understands**

### **Criminal Procedure Code**

#### **Article 147: Manner of statement taking and interrogation**

**(1)-b-** During statement taking or interrogation of the suspect or the accused he shall be informed about the offence that is attributed to him.



## **Article 202: Cases where the presence of an interpreter is required**

- (1) If the accused or the victim does not speak sufficient Turkish to explain his plight, during the hearing the essential points of the prosecution and defense shall be interpreted by an interpreter which is appointed by the court.
- (2) In the hearing of a handicapped accused or victim, the essential points of the prosecution and defense shall be explained to him in a way that he is able to comprehend.
- (3) The provisions of this article shall also apply in respect of suspects, victims or witnesses heard during the investigation phase. During that stage, the interpreter shall be appointed by the judge or the public prosecutor.



## - Adequate Time and Facilities for Defense

### Criminal Procedure Code

#### Article 153: Examination of the case file by the defense lawyer

- (1)The defense lawyer may examine the full content of the file during the investigation phase and may take a copy of the documents of his choice free of charge.
- (2)At the request of the public prosecutor, the defense lawyer's power to do so may be restricted by decision of the district judge dealing with criminal matters, if his examining the contents of the file or taking copies is likely to jeopardize the aim of the ongoing investigation.



## Article 153 (CONT'D)

- (3) The provision in the second paragraph shall not be applicable to the records of statements given by the apprehended person or suspect as well as to the written expert opinions and the records of other judicial proceedings at which the afore-mentioned persons are entitled to be present.
- (4) From the date on which the office of the public prosecutor submits the indictment to the court, the defense lawyer for the suspect or accused may examine the contents of the file, the evidence, traces, indications or circumstantial evidence of the offence and other items which have been placed in safe custody, and may take copies of any records and documents free of charge.





## Article 154: Meeting with the lawyer

(1) Suspect or accused shall have the right to meet his defense lawyer at all times, without power of attorney being required and out of hearing of other persons. These persons' correspondence with their defense lawyer shall not be monitored.



## **Article 176: Service of the indictment to the accused and summoning the accused**

(1) The indictment and the summons shall be served on the accused together.

(4) There shall be a period of at least one week between the notification of the summons according to the above paragraphs and the date of the hearing.



## **Article 177: The accused's request to have defense evidence collected**

- (1) When the accused wants to summon a witness or an expert or when he wants defense evidence to be collected, he shall submit a petition to this effect to the presiding judge or the judge, at least five days in advance of the hearing, by also indicating the incidents to which they are connected.
- (2) The decision which is taken regarding this petition shall immediately be notified to him.
- (3) From the requests made by the accused, the ones that are accepted shall also be notified to the public prosecutor.



## **Article 178: Bringing the witness or the expert directly to the court**

If the presiding judge or another judge rejects the request of the accused or the intervener to summon the witness or the expert, the accused or the intervener shall have the right to bring him to the hearing.

They shall be heard at the hearing.





## - Trial in Absentia Criminal Procedure Code

### Article 193: Presence of accused at the hearing

- (1) Without prejudice to the exceptional conditions prescribed by law, the trial shall not be conducted in the absence of the accused. If there is no valid reason for the absence of the accused it shall be decided to bring him by force.
- (2) According to the collected evidence about the accused if the court or the judge reaches a decision other than conviction, notwithstanding that his interrogation has not been made, the case may be ended in his absence.



## **Article 195: Hearing in the absence of the accused**

If the offence carries the penalty of a fine or confiscation or a combination of those , the hearing may be held notwithstanding that the accused has failed to appear. In such cases, the summons served on the accused shall state that the hearing will take place notwithstanding that he fails to appear.

## **Article 196: Exemption of the accused from the hearing**

(1) Upon the request of the accused whose interrogation has been completed by the court or with the request of his lawyer in such cases that he is authorised by the accused, the accused may be exempted to appear at the hearing.

## **Article 197: Sending his lawyer to the hearing by the accused**

Notwithstanding the absence of the accused, his lawyer shall be entitled to be present at all the sessions.

## - Adjudication of Missing Persons

### Article 244: Definition of missing person and the procedures that may be followed

- (1) The person is accepted as missing if his whereabouts is not known or living abroad but cannot be brought before the competent court or bringing him is not suitable.
- (2) Trial cannot be opened for a missing person; the court carries out the necessary proceedings in order to obtain or protect the evidence.
- ...
- (4) In the course of the above proceedings the lawyer or legal representative or spouse may be present. If necessary the court shall ask the bar association to appoint a lawyer.

## **Article 245: Notification of the missing person**

A notice by a suitable telecommunication means shall be made to the missing person whose address is not known to come to the court.

## **Article 246: Guarantee document to be given to the accused**

The court may issue a guarantee document about the accused that he would not be detained if he shows up at the hearing and this guarantee may be bound to conditions.





## - Adjudication of Fugitive

### Article 247: Definition of fugitive

- (1) Fugitive is the person who aims to prevent the prosecution conducted about him from being completed by hiding in the country or abroad and because of this reason has not been reached by the court.
  
- (2) In case the person cannot be brought before the court by force, the accused about whom the prosecution is conducted related to the offences set out in the second paragraph of Article 248 (genocide, human trafficking, theft, fraud etc.) despite a due notification by the court, the court shall;



## Article 247 (CONT'D)

- a) decide to announce the notification by a newspaper by pasting it on the door of his known address; in the announcement, the court explains that it would decide on the measures set forth in Article 248 if the accused does not come to the court in fifteen days,
- b) within fifteen days after the determination of above mentioned proceedings by an official record if the accused does not apply to the court, then he shall be accepted as fugitive.
- (3) Prosecution may be conducted about the accused fugitive. However, if he was not questioned by the court before, he cannot be convicted.
- (4) The court shall ask the bar association to appoint a lawyer in case of holding hearing if the accused fugitive does not have a lawyer.



## - Defence in Person or Through Legal Assistance

### Article 74: Taking under custody

(1) According to the Article the person who is under strong suspicion of having committed a crime may be taken under custody in a hospital if there are reasons that he is mentally ill.

This provision is valid for both investigation and prosecution phases.

(2) If the suspect or the accused does not have lawyer the judge or the court shall ask the bar association to appoint a lawyer.



## **Article 147 : Manner of statement taking and interrogation**

(1) During statement taking or the interrogation of a suspect or accused, the following rules shall apply:

c) He shall also be informed that he has the right to appoint a lawyer and take advantage of the legal assistance provided by this lawyer; he shall also be informed that if he so requests the lawyer will be present during the statement taking or questioning. If he is not in a position to appoint one, the bar association shall appoint a lawyer if he expresses his will to take advantage of a lawyer.





## **Article 149: Appointment of a defense Lawyer by the Suspect or Accused**

- (1) The suspect or accused can take advantage of the assistance of one or more defense lawyers at any stage of the investigation and prosecution; the personal representative can appoint the lawyer for the suspect or accused in cases of the existence of such a representative.
- (2) During the investigation process, at most three lawyers can be present during statement taking.
- (3) At no stage of the investigation and prosecution, the right of the lawyer to meet with the suspect or accused, to accompany him during statement taking or questioning, and to provide him legal assistance can be avoided or restricted.



## Article 150: Appointment of a lawyer by the court

- (1) A defense lawyer shall be appointed for the suspect or accused if he declares that he wants to benefit from the services of a defense lawyer but is not in a position to appoint one.
- (2) A defense lawyer shall be directly commissioned in cases where there are no lawyers present and the suspect or accused has not yet completed the age of eighteen or he is deaf or mute or disabled to such an extent to prevent self-defense.
- (3) The provision laid down in paragraph (2) shall be applicable to investigations and prosecutions carried out about offences calling for imprisonment of at least five years as an upper limit.



## **Article 151: Measures to be taken in cases where the defense lawyer does not fulfill his duty**

- (1) If the defense lawyer who has been appointed according to Article 150 does not appear at the hearing or leaves the hearing at an inappropriate time or fails to fulfill his duties as a defense lawyer, the judge or trial court shall take the necessary measures in order to have another defense lawyer appointed immediately. In such an event, the court may interrupt or even adjourn the session to a later date.
- (2) If the new defense lawyer explains that he was not given enough time to prepare a defense, the court session shall be adjourned.



**Article 154 (See Above)**

**Article 197 (See Above)**





## **Article 200: Possibility of removal of the accused from the court room during the hearing**

- (1) If there is a concern that the partner of the accused in the offence or one of the witnesses will not tell the truth to the face of the accused then the court may rule to remove the accused from the court room during questioning.
  
- (2) When the accused is brought back the records shall be read to him and if necessary the content shall be explained.



## - Payment of Legal Assistance

### Law on Enforcement and Implementation of Criminal Procedure Code (Law no: 5320, O.G: 23.3.2005, 25772)

#### Article 13: Wage of legal assistance and conciliation

(1) The wage which is calculated according to a special method other than legal assistance wage tariff is paid to lawyers who are appointed upon the requests of investigation or prosecution authorities on the grounds of Criminal Procedure Code, the costs stemming from fulfilment of the duty are excluded. However, Bar Associations Union's right to claim reimbursement from the accused who are convicted is valid if they have sufficient means to pay for legal assistance.



# - Attendance of Defence Witnesses and Their Examination

## Criminal Procedure Code

### Articles 177 and 178 (See above)



## Article 201: Direct questioning

(1)The public prosecutor, the defense lawyer or the lawyer who participates in the hearing as a legal counsel or representative may put direct questions to the accused, the intervening party, the witnesses, the experts and other persons summoned to the hearing, by respecting the discipline of the hearing. The accused and the intervening party may also ask questions through the presiding judge or the judge. If an objection is raised to the questions asked, the presiding judge shall decide whether the question needs to be asked or not.





## - Free Assistance of an Interpreter

### Criminal Procedure Code

Article 202: (See above)



## Article 324: Adjudication costs

(5) The costs for the interpreter which shall be appointed for non-Turkish speaking or handicapped suspect, accused, victim or witness are not deemed as adjudication costs and these costs shall be paid from the State Budget.



## - Legal Aid

### 1. Civil Law

#### - Civil Procedure Code (No: 1086)

**Article 465:** Those who are partly or wholly incapable to afford court expenses without jeopardising their families' livelihood and submit enough evidence to support their case shall benefit from legal aid.

Eligibility to legal aid of foreign nationals depends on proof of reciprocal legal aid being available in their countries for Turkish nationals.



## Article 466: Legal aid provides;

- Temporary exemption from the court expenses
- Advance payment by the State for expenditures of the witnesses and experts
- Exemption from the deposit for court expenses
- Postponement of notification expenses
- In case of necessity of lawyer, provision of lawyer whose wage would be paid later
- Postponement of the fees and advance payment of compulsory expenses by the State
- Temporary exemption from all stamp duties
- Temporary exemption from the fees and taxes for the documents that are arranged by the notaries.





**Article 469:** (2) Request for legal aid may also be lodged during the trial. Even if this request is accepted the decision on the legal aid shall not be applied for the previous expenses.

**Article 470:** If the court determines that the request for legal aid is not proven or the reason for legal aid disappears then the court shall decide to cancel its decision on the legal aid.

**Article 472:** The lawyer who is appointed for the person according to legal aid provisions is competent to ask and obtain directly his/her wage and expenses from the other party which loses the case.



## 2. Commercial Law

Same as indicated under civil law.

## 3. Administrative Law

Article 31 of the Law on Procedure of Administrative Justice (Law No.2577, 6.1.1982) makes reference to the Civil Procedure Code and arranges that the legal aid matters should be handled in line with the provisions of civil procedure.



## 4. Criminal Law

All the criminal procedure and court expenses are met from the State budget. The only legal aid matter in this field is providing lawyers (legal assistance) for the suspect, accused, victim or the complainant.

There is no distinction for foreign nationals, they may also benefit from legal assistance freely.

Having habitual residence in Turkey is not a prerequisite to benefit from free legal aid, neither in civil nor criminal procedures.



## - Criminal Procedure Code

### Article 147: Manner of statement taking and interrogation

(1) During statement taking or the interrogation of a suspect or accused, the following rules shall apply:

(c) He shall also be informed that he has the right to appoint a lawyer and take advantage of the legal assistance provided by this lawyer; he shall also be informed that if he so requests the lawyer will be present during the statement taking or questioning. If he is not in a position to appoint one, the bar association shall appoint a lawyer if he expresses his will to take advantage of a lawyer.





## Article 150: Appointment of a lawyer by the court

- (1) A defense lawyer shall be appointed for the suspect or accused if he declares that he wants to benefit from the services of a defense lawyer but is not in a position to appoint one.
- (2) A defense lawyer shall be directly commissioned in cases where there are no lawyers present and the suspect or accused has not yet completed the age of eighteen or he is deaf or mute or disabled to such an extent to prevent self-defense.
- (3) The provision laid down in paragraph (2) shall be applicable to investigations and prosecutions carried out about offences calling for imprisonment of at least five years as an upper limit.



## Article 234: Rights of the victim and the complainant

- (2) May request the bar association to appoint a lawyer if he does not have one.
- (5) A lawyer shall be commissioned without consent in cases where there are no lawyers present and the victim has not yet completed the age of eighteen or he is deaf or mute or disabled to such an extent that he cannot express himself.



Article 324 of the Criminal Procedure Code contains the provisions of adjudication costs. According to the Article the lawyers' fee and the other court expenses represent the adjudication costs.

Paragraph 1 of Article 325 states that the adjudication costs shall be paid by the accused if he/she is convicted to a penalty or any security measure.



## Attorney Law (Law no: 1136, 7.4.1969)

### Article 176: Scope of legal aid

Legal aid is the rendering of the attorney services described in the present Law for the benefit of those who do not have the wherewithal to pay attorney fees and other adjudicatory expenses.





## Article 177: Legal aid office

Legal aid service is rendered by a legal aid office established at the headquarters of bar associations by the board of directors of the bar association with staffing drawn from among its attorneys. The board of directors of the bar association may also designate an attorney as the representative of the legal aid office in jurisdictional areas outside the location of the bar association where more than five attorneys are available. The legal aid office and the representatives operate under the supervision of the board of directors of the bar association.



## Article 178: Request for legal aid

A request for legal aid will be made to the legal aid office or its representatives. The requester must prove the rightfulness of the request by presenting evidence.

If the request for legal aid is rejected, the requester may apply to the president of the bar association verbally or in writing. The decision of the president of the bar association will be final.



## Article 179: Administration of legal aid

If the request for legal aid is accepted, the legal aid office will assign one or more attorneys to carry out the actions required. An attorney thus assigned will be assuming the obligation to render attorney services upon receiving the letter of assignment.

This obligation will cease to exist if the requester fails to furnish the required documents and information despite a request or refrains from giving a power of attorney.

If the assigned attorney wishes to abstain from performing the job, he/she will be under the obligation to pay to the bar association the fee indicated for that job in the tariff within fifteen days as of the date he/she received notice of the assignment.

The legal aid office will monitor the progress of the work being done by the attorney assigned.



# PROJECT OF BETTER ACCESS TO JUSTICE IN TURKEY, 2004 FINANCIAL PROGRAMMING

## Project purpose

Improved access to justice by increasing the utilization of the legal aid system, making ADR more applicable in the justice system and strengthening the functioning of the judiciary

## Beneficiaries:

The Ministry of Justice, the Union of Turkish Bars and Ankara Bar Association.





## Activities of the Project regarding legal aid

**Public awareness activities on legal aid** to inform the citizens and social partners about the rights of the citizens on their right to legal aid

**Training for lawyers** on the subject of improving the quality of the service of the legal aid in Turkey



## - Offences against right to a fair trial

### Turkish Criminal Code

#### Article 277: Influencing judicial bodies

(1) Any person who unlawfully attempts to influence judicial bodies, or forces them to give instructions in favor or against any one of or all the parties present in the trial before the court, or the offenders, or the intervener, or the victim, is sentenced with imprisonment from two years to four years. The sentence to be imposed shall be from six months to two years if the attempt is no more than favoritism.



## **Article 288: Attempt to influence a fair trial**

- (1) Any person who makes oral or written declaration until finalization of the investigation or prosecution proceeded on an event in order to influence the prosecutor, judge, court, experts and witnesses, is sentenced with imprisonment from six months to three years.
- (2) In case of commission of this offense through press and publication organs, the sentence to be imposed is increased by one half.



## III- OTHER PROCEDURAL SAFEGUARDS





In Turkish legislation there are certain provisions which correspond to Articles 7 and 13 of the ECHR, Article 1 of Additional Protocol No. 4 and Articles 2, 3, 4, 7 of Additional Protocol No. 7.



## - No punishment without law (Article 7, ECHR)

### Constitution

#### Article 38 (1)

No one shall be punished for any act which does not constitute a criminal offence under the law in force at the time the act is committed; no one shall be given a heavier penalty for an offence other than the penalty applicable at the time when the offence was committed.



## Turkish Criminal Code

### Article 2: Legality rule in offences and penalties

- (1) A person may neither be punished nor be imposed security measures for an act which does not explicitly constitute an offence within the definition of the Law. Furthermore, application of sanctions and security measures besides those stipulated in this Law is not allowed.
- (2) No criminal sanction shall be imposed through regulatory transactions of the Administration.
- (3) Application of provisions of the Laws relating to crimes and punishments by analogy is prohibited. The provisions relating to crimes and punishments may not be interpreted in way to lead to analogy.



## Article 7: Application of the law in respect of time

(1) A person may neither be punished nor subjected to a security measure for an act which does not constitute an offense according to the law in force at the time of commission of the offense. Also, a person may neither be punished nor subjected to a security measure for an act which does not constitute an offense according to the law which entered into force after the commission of the offense. Where a punishment or security measures of that sort is imposed, its execution and legal consequences are spontaneously abrogated.





## **Law on Misdemeanors (Law no: 5326, O.G: 30.3.2005, 25772)**

### **Article 4: Legality rule**

- (1) The definition of which acts are misdemeanors may either be outlined explicitly in the law or the framework provisions of the law may be filled by the general and regulatory transactions of administration.
- (2) The type, duration and amount of the sanctions for misdemeanors shall be prescribed by law.

### **Article 5: In respect of time**

The same rule applies as in Turkish Criminal Code. (Article 7)



## - Right to an Effective Remedy (Article 13, ECHR)

### Constitution

#### Article 36 : Freedom to claim rights

Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures.

No court shall refuse to hear a case within its jurisdiction.



## Article 40: Protection of fundamental rights and freedoms

Everyone whose constitutional rights and freedoms have been violated has the right to request prompt access to the competent authorities.

The State is obliged to indicate in its transactions, the legal remedies and authorities the persons concerned should apply to and their time limits.

Damages incurred by any person through unlawful treatment by holders of public office shall be compensated by the state. The state reserves the right of recourse to the official responsible.



## Turkish Criminal Code

### Article 121: Prevention of Right to Petition

In case of rejection without legitimate ground of an application made to a competent public authority by a person using his legal rights, the offender shall be sentenced to imprisonment of up to six months.





# Prohibition of Imprisonment for Debt (Protocol No. 4, Art.1)

## Constitution

### Article 38 (8)

No one shall be deprived of his liberty merely on the ground of inability to fulfill a contractual obligation.



## Right of Appeal in Criminal Matters (Protocol No.7, Art.2)

### Law on Enforcement and Implementation of Criminal Procedure Code (Law no: 5320)

#### Article 8: Appeal and rectification of judgments

In Turkey Courts of Appeal were established by Law no. 5235. According to Transitional Article 2 of the Law, the Appeal Courts will start to function within 2 years after the date of entry into force of the law which is 1 June 2005. As Courts of Appeal are not operating currently, the appeal system in Turkey continues as governed in former Criminal Procedure Code (Law no. 1412). According to Article 8 of Law no: 5320, provisions of former Code on appeal and rectification of criminal judgments will be in force until functioning of Courts of Appeal. Until this date appeals shall be made to the Court of Cassation.

Appeal and rectification procedure for criminal cases are set out under Articles 305 and 326 of Law No.1412.



## - Compensation for Wrongful Conviction (Protocol No.7, Article 3)

### Criminal Procedure Code

#### Article 323: Judgment after the new hearing

(3) In case of a decision which is given at the end of retrial procedure on the acquittal or no need for punishment, then the person who has been convicted before and served his conviction fully or partly shall be compensated materially and immaterially according to provisions of Articles 141,142, 143 and 144 of the CPC.

Under these articles the compensation claims of related situations are set forth in detail.



**Article 141: Claim for compensation**

**Article 142: Conditions for compensation claims**

**Article 143: Withdrawal of compensation**

**Article 144: Persons who cannot claim compensation**





## **- Right to not be Tried or Sentenced Twice**

**(Protocol No.7, Article 4)**

**Criminal Procedure Code**

**Article 223: Ending the hearing and judgment**

(7) If there is a previous judgment or open case about an accused on the ground of the same act, then the case is rejected.

**SCREENING CHAPTER 23  
JUDICIARY AND FUNDAMENTAL RIGHTS  
AGENDA ITEM III : FUNDAMENTAL RIGHTS**

**Thank you for your attention...**