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LEGISLATION DIVISION

Law

Law on Changes made to Various Laws

Law no. 4771

Adopted: 03.08.2002

ARTICLE 1

A) In order to abolish the death penalties envisaged for crimes committed in circumstances of war or the immediate threat of war, the death penalties laid out in Turkish Penal Code 765 dated 1.3.1926, Law 1918 on the Prohibition and Prosecution of Smuggling dated 7.1.1932 and Forest Law 6031 dated 31.8.1956 have been commuted to life sentences.

But

- a) The decrees pertaining to the death sentence in Articles 47, 50, 51, 55, 58, 59, 61, 62, 64, 65, 66, 102, 112, 451, 452, 462 and 463 of the Turkish Penal Code and Article 12 of Law 2253 on the Founding, Duty and Hearings of Juvenile Courts dated 7.11.1979 and
- b) The decrees on those for whom the Turkish Grand National Assembly has decided the death penalty shall not be substituted of Article 17 of the Turkish Penal Code and Article 19 and Appendix 2 of Law 647 on Executions dated 13.7.1965

shall be maintained.

B) According to the decrees of this law the periods envisaged in Articles 70, 73 and 82 of the Turkish Penal Code concerning the commutation of the death penalty to a life sentence shall be applied at two levels, for those guilty of terror crimes, three.

According to the decrees of this law, the decrees of Law 3713 on Combating Terror dated 12.4.1991 on conditional release and the Law on Executions regarding terror criminals whose death penalty is commuted to life imprisonment shall not apply. For these life imprisonment shall continue, never to be released.

ARTICLE 2

A) The paragraph below shall be added to Article 159 of the Turkish Penal Code.

Written, verbal or pictorial expressions of opinion which are intended solely to criticize, without insulting and criminal intent, the bodies and establishments detailed in the first paragraph shall not incur punishment.

B) Articles 201/a and 201/b below shall be added to come after Article 201 of the Turkish Penal Code.

Article 201/a

Those who, with the intention of making material gain, directly or indirectly provide anyone foreign, stateless or who has not been given permission by the authorities to remain in Turkey with an illegal way of entering or staying in the country or provide these people or Turkish citizens with an illegal way out of the country shall be called migrant smugglers.

Perpetrators of migrant smuggling or those who get illegal migrants who have previously entered the country without participating in such a crime out of the country illegally with the aim of material gain, those who remain in the country illegally, those who prepare false identity or travel documents to this end or those who undertake to do so, even if their actions constitute any other crime shall be given in addition a prison sentence of two-five years and a fine of not less than one billion TL. Vehicles that have been used in carrying out an offence and the resulting material benefits shall be confiscated.

For the offences described in the paragraph above, in cases which cause the lives or physical integrity of illegal migrants to be endangered or are contingent upon inhuman or degrading treatment, the punishments to be given to perpetrators are in a ratio of half to if it causes death and it shall be decreed that it is a level higher.

Those who commit the crimes described in the paragraph above in an organized way shall be given a punishment a level higher.

Article 201/b

Anyone with the aim of benefiting from people being put to work or being servants, contingent on them being slaves or similar or on their providing their bodily organs, their being endangered, pressurised, constrained or subject to violence, anyone who abuses their power, burns or benefits from people being experimented on or neglected shall be given a prison sentence or five-ten years and a fine of not less than one billion TL.

If actions exist which have been undertaken with the aims outlined in the first paragraph and which constitute offences, the consent of the injured party shall not count.

In cases where children who are not yet over 18 years are procured, kidnapped, taken from place to place or coerced or sheltered with the intentions laid out in the first paragraph, even if there is no application of anyone who was the target of the crime, the perpetrator shall be punished as laid out in the first paragraph.

In cases where the crimes laid out in the paragraph above are committed in an organised way it shall be decreed that the perpetrators shall be punished one level higher.

ARTICLE 3

Article 11 of Law 2908 on Association dated 6.10.1983, which was taken out of force, and its title, shall be rearranged in the following way.

Activities abroad of Associations founded in Turkey

Article 11

In cases where cooperation in the international arena is deemed beneficial, the founding of associations which administer goals in international activities, the opening of foreign branches of these associations, membership of foreign associations and institutions with similar aims and collaboration with them or activities abroad require the permission of the Council of Ministers taking into account the opinion of the Ministry of Foreign Affairs and upon the proposal of the Ministry of Internal Affairs.

An association or high institution which wants to become a member of a foreign association or high institution or wants to collaborate with them is obliged to give the Ministry of Internal Affairs two examples of the association or institution's status translated into Turkish and ratified.

In the case that foreign associations and institutions which are members of or collaborate with associations in Turkey act in contravention of our laws or against our national interests, the relationship of the association founded in Turkey with these foreign associations or institutions shall be terminated by a decision of the Council of Ministers taking onto account the opinion of the Ministry of Foreign Affairs and upon the proposal of the Ministry of Internal Affairs.

B) Article 12 of the Law on Associations, which was taken out of effect, and its title, shall be redrafted in the following way.

Activities in Turkey of Associations founded abroad

Article 12

In case where international collaboration is deemed beneficial for associations founded abroad, and on condition it is reciprocal, in order to benefit from knowledge or technology culturally, economically, technically or in sport or science, the Council of Ministers may, upon the suggestion of the Ministry of Internal Affairs and taking into account the opinion of the Ministry of Foreign Affairs, give permission for branches to be opened in Turkey, for them to become members of or collaborate with associations that have been founded in Turkey or for them to be active in Turkey.

If the associations mentioned in the paragraph above contravene our laws or national interests, the Council of Ministers shall decide on the proposal of the Ministry of the Interior and taking into account the opinion of the Ministry of Foreign affairs to retract permission that had been granted

C) The first and second paragraphs of Article 15 of the Law on Associations have been changed in the following way.

An Associations Register shall be set up by the Ministry of Internal Affairs to record associations in the Ministry of Association Administration and in provinces in the structures of governorships.

All confederations, federations and associations together with branches and headquarters and branches in Turkey of associations founded abroad shall be enrolled on the Associations Register in the Ministry of Association Administration.

D) The title and first paragraph of Article 40 of the Law on Associations has been changed in the following way.

Ban on preparatory activities for National Defence and Police Services

Associations may not act in preparatory education and training for the army, national defence or police services. To this end camps and drill areas may not be open.

Article 45 of the Law on Associations, and its title, have been changed as follows.

Obligation and Supervision of making declarations

Article 45

Associations shall give a declaration to the most senior local civil servant on the subject of their activities and the results of their transactions of income and expenditure as suitable to the way prescribed in the directive to be published by the Ministry of Internal Affairs, as of the end of the year.

In cases where it is deemed necessary, associations' administrative headquarters, institutions and all types of accessories, notebooks, bills and procedures may always be audited by the Ministry of Internal Affairs or the most senior civil service chief in that place.

The Ministry of Internal Affairs shall carry out these audits through staff of the Ministry of Association Administration or the Ministerial Inspection Committee; the

most senior local civil servant chiefs may do so in person or through an employee or employees to be charged with their duty.

Associations may also be audited by the ministries relevant to their objective and activities. The results of inspections shall be made known to the Ministry of Internal Affairs for information.

During the inspection every type of information, document and paperwork required by the civil servants on duty must be shown or handed over by the association authorities and requested access must be given to the headquarters, institutions and annexes.

During the supervision, in case actions are established that constitute an offence, the relevant chief civil servant's office shall immediately inform the public prosecutor of the Republic.

F) Article 46 of the Law on Associations, and its title, have been changed as follows.

Ministry of Association Administration

Article 46

In order to administer services relating to associations and to check whether they are acting on work topics prescribed for the furthering of the goal shown in their statutes and for the realisation of this goal and whether they are administering their accounts and bills according to law and regulations, the Ministry of Association Administration shall be established in the structure of the Ministry of Internal Affairs.

The working method and inspection fundamentals and principles of this unit shall be laid out by regulations to be published by the Ministry of Internal Affairs.

G) Article 62 of the Law on Associations has been changed as follows.

Art 62

The principles and fundamentals pertaining to accounts to be kept by associations shall be laid out in regulations to be published by the Ministry of Internal Affairs and the Ministry of Finance. These accounts must be ratified by a notary.

H) Article 73 of the Law on Associations has been changed as follows.

Article 73

A unit shall be formed by the Ministry of Internal Affairs relating to associations in the structures of provinces, governorships, administrative districts and *kaymakams* to administer work and procedures relating to associations and to attend to services.

The organisational structure, foundation, duties and authority of this unit in administrative provinces and the method, arrangement and enrolment principles of the

Associations Register to be formed according to Article 15 shall be laid out in regulations to be published by the Ministry of Internal Affairs.

ARTICLE 4

The paragraphs below have been added to the end of Article 1 of the Law on Foundations no. 2762 dated 5.6.1935.

Community foundations, regardless of whether or not they have a charter may, with the permission of the Council of Ministers, acquire wealth and own real estate in order to meet their needs in the religious, charitable, social, educational, sanitary and cultural arenas.

In order for these foundations to meet their needs in the religious, charitable, social, educational, sanitary and cultural arenas by whatever means, their wealth, tax records, rental agreements and property described in other documents shall be registered on behalf of the foundation if they apply within six months from the date that this Law comes into force. Property donated or bequeathed to religious foundation shall also be bound by the decrees of this article.

- B) The following Appended Article has been added to the Governmental Decision in the Decree of the Law on the Organisation and Duties of the General Directorship of Foundations no 227 dated 8.6.1984.

APPENDED ARTICLE 3

In the case that it is deemed beneficial for foundations established in Turkey to collaborate in the international arena, they may become members of the foundation or institution founded abroad with the permission of the Council of Ministers upon the suggestion of the Ministry to which the General Directorship of Foundations is linked, taking into consideration the opinion of the Ministry of Internal Affairs and the Ministry of Foreign Affairs.

International activities of foundations established in Turkey in order to realise the goals laid out in the foundation's title deeds, opening branches abroad, and collaboration with foundations or establishments abroad with similar goals require the permission of the Council of Ministers upon the suggestion of the Ministry to which the General Directorship of Foundations is linked, taking into account the opinion of the Ministry of Internal Affairs and the Ministry of Foreign Affairs.

Foundations established in foreign countries, if they are deemed to benefit from collaboration in the international arena, on condition it is reciprocal, may, with the permission of the Council Of Ministers upon the suggestion of the Ministry to which the General Directorship of Foundations is linked, taking into account the opinion of the Ministry of Internal Affairs and the Ministry of Foreign Affairs, be active in Turkey, open branches, found high institutions, participate in established high institutions or collaborate with established foundations.

These foundations are bound to the law applying to foundations established according to the decrees of the Turkish Civil Code.

ARTICLE 5

A) The second paragraph of Article 3 of Law 2911 on Meetings and Demonstration Marches dated 6.10.1983 has been changed in the following way.

Foreigners organising meetings and demonstration marches according to the decrees of this Law require the permission of the Ministry of Internal Affairs. It is possible for foreigners to address groups in meetings and demonstration marches arranged according to this Law and to carry posters, banners, pictures, flags, signs, tools and equipment by informing the most senior local civil servant of the district where the meeting will be held at least 48 hours prior to the meeting.

B) The first paragraph of Article 10 of the Law on Meetings and Demonstration Marches has been changed in the following way.

For it to be possible for a meeting to be held, a notice signed by all members of the organising committee shall be given to the governorship or administration of the place where the meeting will be held at least 48 hours prior to the meeting within working hours.

ARTICLE 6

A) Article 445/a below shall be added after Article 445 of Law 1086 on Legal Principle Adjudication date 18.6.1927.

Article 445/A

When it is established that an absolute or definite decision has been given by the European Court of Human Rights that there has been a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or its additional protocols, if it is agreed that from the point of view of the nature and gravity of the violation it has produced results which cannot be overcome by damages decreed according to Article 41 of the Convention, the Minister of Justice, the Chief Prosecutor of the Supreme Court, the applicant to the European Court of Human Rights or a legal representative may request the overturning of the trial from the President of the Supreme Court within a year from the date when the decision was finalised.

This request shall be analysed by the Supreme Court Legal General Committee. The Supreme Court Legal General Committee shall decide to reject the compensation result of the violation established by the European Court of Human Rights or reject it if it is not made within the request period. Otherwise it shall decide absolutely without a hearing for the file to be sent to the court that gave the decision for a hearing.

B) The following decree has been added as the last paragraph in Article 448 of the Law on Procedural Hearings.

The decrees of Article 445/A are guaranteed.

ARTICLE 7

- A) Article 327/a below has been added to come after Article 327 Criminal Procedural Law no. 1412 dated 4.4.1929.

ARTICLE 327/a

When it is established that a definite punishment decree has been given by the European Court of Human Rights following a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms or its additional protocols, if it is agreed that from the point of view of the nature and gravity of the violation it has produced results which cannot be overcome by damages decreed according to Article 41 of the Convention, the Minister of Justice, the Public Prosecutor of the Supreme Court, the applicant to the European Court of Human Rights or a legal representative may request an overturning of the judgement from the first Presidency of the Supreme Court within a year of the date when the decision of the European Court of Human Rights is definite.

This request shall be analysed by the Supreme Court Punishment General Committee. The Supreme Court Punishment General Committee shall decide to reject the compensation result of the violation established by the European Court of Human Rights or reject it if it is not made within the request period. Otherwise it shall decide absolutely without a hearing for the file to be sent to the court that gave the decision for a hearing.

- B) The following decree has been added as the last paragraph to Article 335 of the Law on Criminal Procedure.

The decrees of Article 327/a decrees are guaranteed.

ARTICLE 8

- A) The following decrees have been added to the first paragraph of Article 4 of Law 3948 on Radio and Television Foundations and Broadcasts dated 13.4.1994.

In addition broadcasts may be made in different languages and dialects traditionally used in the daily life of Turkish citizens. These broadcasts shall not contravene the basic qualities described in the Constitution of the Republic or the indivisible integrity of the country and nation of the State. The fundamentals and principles regarding the carrying out and supervision of these broadcasts shall be laid out in regulations to be published by the High Committee.

- B) Items (f) and (v) of the second paragraph of Article 4 of the Law on Radio and Television Foundations and Broadcasts have been changed in the following way.

- f) Respectful to the privacy of private life
- v) Broadcasts not being of a nature that incites the use of violence or foments feelings of racial hatred.

- C) The first paragraph of Article 26 of the Law on Radio and Television Foundations and Broadcasts has been changed in the following way.

As long as not in contravention of this Law, the transmission of broadcasts is also free. Again the fundamentals and principles of transmission shall be laid down in regulations to be published by the High Committee.

ARTICLE 9

A) The phrase “offences appearing in the second paragraph of the first additional article of this Law”, which is in item (6) of the third paragraph of Article 5 of Press Law 5680 dated 15.7.1950, has been changed to “offences appearing in the first paragraph of the first additional article of this Law”.

B) Article 21 of the Press Law has been changed in the following way.

Article 21

Those who contravene the decrees of paragraph 1 of Article 9 and Article 11 shall be served a fine of 10-30 billion TL.

Those who continue without giving a declaration to publish periodicals, which have been stopped according to the last paragraph of Article 9, shall be punished with a fine of 20-60 billion TL.

C) Article 22 of the Press Law has been changed in the following way.

Article 22

Anyone who gives a false statement, if the action constitutes another crime, shall be sentenced to a fine of 20-100 billion TL.

D) Article 24 of the Press Law has been changed in the following way.

Article 24

A fine of 30-100 billion TL shall be decreed for those who do not carry out the decree of the first paragraph of Article 12.

E) Article 25 of the Press Law has been changed in the following way.

Article 25

Those who employ anyone who does not have a contract or the right qualities shall be punished with a fine of not less than 15 billion TL.

F) The third paragraph of Article 30 of the Press Law has been changed in the following way.

Those who act in contravention of the decrees of the paragraphs above shall be punished with a fine of 20-100 billion TL.

- G) The second paragraph of Article 33 of the Press Law has been changed in the following way.

Those who contravene this law shall be punished with a fine of 10-30 billion TL.

- H) The second paragraph of Article 34 of the Press Law has been changed in the following way.

If these accounts are not kept or are deficient or falsified, or accounts or the necessary elements that they contain are withheld upon the demand of the Public Prosecutor, the owner of the periodical or his/her agent shall be given a fine of 1-10 billion TL.

ARTICLE 10

- A) Item (D) of Article 8 of Law 2559 on Police Duties and Powers has been changed in the following way.
- D) Places where games are played, performances staged or films or video tapes shown and places licensed to broadcast what is on the internet which attempt to harm the indivisible integrity of the country and nation of the State, the Constitutional order, public security or public morality,
- B) Article 9 of the Law on Police Duties and Powers has been changed in the following way.

The police, in cases where there is a delayed objection regarding the [illegible] decision according to the principles intended to protect national security and public order, public health and public morals or other rights and freedoms, to prevent an offence being committed, to determine every type of weapon, explosive material or goods which it is forbidden to carry or for these reasons, on written orders to be given by the most senior local civil servant, shall search people, vehicles, private documents and belongings

- A) In the location or immediate vicinity where meetings and demonstration marches that come under the scope of Law 2911 on Meetings and Demonstration Marches are carried out
- B) In places where professional establishments which are private legal persons or public institutions, or unions, hold general committee meetings or in their immediate vicinity
- C) In places where people gather or may meet
- D) In all types of educational and training institutions for the provision of education and training freedom, in universities, independent faculties or dependent institutions which adhere to the conditions in item (A) of the second paragraph of Article 20, and their entrances and exits
- E) In public places or places open to the public or in student halls or their annexes
- F) In settlements and their exits and entrances

G) On all types of passenger or goods vehicles

in order to prevent crime, and shall investigate their components and together with documents shall commit them to the Public Prosecutor of the Republic.

In cases where there is a delayed objection to the ruling given according to the principles for the searches carried out by the police with the aim of establishing the hint, evidence, indication or sign of a crime according to the Criminal Procedure Law or other laws or of catching the perpetrator, or linked to these reasons, there must be an official written order made by authority in other laws.

The search and confiscation of printed works under the scope of Press Law 5680 shall be subject to general decrees.

C) Item (C) of Article 11 of the Law on Police Duties and Powers has been changed in the following way.

C) All types of audio and visual works of a nature contrary to public morality and etiquette, the production and sale without regard to the content

D) Article 12 of the Law on Police Duties and Powers has been changed in the following way.

Article 12

To guarantee the legal exceptions, no one under the age of 18 may be employed in places of entertainment, gaming, drinking or similar purposes that need a license to be opened and are open to the public.

Even if accompanied by a guardian the police shall prohibit anyone who is not yet 18 years old entering places which have alcohol such as bars, nightclubs, casinos and pubs and cafes or places where games are played or similar.

Article 17 shall be the procedure for those acting contrary to the decrees of this article and Article 8 shall be the procedure for workplaces.

E) Article 13 of the Law on Police Duties and Powers has been changed in the following way.

Article 13

The police shall detain and take the necessary legal measures against

A) In cases following an offence or in other cases when there is a delayed objection, suspects where there is a strong hint, evidence, indication or sign that an offence has been committed or a crime is underway,

B) Those for whom the authorised official has given a decision to detain or hold them

- C) Those who are drunk to the extent they breach the peace or act disgracefully, or those who attack others in a state of inebriation, those who continue their actions despite warnings and those who try to attack others and argue
- D) Those who entered the country illegally or those about whom a decision has been made to expel or *refouler* them
- E) Those who go against the measures taken by the police in accordance with the law, those who resist and those who stop them doing their duty
- F) People who have a mental illness which constitutes a danger to society, vagrants dependent on drugs or alcohol or people with an infectious disease, with the aim of taking measures in accordance with the principles laid out in the regulations on the implementation of the laws on reform in institutions, education and therapy, and of this Law
- G) Juveniles about whom a decision has been given for them to reform under supervision, or appear in front of the authorised official.

The decrees of the law relating to people detained on a specific principle are guaranteed.

From the point of view of preventing detainees escaping or being attacked, all measures shall be taken in a way which will not do damage to their health.

Detainees shall be informed immediately of the reason for their detention probably in writing but when this is not possible orally, for group crimes this shall be at latest when they are brought before a judge.

The requested next of kin shall be immediately informed that the person has been detained.

The health situation of the following detainees shall be established by a medical report at the moment of detention:

- A) Those who are under the influence of drugs or drunk
- B) Those detained by force
- C) Suspects and accused who will be investigated for an offence.

Those detainees under suspicion of having committed an offence shall be sent to forensic officials.

Those for whom treatment or reform is necessary shall be taken on by the authorities of the relevant institution. Those without reason for detention shall be immediately released.

- F) Additional Article 1 of the Law on Police Duties and Powers has been changed in the following way.

Additional Article 1

Natural persons or groups may put on plays or perform or give performances in various different ways in public places or places open to the public or vehicles that are open to the public, by giving written notification to the most senior local civil servant

at least 48 hours in advance. Of these, the most senior local civil servant shall inform the Public Prosecutor of the Republic about those which are contrary to the indivisible integrity of the country and nation of the State, the Constitutional order or public morality.

The identity, domicile and nationality of the director and others participating in the play or performance shall be made known in the notification which is to be made according to paragraph 1.

ARTICLE 11

A) The name of Law 2923 on Education and Training in Foreign Languages dated 14.10.1983 has been changed to “ Law on Foreign Language Education and Training and the Education of Turkish Citizens in different Languages and Dialects”.

B) Article 1 of the Law on Education and Training in Foreign Languages has been changed in the following way.

Article 1

The purpose of this law shall be to lay out the principles binding foreign languages to be taught in educational and training institutions, schools which give education and training in foreign languages and the education of different languages and dialects traditionally used by Turkish citizens in their daily lives.

C) The decrees below have been added to item (a) of the first paragraph of Article 2 of the Law on Education and Training in Foreign Languages.

But in order to keep to the decrees of Law 625 on Private Educational Institutions dated 8.6.1965 on education in different languages and dialects traditionally used by Turkish citizens in their daily lives, private courses may be opened, these courses shall not go against the basic characteristics described in the Constitution of the Republic or the indivisible integrity of the country and nation of the State. The fundamentals and principles regarding the opening and monitoring of these courses shall be laid out in regulations to be published by the Ministry of National Education.

ARTICLE 12

The following decrees shall be abolished.

- A) Articles 39,47 and 56 of the Law on Associations
- B) Article 31 and Additional Article 3 of the Press Law
- C) The last paragraph of Article 11 of the Law on Police Duties and Powers
- D) Provisional Article 1 of the Law on Free Regions.

PROVISIONAL ARTICLE 1

The files of detainees given the death sentence because of crimes coming under the scope of paragraph A of Article 1 one month before this law comes into force shall be decided urgently and taking into account Article 2 of the Turkish Penal Code, by

- a) The court which gives the decree on those not yet sent to the Supreme Court or those in the office of the Public Prosecutor of the Republic's Supreme Court or those previously sent to the Turkish Grand National Assembly
- b) The penal department concerning those in the Supreme Court.

Files in the office of the Public Prosecutor of the Supreme Court of the Republic or in the Turkish Grand National Assembly shall be sent back to the court presiding within the month from the date that the law comes into force according to the principles in their development.

The decrees of this article shall be applied similarly for files in Military Courts, the Office of the Military Supreme Court Prosecutor and in the Military Supreme Court.

PROVISIONAL ARTICLE 2

Articles 6 and 7 of this Law shall be applied for decisions to be given about applications made to the European Court of Human Rights after the date these articles come into force.

PROVISIONAL ARTICLE 3

The directives envisaged in this law shall be brought into force within a year of the date that this Law comes into force.

Validity

ARTICLE 13

Articles 6 and 7 of this Law shall come into force one year from the date of publication of this Law, the other decrees on the date of publication.

Administration

ARTICLE 14

The Council of Ministers shall administer the decrees of this law.