

E/NL.2001/69 "THE LAW ON PREVENTION OF BENEFIT-ORIENTED CRIMINAL ORGANIZATIONS" enacted by TGNA General Assembly on 30 July 1999.

Benefit-oriented Criminal Organisations

ARTICLE 1.

Those who set up organisations to commit crimes or manage such organisations or act on behalf of such organisations or wilfully and knowingly undertake services, in order to take control of management and administration of an institution, establishment or enterprise directly or indirectly; take control of or gain control or influence over public services, press and publishing institutions; bids, privileges and licensing transactions; establish cartels and trusts concerning financial activities; inflict scarcity or reduction of items or articles; cause price fluctuations; get unfair benefits on behalf of oneself or others; or elicit votes of people in elections or prevent elections from being held, by means of exercising force or threat or making people to be subject to themselves or undertaking overt or covert clandestine co-operation among their members in whatsoever form, shall be imposed an imprisonment term of three to six years solely for this reason, whilst an imprisonment term of two to four years shall be imposed on offenders who become members of such organisations.

If the said organisation is armed, the sentence shall be increased from one-third to half. An organisation is armed, even though no armed action has already been engaged, when the arms and explosives have been prepared or possessed in line with the organisation's aims.

If the criminal author is a civil servant or a public person then the sentence shall be increased from half up to one.

Values or products or their substitutes which are intended for commission of crime or used in commission of crime and revenues of any property, which needs to be confiscated, or any benefit generated through crime shall be decided that they be confiscated to State.

Provisions of this Article, however they are called, shall be applied to the open or clandestine organisations which share the common goals with the said organisations and which use the power of

bewilderment or getting people scared or silenced through oppression.

Sentences for the offences committed by members or non members on behalf of such organisations, for realisation of aims mentioned in paragraph 1 and the crimes under Article 296 of the Turkish Penal Code No 765 dated 1.3.1926 shall be imposed more heavily, from one-third to half.

The ones who commit crimes under this Law, or publicise through written, audio or visual publication means the actions, aims, goals of the such organisations, in order to produce unfair benefits for such people or organisations or to enhance the power of making people scared, silencing through oppression, or intimidation or make propaganda for such organisations in any manner shall be sentenced with an heavy imprisonment term of two to four years and a heavy fine of one to five billion Turkish Liras. Furthermore, it shall be ruled that activities of such publishing institution should be suspended from one to three days.

Tapping or Intercepting Telecommunications

ARTICLE 2.

Signals, writings, pictures, Audio or videos and other type of information received or transmitted by people suspected of acting as helpers or Intermediaries or aiding authors of such crimes via either cable or non cable or any other electromagnetic devices like telephone, facsimile and computer or one-way systems may be tapped or determined or commission of or participation in the crimes under this Law or aiding and abetting authors of such crimes after commission of the crime in any way. Such determined ones shall be sealed and entered into register by authorities in question.

Decisions for engagement in tapping or interception of communications can only be made upon presence of strong criminal indications.

No decision shall be made for tapping or intercepting communications when it is possible that the author(s) can be identified, seized or criminal evidences can be obtained through other precautions available.

For the records which can not be regarded to be part of communications and which are kept by any official or private communications institutions, above mentioned provisions shall also apply.

Judges shall decide for conduct of tapping or intercepting or examining records. Public Prosecutors shall also have the power on same the issue in cases where there may be certain drawbacks when taking of action is delayed. It shall be obligatory however that for actions done without decision of a judge should be obtained a judge's decision within subsequent 24 hours. Such precaution shall be lifted(?) by the Public Prosecutor immediately when the allocated time is due or when the judge rules a verdict in the opposite direction.

Decisions for tapping or intercepting may be given for a term of maximum three months. Such time may be extended maximum twice and each for three months.

If the suspicion regarding commission of crimes under present Law demises while the tapping or interception activity is continuing, then that precaution shall be lifted by the Public Prosecutor. Data obtained as the result of conduct of such precaution in such cases shall be deleted immediately and maximum 10 days time, under auspices of Public Prosecutor and this fact shall be specified with a Minute.

If the Public Prosecutor and the law enforcement officer tasked by Public Prosecutor should ask the officers of communications institutions or establishments or the others which have the authority to render such services to have such tapping and recording conducted and relevant devices installed, this request shall be immediately met and the inception and termination dates and times of such activities shall be specified with a Minute.

Clandestine Surveillance

ARTICLE 3.

Any actions at whereabouts, residences, business places or public locations of people suspected of having committed crimes under present Law may be clandestinely surveilled, traced or placed under audio or video recordings.

Reviewing Records and Data

ARTICLE 4.

Any governmental or private recordings or computer data on people who have attitudes or behaviour similar to the style of commission of crimes at locations, institutions, environs and establishments may be examined in order to uncover crimes or evidences under present

Law, save the ones which must be kept a secret for the sake of national security of State.

Employing Secret Agents

ARTICLE 5.

Public officers may be deployed as secret agents in investigation of the crimes which fall within purview of the present Law, if it becomes apparent that other measures may not be sufficient enough.

Secret Agents shall also have the responsibility for collecting other evidences, traces, signs and indications concerning crimes and for making any investigations about such organisations, and infiltrating such organisations when necessary.

When a Secret Agent is entrusted with the task of surveillance of one or more people suspected of committing crimes under Article 1, such suspects must be the ones who have already committed such crimes or there must be clear indications of the danger that they are likely to commit crimes under present Law or that they are hardened or habitual crime committers.

Secret agents can not be held responsible for the crimes committed by the organisations for which they are entrusted with the task of infiltration. Secret agents shall not commit crimes while doing their respective jobs.

Identities of secret agents shall be kept a secret.

A Regulation to be enacted by Ministry of Interior shall determine relevant issues covering application of present Article or the reshuffling of secret agents at similar jobs for the sake of their own safety or their families'™ safety.

Measures Concerning Claims and Rights

ARTICLE 6.

Except for reserved provisions of the Law no 4208 dated 13.11.1996,[\[href="#f02">¹ \]](#) a decision may be taken during investigations on the confiscation of all movable or immovable assets of people which are strongly suspected of having committed crimes mentioned under Article 1 of present Law lifting partially or wholly the power of exercising rights of or claims over, including rented vaults, in banks or non banking institutions and other real or corporate bodies; investing in a depository location; taking of additional measures for return of property, commercial papers, cash or other values.

The Financial Crimes Investigation Board of Ministry for Finance shall meet requests of the relevant Public Prosecutor's demands for domestic investigations, examinations, determination or appraisals of the property mentioned in the above-cited paragraph.

When it becomes apparent that the property mentioned in paragraph 1 is legitimate, then no confiscation measure decision shall be taken and the already taken confiscation orders shall be nullified(?).

Should the accused receive a sentence, relevant property shall be confiscated by State.

Protection of the Witnesses and the Officers

ARTICLE 7.

If knowledge of identity, whereabouts, residence, or business address of a particular witness will bring about the probability of serious threat to the security of his/her own person or others:

a)

another address may be identified for the accused to which any communications may be sent and identity of the accused may be kept a secret throughout the entire investigation.

b)

identity of the accused shall not be disclosed throughout investigation if it is possible identification of other evidences by acting on the information furnished by the accused.

When the need arises that the identity of a particular witness shall have to be disclosed by means of his/her being heard, it may be decided, for that witness, application of the provisions of Article 20 of Prevention of Terrorism Act No 3713 dated 12.4.1991.

Provisions under above-cited paragraphs shall also cover informants and the law enforcement supervisors and officers charged with intelligence on or investigation of crimes under present Law. Information on their identities or jobs or private lives may not be disclosed under any circumstances.

An imprisonment term of one to two years shall be imposed on those who disclose or assist disclosure of the identities, jobs or private lives of such officers.

Execution of Measures

ARTICLE 8.

In taking and application of measures and action envisaged under Articles 3; 4; 5; 6; and 7,

the procedures and means in Article 2 shall be followed.

Prohibition of Leaving the Country

ARTICLE 9.

For the crimes falling on periphery of present Law, judges may rule temporary prohibition for preventing suspects or the accused from leaving the country, while courts may order the same if the final step of investigation has already been reached. However, Public Prosecutors may decide for temporary prohibition of going abroad of suspects if such going abroad shall cause major setbacks in terms of action delays. Such decision shall be immediately presented to a judge for approval and within 24 hours by latest. Judge shall verdict on such issues within 24 hours' time; otherwise, decision of the Public Prosecutor shall automatically become void.

Breach of Secrecy and Responsibilities and Punishment of Authorities

ARTICLE 10.

The procedures pursued under present Law and decisions taken in the course of preliminary investigations are a secret. Those who disclose such secrets shall be imposed an imprisonment term of two to three years.

Same imposition shall also cover those who do not destroy the data which must be destroyed according to paragraph 7 of Article 2 of present Law, or those who disclose, or use such data in any manner.

If powers relevant to application of present Law are abused and provisions of other Laws are violated, then the sentences mentioned in such Laws shall be increased from half to one time and provisions of Article 12 of present Law shall apply.

Means of Trial

ARTICLE 11.

Trials of commission of crimes under present Law shall be conducted by competent State Security Court. If more than one department of State

Security court exist in such location, then State Security Court 1 shall assume such duty.

The judge as contained in present Law shall refer to reserve member of competent State Security Court. The Public Prosecutor on the other hand shall refer to Public Prosecutor's Office of competent State Security Court.

In trialing crimes under present Law, the provisions

of present Law and the provisions of the Law no 2445 on Means of Establishment of and Trials by State Security Courts dated 16.6.1983 shall prevail.

Prohibition of Conversion to Measure and Postponement

ARTICLE 12.

Articles 4 and 6 of the Law no 647 on Execution of Sentences dated 13.7.1965 shall not apply to the sentences imposed for the crimes provided for under present Law.

Custody of Arrestees; Execution of Sentences; and Probationary Release

ARTICLE 13.

For those who are arrested or sentenced for commission of crimes falling on periphery of present Law, Articles 16 and 17 of Prevention of Terrorism Act shall apply.

Repentance

ARTICLE 14.

In crimes under present Law, excluding the crimes falling on periphery of Prevention of Terrorism Act, no prosecution shall be initiated on those who withdraw from the organisation:

a)

Without having committed crimes personally for the organisation, before commission of any crimes by the organisation,

b)

Providing information after preliminary investigation takes effect, on the organisation, activities and its members, as being no commissioners of crimes for the organisation, while

c)

Sentences for those who apply to and assist competent authorities by providing information, after commission of crime, for seizure of criminals before investigations on the crime committed initiates, shall be imposed being decreased max. by $\frac{1}{8}$, (?)

Sentences for those who apply to and assist competent authorities by providing information, for seizure of criminals during preliminary investigations after commission of crime, shall be imposed being decreased max by $\frac{1}{6}$.

d)

Sentences for those who apply to and assist competent authorities by providing information, after commission of crime, for seizure of criminals during final investigations, shall be imposed being decreased max. by $\frac{1}{4}$.

e)

Leaders of organisations being an exception,

sentences for those who apply to and assist competent authorities by providing information, after commission of crime, for seizure of criminals after verdict becomes absolute, shall be imposed decreasing the sentence by half.

Aiding Criminal Organisations

ARTICLE 15.

For crimes falling on periphery of present Law, the provisions of Article 314 of Turkish Penal Code shall apply.

Additional Circumstances in Which Measures Concerning Investigations and Measures Shall Be Applied

ARTICLE 16.

Articles 2 or 10 of present Law shall also be applicable when the crimes falling on periphery of Prevention of Terrorism Act and the crimes in the Law no 2863 on Protection of Cultural and Natural Objects dated 21.7.1983; the Law no 6136 on Firearms and Knives and Other Tools dated 10.7.1953; and Articles 403, 404, and 406 of Turkish Penal Code are committed as an organisation.

Reserve Provisions

ARTICLE 17.

The provisions on organised crime which have been defined in Turkish Penal Code or other special laws shall be reserved.

Taking Effect

ARTICLE 18.

Present Law shall take effect on the date of its publishment.

Execution

ARTICLE 19.

Cabinet of Ministers shall execute provisions contained in present Law.

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¹ Note by the Secretariat: E/NL. [2001/70](#)