

**NOTE ON THE "ACT AMENDING THE TURKISH PENAL CODE AND THE
ACT ON THE ADMINISTRATION OF PRISONS AND DETENTION HOUSES"**

With that Act;

- Prison terms are foreseen for those who prevent the prisoners/convicts from communicating/meeting with the visitors, participating in social and cultural events, having a medical treatment and appointing/seeing a lawyer.
- Prison terms are foreseen for those who prevent the prisoners/convicts from having enough nourishment. Especially in the context of hunger strikes, the incitement or persuasion of prisoners/convicts to hunger strikes and death fasts or issuing instructions for this purpose are considered as prevention of nourishment.
- Preventive medical measures are foreseen for those who intend to start hunger strikes. In this context, the measures to be enforced for the protection of the health of prisoners/convicts will be applied only if these measures are not deemed as violation of human integrity.
- The lawyers and legal counselors and the members of the organizations authorized by international agreements will not be searched manually at the entrance of prisons. It is also foreseen that the principle of human dignity is to be observed during the searches at the entrances of the prisons.
- It is foreseen that, the legal defense documents and files that have been declared in writing by the defense lawyer are not to be examined at the entrance of the prisons.

**The Act Amending the Turkish Penal Code and
the Act on the Administration of Prisons and Detention Houses**

Act No. 4806

Date of Adoption: 5.2.2003

Article 1.-The second word "one" in Article 30 of the second paragraph of the Turkish Penal Code No. 765, dated 1.3.1926, has been changed to "thousand."

Article 2.-Article 307/a and 307/b have been added to follow after Article 307 of the Turkish Penal Code.

Article 307/a.-Those who bring into, are in possession of or use firearms, bullets, explosives, cutting, puncturing or wounding tools, gases and chemicals that are inflammable, corrosive, asphyxiating, blinding or anesthetic, all kinds of poisons and narcotic drugs, cellular phones, wireless and other electronic communication devices in prisons and detention houses, are to be sentenced to two to five years in prison, regardless of whether these actions constitute the basis for another criminal offense. However, in this case, no sentences may be imposed in accordance with the actions indicated in Supplementary Article 1 of Act No. 6136 on Firearms, Knives and other Tools, dated 10.7.1953.

Persons who bring into, are in possession of or use all kinds of things, equipment or supplies that have not been indicated in the first paragraph but have been prohibited by law in prisons and detention houses are to be sentenced to six months to two years in prison.

Article 307/b.-Persons who prevent convicts and prisoners at prisons and detention houses from communicating, meeting with their visitors, participating in the training and sports activities, vocational and workshop activities and other social and cultural activities, from being examined and treated by the doctor at the institution, from appointing and seeing a lawyer or legal counselor, from going to court hearings or to the Chief Public Prosecutor, from seeing prison officials, or preventing, under any condition, convicts and prisoners released from leaving the institution, or encouraging the prisoners and convicts and issuing instructions to this purpose,

preventing all kinds of visits and contacts by convicts and prisoners provided for in the law, regardless of whether these actions constitute the basis for another criminal offense, are to be sentenced to one to three years in prison.

Persons who prevent convicts and prisoners from taking nourishment are to be sentenced to two to four years in prison. The encouragement or persuasion of convicts and prisoners to hunger strikes and death fasts or issuing of instructions to this purpose are considered as the prevention of taking nourishment.

In case of death resulting from the prevention of taking nourishment by the convict or prisoners, the perpetrator is to be sentenced to ten to twenty years in prison. In case the bodily harm indicated in the first, second and third paragraphs of Article 456 has taken place, the perpetrator is to be sentenced in accordance with the provisions of the same article.

Article 3.-The second sentence of the second paragraph of Article 516 of the Turkish Penal Code has been amended as follows:

However, if the action has been taken against the building, equipment or the facilities of the prisons and detention houses or in case of circumstances indicated in the seventh subparagraph, the prison sentence is not to be less than three years.

Article 4.- Article 3 of Act No. 1721 on the Administration of Prisons and Detention Houses, dated 14.06.1930, repealed by Decree law No. 524, dated 10.9.1993, has been revised as follows.

Article 3.- In accordance with the second article of this Law, under the rules to be determined jointly by Ministries of Justice and Health, with consideration to age, characteristics of the work, and religious and cultural necessities, are to receive hygienic food nutritious in quality and quantity with sufficient calories and of a reasonable variety and drinking water in order for these persons to remain in good health and strength.

Prisons and convicts may meet necessities additional to the daily food from the shop of the prison or detention houses. In institutions where there is no shop, these substances may be obtained from outside of the prison, with the permission of and under the supervision of the administration.

Food determined by the doctor at the institution is to be provided for convicts and prisoners who are ill.

Article 5.- Article 4 repealed by Decree Law No. 524, dated 10.09.1993, of the Act on the Administration of Prisons and Detention Houses have been revised as follows.

Article 4.-Convicts and prisoners who, for whatever reason, continuously refuse food and drinks provided to them are to be informed by the doctor at the prison or detention house of the negative consequences and the physical and psychological damages of this action. Work is to be undertaken by the psycho-social services unit to dissuade these persons from this behavior and in case a positive outcome is not obtained, these persons may be put on the regime determined by the doctor at the institution in the appropriate circumstances.

If the doctor determines that convicts and prisoners who undertake hunger strikes and death fasts by refusing food, even though the measures indicated in the first paragraph have been taken and efforts have been made, are in a life-threatening situation or are in a state of impaired consciousness, measures such as medical research for examinations and diagnosis, treatment and feeding are to be taken at the institution, or in the absence of such resources, through immediate hospitalization, regardless of the wishes of the convicts and prisoners, on the condition that these measures do not constitute a danger for the health and lives of these prisoners and convicts.

In cases other than those indicated above, the provisions of the second paragraph are to be applied to convicts and prisoners who have a health problem and refuse medical examination and treatment or whose health and lives are

seriously threatened or in case of a situation threatening the health and lives of others at the prison or detention house.

The measures envisioned in this article are to be applied with the recommendation and under the supervision of the doctor. However, if the doctor is unable to intervene in time or a delay in the intervention may result in a life-threatening situation for the convict or prisoner, the measures are to be taken without consideration of the conditions indicated in the second paragraph.

Measures enforced for the protection of the health and for the medical treatment of convicts and prisoners in accordance with this article are to be applied only if without injury to dignity.

Article 6.- Article 6 of the Act on the Administration of Prisons and Detention Houses repealed by Decree Law No. 524, dated 10.9.1993, has been revised as follows:

Article 6.- All persons coming into prisons and detention houses, including institution personnel and external security guards, are to pass through the detector gate, regardless of their titles or duties. These persons are to be searched with metal detectors and their belongings examined through x-ray devices and similar security equipment, and are to be searched manually in cases of suspicion. Manual searches are to be undertaken in places where this equipment is not available. However, members of parliament, gubernatorial administrators, judges, public prosecutors and lawyers and legal counsels, notaries, the chair person and members of monitoring boards for prisons and detention houses, representatives of persons and organizations authorized by international agreements, the commanders of the security unit of the prison and detention house and the superiors of the director of the prison are not be searched manually except in situations of flagrante delicto for criminal offenses with heavy penalties. These persons may enter the institutions if they consent to being searched manually in cases where the detection gate continually gives warning signals.

Legal documents and files that have been declared in writing as being for defense by the defense lawyer or the lawyer are not to be examined.

Materials, equipment and supplies that are prohibited from being brought into prisons but do not constitute a crime in themselves are to be deposited with the administration, to be returned to the owners on their departure from the prison.

Convicts and prisoners are to be subject to body searches and search of possessions to be undertaken in different places and by different personnel each time they leave and return to their rooms.

Principle of respect for human dignity is to be observed during the searches.

Article 7.-This law is to enter into force on the date of its publication.

Article 8.-The provisions of this law are to be implemented by the Council of Ministers.

5 February 2003

**PROGRESS MADE IN THE FIELDS OF THE
COPENHAGEN POLITICAL CRITERIA AND JUSTICE AND HOME AFFAIRS
AFTER THE COPENHAGEN EUROPEAN COUNCIL**

I. INTERNATIONAL CONVENTIONS

- Turkey signed the Additional Protocol No. 6 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty except in cases of war and imminent threat of war on 15 January 2003.

- Act No. 4800 that endorses the ratification of the 2000 UN Convention Against Transnational Organized Crime entered into force on 4 February 2003.

- Act No. 4803 that endorses the ratification of the 2000 Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the UN Convention Against Transnational Organized Crime entered into force on 4 February 2003.

- Act No. 4804 that endorses the ratification of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention Against Transnational Organized Crime entered into force on 4 February 2003.

II. CONSTITUTIONAL AMENDMENTS

With the amendment of Article 76 of the Constitution on 31 December 2002, the scope of the freedom of thought and expression was expanded. The previous condition stipulated in this article of "not having participated in ideological or anarchical acts" to be eligible to become a Member of Parliament was repealed and a new provision regarding "participation in acts of terrorism" was introduced.

III. LAWS ENACTED

- The legislative harmonization package, which entered into force on 11 January 2003 was drafted with due regard to the evaluation made in the 2002 Regular Report on Turkey. With the adoption of this package, legal impediments for the prosecution of public officials who allegedly resort to torture and ill treatment were removed. This package also enabled the foundations of religious communities to acquire and dispose of immovables following the permission of the Directorate General of Foundations.

- The Act Amending Various Acts in order to Combat Bribery of Foreign Public Officials in International Business Transactions entered into force on 11 January 2003.

- The Act Amending the Act on the National Security Council and the Secretariat General of the National Security Council entered into force on 18 January 2003 to align with the Constitutional amendments of 3 October 2001. In this context, the Deputy Prime

Ministers and the Minister of Justice became members of the Council. The Act also confirmed that the decisions related to the determination, identification and implementation of the national security policy of the State are “consultative” in character.

- The latest package of reforms, which entered into force on 4 February 2003 as Act No. 4793 Amending Various Laws, expanded the scope of retrial arrangements on the basis of judgments rendered by the European Court of Human Rights to cover decisions that had been or are to be finalized by or after the date of entry into force of this Act.

- The Act Amending the Act on the Postponement of Cases and the Suspension of Sentences on Offenses committed through the Press and Broadcasting was adopted by the Parliament on the 2 January 2003. The ratification process of this Act is already underway. The purpose of the amendment is to allow persons, whose sentences had been enforced prior to the entry into force of the Act on the Postponement of Cases and the Suspension of Sentences on Offenses Committed through the Press and Broadcasting, to be able to benefit from provisions in their favor in this Act.

- The Act on the Organisation, Duties and Competences of the Family Courts entered into force on 18 January 2003 establishing a specific court to deal with the disputes regarding family law.

IV. SECONDARY LEGISLATION

- With the “Regulation on the Language of Radio and Television Broadcasts” that entered into force on 18 December 2002, the principles and procedures relating to broadcasts to be made in the different languages and dialects traditionally used by Turkish citizens in their daily lives were regulated.

- The Bylaw on the Acquisition of Real Estate by Community Foundations, which entered into force on 24 January 2003, sets out the principles and procedures for the implementation of the relevant article in the harmonization package of 11 January 2003.

- The Circular dated 16 January 2003 of Ministry of the Interior instructs the responsible public personnel to give outmost care in the implementation of the relevant law for the prevention of torture, ill-treatment and regarding improvement of the detention conditions.

Act No. 4793 Amending Various Acts
(The Fifth Harmonization Package)

Not yet published in the Official Gazette

Date of Approval: 23.01.2003

Article 1.- The following subparagraph 11 has been added to the first paragraph of Article 445 of the Code of Civil Procedure, No. 1086, dated 18.6.1927.

11- The determination by a finalized decision of the European Court of Human Rights that the judgment was taken for a violation of the Convention of the Protection of Human Rights and Fundamental Freedoms.

Article 2.- The following third paragraph has been added to Article 447 of the Code of Civil Procedure

The time period for retrial, for the reason written in subparagraph 11 of the first paragraph of Article 445, is one year from the date of the finalization of the decision of the European Court of Human Rights.

Article 3.- The following sixth paragraph has been added to Article 327 of the Code of Penal Procedure, No. 1412, dated 4.4.1929.

6-. -The determination by a finalized decision of the European Court of Human Rights that the judgment for a penalty was taken for a violation of the Convention of the Protection of Human Rights and Fundamental Freedoms. In this case, retrial may be requested within one year of the date of the finalization of the decision of the European Court of Human Rights.

Article 4.- Article 82 of the Act No. 2908 on Associations, dated 6.10.1983, has been amended as follows:

Article 82.- Persons that do not comply with the requirements of Article 43 or the first and fourth paragraphs of Article 45 of this Act, persons that do not complete the declaration indicated in the second paragraph of Article 64 or persons who do not convert immovable properties into cash within the time period indicated by the Ministry are sentenced to a heavy fine from one billion liras to three billion liras.

Article 5.- Article 445/A of the Code of Civil Procedure, No. 1086, dated 18.6.1927, the final paragraph of Article 448 of the same Act, Article 327/a of the Code of Penal Procedure, No. 1412, dated 4.4.1929, the final paragraph of Article 335 of the same Act and the provisional Article 2 of Act No. 3771 Amending Various Acts, dated 3.8.2002, have been repealed.

Provisional Article 1.- Article 1 and 3 of this Act are to be applied to decisions of the European Court of Human Rights that have been finalized by the date of entry into force of this Act and decisions taken on applications to the European Court of Human Rights after the entry into force of this Act. Applications for retrial upon the decisions of the European Court of Human Rights that have been finalized after the date of entry into force of this Act are to be made within one year of the date of entry into force of this Act

ANALYSIS OF THE IV. HARMONIZATION PACKAGE

Amendments related to Torture and Maltreatment

1. The amendment to Article 2 of the Act on the Prosecution of Civil Servants and Public Employees introduces provisions that make the prosecution of public employees in cases of torture and maltreatment possible by taking these persons out of the scope of administrative permission. The aim of this amendment is to address the claims that public employees who are accused of torture and maltreatment at the ECtHR cannot be prosecuted due to the administrative permission procedure.

According to the amendment to Article 245 of the Turkish Penal Code, sentences for torture and maltreatment may not be converted into fines or any other measures and may not be suspended. This amendment is intended as a deterrent measure.

2. The amendments to paragraph c of Article 3 of the Decree Law No. 430 are as follows:

-The length of time that the convict or detainee may be taken out of the prison or detention house has been changed from "ten days" to "four days." This amendment to Article 3 ensures the alignment of this law with the most recent amendments to the Constitution and legislative amendments in the first harmonization package.

-Each time that the prisoner or detainee is to be taken out of the prison or detention house, he or she is to be heard by a judge before the judge takes a decision on this matter.

-The convict or the detainee is to continue to benefit from the rights related to his or her legal status.

-The health of the prisoner or the detainee is to be certified by a medical report each time he or she is taken out of the prison or detention house and returned.

These amendments have been enacted in order to improve detention conditions in regions of State of Emergency.

3. The fourth paragraph of Article 16 of the Act on State Security Courts has been repealed. With this amendment, the implementation of the provisions of the Code of Civil Procedure on the rights of persons apprehended or arrested for common criminal offenses is also extended to offenses defined as under the jurisdiction of State Security Courts. The purpose of this amendment is to prevent the use of statements taken at the time of detention, without allowing the apprehended person to exercise his or her right to a lawyer as evidence in court, which may lead to rulings by the ECtHR of violation of the Article 6 on the right to a fair trial and to rulings against Turkey on torture and maltreatment.

Amendments to the Act on Associations and the Turkish Civil Code

-Restrictions have been decreased with the amendment to Article 5 of the Act on Associations relating to the restrictions on purposes for which associations may be established. This amendment provides for the expansion of the exercise of the right to freedom of association in alignment with the amendment to Article 33 of the Constitution.

-In Article 6 of the Act on Associations, relating to the use of certain names and symbols, a provision has been introduced that allows associations to use foreign languages in their international contacts and unofficial correspondence. This amendment expands the scope of the freedom of association and aligns this law with the amendment to Article 26 of the Constitution.

-The amendment to Article 16 of the Act on Associations provides for the membership of legal entities in associations. The amendment to Article 18 of the Act on Associations introduces provisions on the right to vote by legal entities that have become members of associations. The purpose of these amendments is to align the Act on Associations with the amendments to Article 33 of the Constitution that expands the scope to the freedom of association.

- The requirement for the decision of the administrative board of the association and the signature of the members for the publication of announcements, declarations and similar publications of associations and for prior notification has been repealed. The phrase "in any language prohibited by law and in writing" has been deleted from the text of this article. This amendment brings the provisions of this law into alignment with the amendment to Article 26 of the Constitution related to the "freedom of expression and dissemination of thought."

-Article 11 of the Act on Associations on the activities abroad of associations established in Turkey and Article 12 of the Act on Associations on the activities in Turkey of foreign associations have been repealed. Amendments to Article 91 and 92 have been undertaken in this context. These amendments are intended to provide uniformity in implementation in this area.

-With the amendment to Article 91 of the Civil Code, the procedure of obtaining permission from the Council of Ministers has been repealed. Competences related to the activities of foreign associations in Turkey formerly exercised by the Council of Ministers are transferred to the Ministry of Interior, provided that the views of the Ministry of Foreign Affairs are obtained. With the amendment to Article 92 of the Civil Code, the condition "if international cooperation is deemed to be beneficial" has been emphasized and other restrictions in this matter have been removed. Provisions have been introduced to both articles related to cooperation undertaken by associations. These amendments serve to increase the scope of the freedom of association.

-An additional provision, extending the applicability of the provisions of amended Article 92 of the Civil Code to non-profit organizations other than associations and foundations has been added to this article.

Amendments related to the Effectiveness of the Judiciary

1. The purpose of the amendment to Article 316 of the Code of Penal Procedure is to ensure that the written statement of the Chief Public Prosecutor of the Supreme Court of Appeals is notified to the suspect, or to his or her lawyer, and to strengthen the right to defense.

2. The Supplementary Article 1 added to the Act on Stamp Duties exempts the compensation paid in accordance with the ECtHR rulings and sums for friendly settlement from stamp duties. These amendments have been undertaken in order to address claims of non-compliance with the ECtHR rulings.

3. According to the amendment to Article 5 of the Act on Criminal Records, in line with the provisions of the Convention on the Rights of the Child, information on minors in the criminal records under eighteen years of age may be provided only in certain exceptional situations specified in the article. These amendments introduce provisions on the protection of

children. As the rules in Article 34 of the Act on the Establishment, Duties and Trial Procedures at Child Courts have been incorporated into Article 5 of the Act on Criminal Records, Article 34 has been repealed.

4. With the amendment to Article 8 of the Act on Criminal Records, it has become possible to delete records on certain offenses. In accordance with the Convention on the Rights of the Child, provisions have been introduced on minors that further enhance the rights of the child.

Amendment to the Act on Press

The amendment to Article 15 introduces provisions that protect the press from being forced to disclose its sources of information. This amendment is intended as a measure for compliance with the ECtHR case law, ensuring the fulfillment of the press of its function in democratic societies and the right of the public to be informed.

Amendments to the Legislation on Political Parties and Elections

-The amendment to the first paragraph of Article 8 of the Act on Political Parties brings the conditions for being eligible to being a founding member of a party in alignment with conditions to be eligible to become members of political parties.

-The phrase “persons convicted of terrorist acts” has been added to subparagraphs b/5 of the second paragraph of Article 11 of the Act on Political Parties and subparagraph f/3 of Article 11 of the Act on the Election of Members of Parliament. This amendment is in alignment with the second paragraph of Article 312 of the Turkish Penal Code.

-The lower limit referred to in subparagraph b/3 of the second paragraph of Article 11 of the Act on Political Parties has been changed from “three years” to “five years” for criminal offenses other than those committed without criminal intent.

-The amendment to Article 66 of the Act on Political Parties introduces a provision that prohibits certain natural persons and legal entities from allowing political parties to “use their media.”

-With the amendment to Article 98 of the Act on Political Parties, a “three fifths majority” is required to take a decision for the closure of a political party. This is in alignment with the amendment to Article 149 of the Constitution.

-With the amendment to Article 100 of the Act on Political Parties, a case for the closure of a political party may be filed only for “reasons stipulated in the Constitution.”

-With the amendment to Article 102 of the Act on Political Parties, the matter of “the closure of parties” has been removed from the scope of the Article and the political party has been given the right to appeal against the request of the Public Prosecutor of the Court of Appeals.

-With the amendment to Article 104 of the Act on Political Parties, this article has been aligned with the amendment to Article 69 of the Constitution. The manner in which political parties may be closed has been revised and the sanction “depriving political parties partially or fully of State assistance” has been introduced to replace the closure of the political party.

-With the amendment to Article 111 of the Act on Political Parties, in alignment with the amendment to Article 104, prison sentences have been introduced for persons who are responsible for having deprived the political party partially or fully of State assistance by not complying with the requirements of the warning, as well as for responsible persons in parties that do not receive State assistance.

Amendments to the Act on the Use of the Right to Petition

With the amendments to Articles 1,2,3,4 and 7 of the Act on the Use of the Right of Petition, the provisions of this Act has been aligned with the amendments to Article 74 to the Constitution related to the rights of foreigners residing in Turkey to use their right to petition. The amendment to Article 8 of this Act introduces the “thirty day” time limit. Another amendment to Article 7 introduces the requirement to include the reasons for the decision in the notification of the decision to the applicant. The amendments to the Act expand the scope of the rights and freedoms extended to foreigners. The rules introduced on the replies to the applicants strengthen rights and freedoms exercised by the petitioners.

Amendment to the Act on Foundations

With the amendment to Article 1 of the Act on Foundations, the requirement for a decision taken by the Council of Ministers for the acquisition of immovable properties by community foundations has been replaced by the requirement to obtain permission from the Directorate General for Foundations. The procedure for the acquisition of property by community foundations has been simplified. Rules and procedures relating to this matter are to be designated in a by-law.

Amendment to the Act on the Human Rights Investigation Commission

The amendment to Article 7 of the Act on the Human Rights Investigation Commission decreases the maximum time period allowed for replies to applications related to human rights violations from “three months” to “60 days.” With this amendment, replies made in a shorter period of time are legally guaranteed.

