

SUBMISSION BY THE REPUBLIC OF TÜRKİYE ON “THE SCOPE AND APPLICATION OF THE PRINCLIPLE OF UNIVERSAL JURISDICTION”

A) The Turkish Penal Code No. 5237 states

1- In Article 8 titled “Application in respect of location”:

“(1) Turkish laws are applied for the offences which are committed in Türkiye. Where the act constituting an offence is partially or entirely committed in Türkiye, or the result is materialized in Türkiye, the offence is assumed to have been committed in Türkiye.

(2) If the offence is committed;

a) in the Turkish territory, or airspace or Turkish territorial waters,

b) in open seas and the space extending above these waters, and in/with the Turkish maritime and air vehicles,

c) in/with Turkish war ships and combat aircrafts,

d) in or against the stationary platforms constructed in the continental shelf or exclusive economic zone of Türkiye,

then this offence is assumed to have been committed in Türkiye.”

2- In Article 9 titled “Conviction in a foreign country”:

“(1) A person who is convicted in a foreign country for an offence committed in Türkiye is subject to retrial in Türkiye.”

3- In Article 10 titled “Offences committed during the performance of a duty”:

“(1) A person who performs an official duty or job in a foreign country in the name of Türkiye and commits an offence on that account, is subject to retrial in Türkiye even if he is convicted in the foreign country due to this act.”

4- In Article 11 titled “Offences committed by citizens”:

“(1) If a Turkish citizen, excluding the offences listed in Article 13, commits an offence in a foreign country, which requires a punishment with a minimum limit of no less than one year imprisonment according to the Turkish laws, and if this perpetrator is found in Türkiye, then he is punished according to the Turkish laws, provided that he is not convicted in the said foreign country for the same offence and there is the possibility to initiate proceedings in Türkiye.

(2) Where the offence requires a punishment with a minimum limit of less than one year imprisonment, the proceedings are initiated only upon the complaint by the injured party or the foreign country. In such case, the complaint has to be forwarded within six months as of the date of entry of the citizen into Türkiye.”

5- In Article 12 titled “Offences committed by foreigners”:

“(1) If a foreigner, excluding the offences listed in Article 13, commits an offence in a foreign country to the detriment of Türkiye, which requires a punishment with a minimum limit of no less than one-year imprisonment, and if the perpetrator is found in Türkiye, then he is punished according to the Turkish laws. The initiation of proceedings is dependent upon the request of the Minister of Justice.

(2) If the offence mentioned in the afore-mentioned paragraph is committed with the intention of causing damage to a Turkish citizen or a private law legal entity incorporated according to the Turkish laws, and if the perpetrator is found in Türkiye, then the perpetrator is punished according to the Turkish Laws upon the complaint of the injured party provided that that he is not convicted in the foreign country for the same offence.

(3) If the aggrieved party is a foreigner, the perpetrator is tried upon request of the Minister of Justice in case of the existence of the following conditions:

- a) Where the offence requires punishment with a minimum limit of no less than three years imprisonment according to the Turkish Laws;
- b) Where there is no extradition agreement or the demand of extradition is rejected by the country where the crime is committed or by the government of the State wherein the perpetrator holds citizenship.

(4) A foreigner who is convicted of an offence by a foreign court within the scope of first paragraph, or the proceedings or conviction against him are abated for any reason or he is acquitted, or the offence committed is not qualified for the prosecution, then a new trial can be initiated in Türkiye upon the request of the Minister of Justice.

(5) (Added on 18 June 2014 – By Article 56 of the Law no. 6545) Under the conditions in the scope of the first paragraph, criminal proceedings for bribery and trading in influence are not conditional to the request of the Minister of Justice.”

6- In Article 13 titled “Other offences”:

“(1) Turkish laws are applied in case of commitment of following offences by the citizens or foreigners in a foreign country:

- a) Offences listed under First Chapter of Second Volume,
- b) Offences listed under Third, Fourth, Fifth, Sixth, Seventh and Eighth Sections in the Fourth Chapter of Second Volume,
- c) Torture (Articles 94, 95),
- d) Intentional environmental pollution (Article 181),
- e) Production and trading of narcotic drugs or psychotropic substances (Article 188), encouragement of use of narcotic drugs or psychotropic substances (Article 190),
- f) Counterfeiting money (Article 197), manufacturing and trading of instruments used in production of money (Article 200) and valuable seals/stamps (Article 202),
- g) Prostitution (Article 227),
- h) (Abolished on 26 June 2009 – By Article 1 of the Law no. 5918),
- i) Confiscation or hijacking of maritime, air or railway vehicles (Article 223, paragraphs 2 and 3), or offences committed with the intention to damage these vehicles (Article 152).

(2) (Paragraph 2 Added on 29 June 2005 – By Article 3 of the Law no. 5377). Except for offences defined in Third, Fourth, Fifth, Sixth and Seventh Sections of the Chapter IV, Volume II, conducting criminal proceedings in Türkiye for crimes within the scope of paragraph 1 shall be subject to the request of the Minister of Justice.

(3) Even where a conviction or acquittal pursuant to the offences listed in paragraph 1 subparagraphs (a) and (b) have been ruled in a foreign country, criminal proceedings in Türkiye shall be conducted upon the request of the Minister of Justice.”

In order for a trial to be held in Türkiye regarding the crimes stated restrictively in the said article, it is not consequential where and by whom these crimes were committed. The commitment of these crimes is in itself a sufficient condition for the existence of the jurisdiction of the State. All types of crimes regulated concern all humanity except for the crimes stated in subparagraph (b) of paragraph 1, which concern the sovereignty and reputation of the state. Therefore, the subparagraph (b) of paragraph 1 of Article 13 of TCC is evaluated not within the scope of the principle of universality, but within the scope of the principle of protecting the State.

In terms of the scope of application for Article 13, the nationalities of both the perpetrator and the victim are of no importance. Whether the perpetrator or the victim is a Turkish citizen or a foreigner, the commitment of these crimes results in Türkiye's jurisdiction over the perpetrator. It is also not necessary for the perpetrator to be present in Türkiye in order to prosecute the perpetrator in Türkiye.

Paragraph 1 of Article 160 of Turkish Code of Criminal Procedure states the duty of public prosecutor who is informed of an offence: “As soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not”. In this case, the impression that a crime has been committed is considered as a sufficient condition for the initiation of an investigation, and it is not considered necessary for the perpetrator to be present in the country. Therefore, even if a perpetrator who committed an offence stated in Article 13 of TCC is not in Türkiye, there is no legal obstacle to initiate an investigation against this person.

In addition, Article 13, paragraph 2 states that “Except for offences defined in Third, Fourth, Fifth, Sixth and Seventh sections of the Chapter IV, Volume II, conducting criminal proceedings in Türkiye for crimes within the scope of paragraph 1 shall be subject to a request of the Minister of Justice”. If the offences are in the Third, Fourth, Fifth, Sixth and Seventh sections of the Chapter IV, Volume II of the TCC, the request of the Minister of Justice is required for a trial.

Paragraph 3 of Article 13 of the TCC stipulates that “Even where a conviction or acquittal pursuant to the offences listed in paragraph 1 subparagraphs (a) and (b) have occurred in a foreign country, criminal proceedings in Türkiye shall be conducted upon the request of the Minister of Justice.” Accordingly, in the case of an offence within the scope of any of the international crimes, crimes against the symbols of sovereignty and dignity of the organs of the state, crimes against the security of the state, crimes against the constitutional order and the functioning of this order, crimes against national defence, crimes against state secrets and espionage and crimes connected with relations with foreign states, the conviction or acquittal decision given in a foreign country will not constitute an obstacle to prosecution, and retrial can be conducted in Türkiye upon the request of the Minister of Justice. In the doctrine, the principle of absolute universality is accepted in subparagraphs 13/1-a and 13/1-b of the TCC, and the principle of relative universality is accepted in the others due to the fact that retrial can be conducted despite the final conviction in the crimes in question. Pursuant to the principle of non bis in idem (no retrial for the same offence), a criminal case cannot be opened if there is a previous judgment against the same defendant for the same offence. Therefore, this provision in Article 13 of the TCC constitutes an exception to the non bis in idem principle. As a matter of fact, in the presence of the request of the Minister of Justice, the previous final judgment will not prevent the initiation of a criminal proceeding. However, it should be noted that pursuant to Article 16 of the TCC, any time spent in custody, detention, under arrest or serving a prison sentence in a foreign country in respect of an offence, irrespective of

where the offence was committed, shall be deducted from the penalty to be given for the same criminal offence in Türkiye.

In the event that the offences defined in subparagraphs (c), (d), (e), (f), (g), (h) and (i) of paragraph 1 are committed abroad, a trial may be filed in Türkiye by applying Turkish law, regardless of whether the perpetrator is a Turkish citizen or a foreigner. However, unlike subparagraphs (a) and (b), in order for a trial to be held in Türkiye for the offences defined in these subparagraphs, the perpetrator must not have been convicted or acquitted in a foreign country.

7- In Article 14 titled “Investigation in Alternative Punishments”:

“(1) No investigation or prosecution is initiated if it is allowed to choose in the related articles of the law which is the subject of prosecution, either punishment of imprisonment or administrative fine in the cases stipulated in articles 11 and 12.”

8- In Article 15 titled “Calculation of Penalty in Cases Where This is a Condition of Investigation”:

“(1) In cases where its amount constitutes condition for investigation, the penalty shall be calculated taking into account the minimum limit of legitimate aggravation and maximum limit of legitimate extenuation brought forward during the investigation.”

9- In Article 16 titled “Deduction of Punishment”:

“(1) No matter where the offence is committed, the period lapsed under observation, detention, arrest or conviction is deducted from the punishment to be given for the same offence in Türkiye.”

10- In Article 17 titled “Disqualification from Certain Rights”:

“(1) Under the above-mentioned circumstances, if a judgment given by a foreign court seeks disqualification of a certain right according to Turkish Laws, then the court, upon demand of the Public Prosecutor, may decide recognition of legal consequences of this judgment in Türkiye as long as it is not contrary to the Turkish judicial system.”

11- In Article 19 titled “Consideration of Foreign Laws”:

“(1) While the trial is conducted in Türkiye due to the offences committed beyond the sovereign area of Türkiye, the punishment to be given under the Turkish law shall not be more than the maximum limit of the punishment stipulated in the laws of the country where the offence is committed.

(2) However, the provisions of the above paragraph shall not be applied if the offence is committed;

- a) Against the security of the Türkiye, or to the detriment of Türkiye, or
- b) Against Turkish citizens, or to the detriment of the private law legal entities incorporated according to Turkish legislation.”

B) The Criminal Procedure Code, Law No. 5271 states

1- In Article 13 titled “Special Jurisdiction”:

(1) “If the place where the offence has been committed is not known, the court where the suspect or the accused was arrested without a warrant; or if there was no arrest without a warrant, the court of his domicile shall have the jurisdiction.

(2) If there is no domicile of the suspect or the accused in Türkiye, the court of the location where he last resided in Türkiye has the jurisdiction.

(3) If even according to this procedure it is not possible to establish which court has jurisdiction, then the court where the first process of criminal proceedings occurred shall have the jurisdiction.”

2- In Article 14 titled “Jurisdiction for offences committed in a foreign country”:

(1) “The jurisdiction for the offences committed in a foreign country, which, according to the statutes are to be investigated and prosecuted in Türkiye, shall be designated according to paragraphs 1 and 2 of Article 13.

(2) However, upon motion of the public prosecutor, the suspect, or the accused, the Court of Cassation is entitled to designate a court that is closer to the location where the offence was committed.

(3) In such offences, if the suspect or the accused has not been arrested without a warrant, did not reside or had no address in Türkiye, then upon the motion of the Minister of Justice, and upon the petition of the Chief Public Prosecutor of the Court of Cassation, the competent court shall be determined by the Court of Cassation.

(4) For the offences committed by Turkish civil servants who have diplomatic immunities and reside in foreign countries, the competent court shall be the Ankara court.”

3- In Article 15 titled “Jurisdiction for offences committed in or with maritime, air or railway vehicles”:

“(1) If the offence is committed in a ship authorized to fly the Turkish flag, or while such a vehicle was outside of Turkey, the court of the location where the vessel first arrives in Türkiye after the offence has been committed, or at the port of registry of the ship has the jurisdiction.

(2) Aircraft that have the right to fly under the Turkish flag, as well as railway vehicles, are subject to the provisions of the above paragraph.

(3) If an offence is committed in maritime, air or railway vehicles or with these vehicles while they are within the country, the court located at the place of first arrival also has jurisdiction.

(4) If an offence related to the pollution of environment is committed by a ship that flies a foreign flag while it is outside of Turkish territorial waters, the court closest to the location where the crime was committed, or the court located where the vessel first arrives in Türkiye shall have jurisdiction.”

C) Various international conventions to which Türkiye is a party include the rule *aut dedere aut judicare/aut punire* (either extradite or prosecute), and they therefore envisage that the perpetrators, whether citizens or foreigners, shall be extradited to the country where the offence was committed for offences covered by the relevant convention. However, the State Parties are under the obligation by these conventions to prosecute and punish in the event that extradition is not pursued due to various legal considerations.

The following conventions are examples in this regard: the Tokyo Convention on Offences or Certain Other Acts Committed On Board Aircraft signed in 1963, the Hague Convention for the Suppression of Unlawful Seizure of Aircraft signed in 1970, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in 1971, New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, signed in 1973, Single Convention on Narcotic Drugs, 1961, Convention on Psychotropic Substances signed in Vienna in 1971, and also the European Convention on the Suppression of Terrorism in 1977.