



**SCREENING CHAPTER 24
JUSTICE, FREEDOM AND SECURITY**

**AGENDA ITEM 9:
FIGHT AGAINST TERRORISM AND TERRORIST
FINANCING**

**Country Session: Republic of TURKEY
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IMPORTANCE ATTACHED BY TURKEY TO THE FIGHT AGAINST TERRORISM

Turkey, having suffered from various kinds of terrorism for the last thirty years, has always been in the forefront in this fight.

Terrorism is a major violation of one of the most fundamental human rights, the right to life. As terrorism grossly and systematically violates human rights, Turkey has always promoted the idea that terrorism should be regarded as a human rights violation. No matter what pretext terrorists may use for their deeds, terrorism in all its manifestations and forms should be treated as a crime against humanity.



LEGISLATION ON TERRORISM

- Turkish Criminal Code No. 5237
- Code on Criminal Procedure No.5271
- Law on Fight Against Terrorism No. 3713
- Law on Compensation for Damages Arising from Terrorism and Combating Terrorism No. 5233
- Law on Administration of Provinces No. 5442



INTERNATIONAL LEGAL INSTRUMENTS

- Council of Europe Conventions
- UN Conventions and Protocols



INTERNATIONAL LEGAL INSTRUMENTS

Council of Europe Conventions

- European Convention for the Suppression of Terrorism (Strasbourg, 27 January 1977), (S) 27 January 1977; (R) 19 May 1981
- Protocol amending the European Convention on the Suppression of Terrorism of the Council of Europe (Strasbourg, 15 May 2003), (S) 15 July 2003, (R) 20 May 2005
- Turkey has also signed Council of Europe Convention on the Prevention of Terrorism on 19 January 2006.



INTERNATIONAL LEGAL INSTRUMENTS

UN Conventions and Protocols on Terrorism

- International Convention for the Suppression of the Financing of Terrorism, (New York, 9 December 1999) (S) on 27 September 2001, (R) on 28 June 2002.
- International Convention for the Suppression of Terrorist Bombings, (New York, 15 December 1997) (S) on 20 May 1999, (R) 30 May 2002.
- Convention on the Marking of Plastic Explosives for the Purpose of Detection, (Montreal, 1 March 1991) (S) 7 May 1991, (R) 14 December 1994, (E i F) 21 June 1998.



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- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, (Rome, 10 March 1988), (R) 6 March 1998, (E i F) 4 June 1998.
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, (Rome, 10 March 1988), (R) 6 March 1998, (E i F) 4 June 1998.
- Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (Montreal, 24 February 1988), (S) 27 February 1988, (R) 7 July 1989, (E i F) 6 August 1989.



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- International Convention against the Taking of Hostages, (New York, 17 December 1979), (R) 15 August 1989.
- Convention on the Physical Protection of Nuclear Material, (Vienna, 3 March 1980), (S) 27 August 1983, (R) 27 February 1985, (E i F) 8 February 1987).
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, (New York, 14 December 1973), (R) 11 June 1981.
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, (Montreal, 23 September 1971), (S) 5 July 1972, (R) 23 December 1975.



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- Convention for the Suppression of Unlawful Seizure of Aircraft, (The Hague, 16 December 1970), (S) 16 December 1970, (R) 17 April 1973.
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, Tokyo, 14 September 1963, (S) 17 December 1975, (R) 16 March 1976.
- Turkey has signed the International Convention for the Suppression of Acts of Nuclear Terrorism on 14 September 2005 in New York.



DEFINITION OF TERRORISM AND TERRORIST ORGANIZATION

According to the Article 1 of the Law on Fight Against Terrorism (Law No: 3713), terrorism is defined as;

“Any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat”.



DEFINITION OF TERRORISM AND TERRORIST ORGANISATION

Terrorist organization is defined as;

“An organization constituted by two or more persons coming together to commit the terrorist offence stated in the Paragraph 1.”



DEFINITION OF TERRORIST OFFENDERS

Terrorist offenders are defined as;

“Any member of an organization, founded to attain the aims defined in Article 1, who commits a crime in furtherance of these aims, individually or in concert with others, or any member of such an organization, even if he does not commit such a crime” and it is decided that persons who are not members of a terrorist organization, but commit a crime on behalf of the organization, are also deemed to be terrorist offenders and shall be subject to the same punishment as members of such organizations.”



The related articles concerning the fight against terrorism, other than the Law on Fight Against Terrorism and the Law on Compensation for Damages Arising from Terrorism and Combating Terrorism, are as follows;

- Articles 54, 55, 220, 314, 315 and 316 of the Turkish Criminal Code, No. 5237.
- Articles 133, 135, 139, 140, 250, 251, 252 of the Code on Criminal Procedure, No. 5271.
- Article 107 of the Law on Execution of Penal and Security Measures No. 5275.



SOME ASPECTS OF JURISDICTION

Under the Article 250 of Code on Criminal Procedure No.5271 specialized felony courts were established.

Higher Commission of Judges and Prosecutors decided to found 18 specialized felony courts in 8 provinces. Namely, one court in Ankara, Erzurum, Izmir and Malatya, 2 courts in Adana and Van, 4 courts in Diyarbakir and 6 courts in Istanbul. These courts have the power to investigate, prosecute and adjudicate all the offences committed by using force or violence or by threatening within the activities of organisations established for the purpose of terrorism and other organized crimes.



Increasing the sentences concerning terrorist offences by a certain ratio is provided.

Sentences imposed under this law may not be commuted to a fine or suspended.

The law provides that execution of the sentences and the internment of those convicted under the provisions of this law shall be realized in special penal institutions with rooms each capable of holding one to three persons.



SUPREME COUNCIL ON COUNTER TERRORISM

The Supreme Council on Counter Terrorism was founded with a view to taking necessary steps on combating terrorism in line with the rule of law and to advance proposals to the Council of Ministers under the chairmanship of a Minister to be assigned by the Prime Minister .

Secretariat of the Supreme Council on Counter Terrorism is undertaken by the Undersecretary of the Office of the Prime Minister.



COORDINATION OF THE FIGHTING AGAINST TERRORISM

As per the Clause D of the Article 11 of the Provincial Administration Law No. 5442, when governors are unable to prevent or when they foresee that they are incapable of preventing the possible or current events with their own forces; when they find it impossible to implement, or are unable to apply the precautions they have taken with these forces, through the fastest means, they may seek the help of the Ministry of Internal Affairs and if need be, of the nearest land, naval and air unit forces including the border units of the General Command of Gendarmerie and Armed Forces, to benefit from the subsidiary forces of the other provinces and from the forces appointed for such tasks, and in this context, the military units may be employed in the fight against terrorism.



INTERNATIONAL COOPERATION

Relevant authorities in Turkey are in close cooperation with their counterparts as well as international organizations.

In this vein, the National Intelligence Organization (MIT) participates actively in the efforts to developing common methods in combating terrorism as a member of the NATO Special Committee.



In addition to its multilateral commitments, Turkey has also signed bilateral agreements with 52 countries on cooperation in combating terrorism, organized crime and drug trafficking.

54 Agreements with 46 countries

33 Protocols with 21 countries

33 Memoranda of Understanding with 21 countries

1 Convention with 1 country



MEASURES AGAINST TERRORIST FINANCING

Provisions Regarding Terrorist Financing

According to the Law No. 3713 on Fight Against Terrorism

- “supporting, harboring, aiding and abetting of terrorists and terrorist groups are criminalized”
- These crimes also include supplying funds to the terrorists and terrorist groups.



Provisions Regarding Terrorist Financing

According to the Law on Fight Against Terrorism: (Art.7)

- “The activities of associations, foundations, unions lending support to terrorist movements shall be prohibited and dissolved by the decision of the concerned court. The assets of such institutions will be seized”



REPORTING SUSPICIOUS TRANSACTIONS REGARDING TERRORISM AND TERRORIST FINANCING

Liable parties are obliged to report the suspicious transaction to the MASAK, the Turkish FIU. There are 21 types of suspicious transactions and two of which are regarding terrorism and terrorist financing. MASAK is explicitly authorized to receive and analyze all STRs including ones on terrorist financing.

The type No. 2 is as follows:

“Transferring large amounts of money from or to countries in which there are illegal activities regarding narcotic substance, smuggling or in which there are terrorist organizations and, transferring large amounts of money from or to offshore centres”
(General Communiqué No. 2 of MASAK)



The type No. 20 is as follows:

“If any suspicion raises or reasonable grounds to suspect exists that funds are linked or related to terrorism or terrorist acts, or used for this purpose” (General Communiqué No. 3 of MASAK)



IMPLEMENTATION OF UN SECURITY COUNCIL RESOLUTIONS 1267/1999, 1333/2000 and 1373/2001

In 2001, Council of Ministers has issued a decree to freeze funds and other assets in which exist in financial institutions as well as other units and establishments in Turkey of the individual and entities listed in the annexes of UN Security Council Resolutions.

The Decree stipulated that all transactions related to the assets depend on the permission of the Ministry of Finance.

The list attached to the decree of the Council Ministers has been updated 6 times so far.



NON-PROFIT ORGANISATIONS

Foundations and associations are included in the concept of non-profit organizations in Turkish legal system. Relevant legislation concerning foundations and associations are as follows:

- Turkish Civil Law No:4721 (*Art. 56-117*)
- Associations Law No:5253
- By-law concerning Foundations established in accordance with Civil Law No:4721
- Communiqué concerning Foundations established in accordance with Civil Law No:4721
- Anti-Terror Law No:3713
- Law on Collecting Donations No:2860



NON-PROFIT ORGANISATIONS

Associations

The purpose of establishment of associations are indicated in their by-laws. An association shall not be established for the purposes prohibited by the Constitution and laws or for carrying out acts constituting crimes.

There are two types of supervision for associations:

Internal supervision; an association shall be supervised by the Board of Controllers every year



External supervision: it is conducted whether they act in accordance with the purposes set up in the by-law of the association and fiscal purpose.

Authorities for supervision:

Ministry of Interior and local administrators

Inspectors of Ministry of Finance



NON-PROFIT ORGANISATIONS

Foundations

Any foundation may not be established contrary to Constitutional Principles and Laws.

Supervision of Foundations

Foundations are subject to supervision of the Directorate General of Foundations.

Moreover, they may be supervised by the Ministry of Industry and Trade, the Ministry of Finance and the Ministry of Labour and Social Security jointly with respect to their financial situation. A copy of the report written after the supervision shall be submitted to the Directorate General of Foundations. Each foundation must be supervised at least once every two years.



FIGHT AGAINST TERRORISM AND TERRORIST FINANCING

Under Article 7 of the Law on the Fight Against Terrorism, “In addition, activities of associations, foundations, trade unions and similar institutions found to have supported terrorism shall be banned and the institutions may be closed down by a court decision. Assets of these institutions will be seized.”



NON-PROFIT ORGANISATIONS

Fiscal Audit

Associations and foundations and economic entities set up by them are supervised. Fiscal control is conducted according to the legislation below;

- Associations Law No: 5253
- Foundations Law No: 2762
- By-law concerning Foundations established in accordance with Civil Law No: 4721
- Communiqué concerning Foundations established in accordance with Civil Law No: 4721
- Law on Collecting Donations No: 2860
- Degree Law No: 178 on Organization and Duties of The Ministry of Finance
- Tax Procedure Law No: 213
- Corporate Tax Law No: 5422



PERSPECTIVES TO ALIGN THE TURKISH LEGISLATION WITH THE ACQUIS

TERRORIST FINANCING OFFENCE

In the Draft Law on Prevention of Proceeds of Crime, which is on the agenda of Parliament, terrorist financing is defined as an offence separate from terror crimes.

According to the related provision,

“Whoever, directly or indirectly, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts shall be sentenced to imprisonment from 1 year up to 5 years and to payment of fine from 150 days up to 1500 days, even if their offences constitute a separate crime. Even if the fund actually not used to carry out terrorist acts, the offender shall be sentenced by the same penalties.”