



## Country File TURKEY

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<b>Region</b>	Europe
<b>Legal System</b>	Civil Law
<b>UNCAT Ratification, Accession (a), or Succession (d)</b>	2 August 1988
<b>Relevant Laws</b>  ▪ Stand-Alone Torture Bill (Y/N)	- Constitution of the Republic of Turkey ("Constitution") - Criminal Code, Law No. 5237 passed on 26.09.2004 (Official Gazette No. 25611 dated 12.10.2004) ("Criminal Code") - Criminal Procedure Code, Law No. 5271 passed on 04.12.2004 (as last amended by Law No. 6217 of March 31, 2011)
<b>Relevant Articles</b>	
<b>Definition of Torture (General) (Article 1)</b>	
<b>Prohibition on Torture (Article 1)</b>	- Article 17 of the Constitution - Article 15 of the Constitution (on the suspension of the Exercise of Fundamental Rights and Freedom)
<b>Crime of Torture (Article 4)</b> ▪ Definition ▪ Statute of Limitations ▪ Penalties ▪ Other	- Article 94 of the Criminal Code - Articles 66-73 of the Criminal Code are articles of general application (not reproduced below). - Articles 94 and 95 of the Criminal Code
<b>Universal Jurisdiction &amp; Cooperation (Articles 5, 9)</b>	
<b>Investigations (Articles 12, 13)</b>	
<b>Remedies and Reparations (Article 14)</b>	

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<b>Exclusion of Evidence (Article 15)</b>	- Article 148 of the Criminal Procedure Code (not reproduced below)
<b>Legal and Procedural Safeguards (Articles 2, 11, 16)</b>	- Article 19 of the Constitution (notification, right to be brought before a judge)
<b>Non-Refoulement (Article 3)</b>	- Article 18(3) of the Criminal Code covers the “rejection” of extradition requests where there is a risk of “cruel treatment or torture.”
<b>Other</b>	<ul style="list-style-type: none"> <li>▪ International Crimes (War Crimes, Crimes against Humanity, etc.) Article 77 of the Criminal Code</li> </ul>
<b>Comments</b>	<p>The Committee against Torture (CAT) reviewed Turkey in November 2010 and issued a number of recommendations to Turkey:</p> <p><b>Torture and impunity</b></p> <p>“The State party should take immediate measures to end impunity for acts of torture. In particular, the State party should ensure that all allegations of torture are investigated promptly, effectively and impartially. In connection with prima facie cases of torture and ill-treatment, the State party should ensure that the alleged suspect is subject to suspension or reassignment during the process of investigation, to avoid any risk that he or she might impede the investigation or continue any impermissible actions in breach of the Convention. The State party should also ensure that guidelines are in place to determine when articles 256 and 86 of the Penal Code will be required to prosecute ill-treatment instead of article 94. Further, the State party should immediately establish effective and impartial mechanisms to conduct effective, prompt and independent investigations into all allegations of torture and ill-treatment, and ensure that perpetrators of torture are prosecuted under article 94 (“torture”) and 95 (“aggravated torture”) so as to ensure that torture is punished by appropriate penalties as required by article 4 of the Convention.” ¶ 7</p> <p><b>Absence of effective, prompt and independent investigations into complaints</b></p> <p>“The Committee calls on the State party to strengthen ongoing efforts to establish impartial and independent mechanisms to ensure effective, prompt, and independent investigations into all allegations of torture and ill-treatment.” ¶ 8</p> <p><b>Restrictions on fundamental legal safeguards</b></p> <p>“The State party should ensure by law and in practice that all detainees are guaranteed the right to have prompt access to a lawyer, to notify a family member and to an independent medical examination from the very outset of their detention. The State party should ensure that it upholds patient-doctor confidentiality during such medical examinations.” ¶ 11</p>

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	<p><b>Reparation and compensation, including rehabilitation</b></p> <p>“The State party should strengthen its efforts in respect of reparation, compensation and rehabilitation and provide victims of torture and other cruel, inhuman or degrading treatment or punishment with fair and adequate reparation and compensation, including rehabilitation. The State party should consider developing a specific programme of assistance in respect of victims of torture and ill-treatment.” ¶ 14</p> <p><b>Non-refoulement and detention of refugees, asylum-seekers and irregular foreigners</b></p> <p>“The State party should take prompt and effective measures to ensure compliance with its obligation under article 3 of the Convention not to return any person facing a risk of torture and ensure that all individuals in need of international protection have fair and equal access to asylum procedures and are treated with dignity.” ¶ 15</p> <p><b>Statute of limitation</b></p> <p>“The State party should amend its Penal Code to ensure that acts of torture are not subject to any statute of limitation.” ¶ 24</p> <p>To read more see the <i>Concluding Observations of the Committee against Torture, Turkey</i>, UN Doc. CAT/C/TUR/CO/3 (20 January 2011), at <a href="http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3_en.pdf">http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.TUR.CO.3_en.pdf</a></p>
<p><b>Languages Available</b></p>	<p>English</p>
<p><b>Links &amp; Sources</b></p>	<ul style="list-style-type: none"> <li>- Constitution of the Republic of Turkey (Office of the Prime Minister website) <i>available at</i>: <a href="http://www.byegm.gov.tr/Content.aspx?s=tcotrot">http://www.byegm.gov.tr/Content.aspx?s=tcotrot</a></li> <li>- Criminal Code, Law No. 5237 passed on 26.09.2004 (Official Gazette No. 25611 dated 12.10.2004) (Organization for Security and Co-operation in Europe website) <i>available at</i>: <a href="http://www.legislationline.org/documents/action/popup/id/6872/preview">http://www.legislationline.org/documents/action/popup/id/6872/preview</a></li> <li>- Criminal Procedure Code (Law No. 5271 of December 4, 2004, as last amended by Law No. 6217 of March 31, 2011) (World Intellectual Property website) (In Turkish) <i>available at</i> <a href="http://www.wipo.int/wipolex/en/details.jsp?id=11128">http://www.wipo.int/wipolex/en/details.jsp?id=11128</a> <ul style="list-style-type: none"> <li>▪ <b>English version:</b> Code on Criminal Procedure (selected articles), Law No. 5271, date of adoption: 4.12.2004 (OSCE website) (Note this version does not indicate whether it contains the amendments of March 31, 2011) <i>available at</i> <a href="http://legislationline.org/documents/action/popup/id/8976">http://legislationline.org/documents/action/popup/id/8976</a></li> </ul> </li> </ul>

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## Relevant Articles – Turkey

### ➤ Constitution of the Republic of Turkey

#### PART TWO- FUNDAMENTAL RIGHTS AND DUTIES

##### CHAPTER ONE- GENERAL PROVISIONS

#### IV. Suspension of the Exercise of Fundamental Rights and Freedoms

**Article 15.** (As amended on May 22, 2004)

In times of war, mobilization, martial law, or state of emergency, the exercise of fundamental rights and freedoms can be partially or entirely suspended, or measures may be taken, to the extent required by the exigencies of the situation, which derogate the guarantees embodied in the Constitution, provided that obligations under international law are not violated.

Even under the circumstances indicated in the first paragraph, the individual's right to life, and the integrity of his or her material and spiritual entity shall be inviolable except where death occurs through lawful act of warfare; no one may be compelled to reveal his or her religion, conscience, thought or opinion, nor be accused on account of them; offences and penalties may not be made retroactive, nor may anyone be held guilty until so proven by a court judgment.

#### CHAPTER TWO- RIGHTS AND DUTIES OF THE INDIVIDUAL

##### I. Personal Inviolability, Material and Spiritual Entity of the Individual

**Article 17.** (As amended on May 22, 2004)

Everyone has the right to life and the right to protect and develop his material and spiritual entity.

The physical integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his or her consent.

No one shall be subjected to torture or ill-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

Cases such as the act of killing in self-defence, occurrences of death as a result of the use of a weapon permitted by law as a necessary measure during apprehension, the execution of warrants of arrest, the prevention of the escape of lawfully arrested or convicted persons, the quelling of riot or insurrection, or carrying out the orders of authorized bodies during martial law or state of emergency, are outside of the scope of the provision of paragraph 1.

##### III. Personal Liberty and Security

**Article 19.** (As amended on October 17, 2001)

Everyone has the right to liberty and security of person.

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[...]

Individuals arrested or detained shall be promptly notified, and in all cases in writing, or orally, when the former is not possible, of the grounds for their arrest or detention and the charges against them; in cases of offences committed collectively this notification shall be made, at the latest, before the individual is brought before a judge.

The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in the case of offences committed collectively within at most four days, excluding the time taken to send the individual to the court nearest to the place of arrest. No one can be deprived of his or her liberty without the decision of a judge after the expiry of the above-specified periods. These periods may be extended during a state of emergency, under martial law or in time of war.

The arrest or detention of a person shall be notified to next of kin immediately.

[...]

Persons deprived of their liberty under any circumstances are entitled to apply to the appropriate judicial authority for speedy conclusion of proceedings regarding their situation and for their release if the restriction placed upon them is not lawful.

[...]

punishment due to racial, religious preference, or nationality, or membership to a social or political group, or to a cruel treatment or torture.

[....]

## SECOND VOLUME- Special Provisions

### FIRST CHAPTER- International Offenses

#### FIRST SECTION- Genocide and Offenses against Humanity

#### **Offenses against Humanity**

##### **Article 77**

(1) Execution of any one of the following acts systematically under a plan against a sector of a community for political, philosophical, racial or religious reasons, creates the legal consequence of an offenses against humanity.

- a) Voluntary manslaughter,
- b) To act with the intension of giving injury to another person,
- c) Torturing, infliction of severe suffering, or forcing a person to live as a slave,
- d) To restrict freedom,
- e) To make a person to be subject to scientific researches/tests
- f) Sexual harassment, child molestation,
- g) Forced pregnancy
- h) Forced prostitution

(2) In case of execution of the act mentioned in paragraph (a) of first subsection, the convict is sentenced to heavy imprisonment; in case of commission of offenses listed in

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other paragraphs, the convict is sentenced to imprisonment not less than eight years. However, if the offense is caused by voluntary manslaughter or intentional injury of a person, then the provisions relating to physical joinder are applied in consideration of number of victims.

(3) The court may adjudicate imposition of security precautions upon the legal entities due to such offenses,

(4) These offenses are not subject to statute of limitation.

## SECOND CHAPTER- Offenses Against Individuals

### **Torture**

**Article 94-**(1) Any public officer who causes severe bodily or mental pain, or loss of conscious or ability to act, or dishonors a person, is sentenced to imprisonment from three years to twelve years.

(2) The punishment may not be reduced in case of commission of offense;

a) Against a child who cannot protect himself due to corporal or spiritual disability,

b) Against an attorney or another public officer by virtue of office, the offender is sentenced to imprisonment from eight years to fifteen years.

(3) In case of engagement in any act defined as sexual harassment, the offender is punished with imprisonment from ten years to fifteen years.

(4) Other persons who participate in commission of an offense are punished likewise the public officer.

(5) The punishment to be imposed may not be reduced even if the offense is committed by negligence.

### **Consequential severe torture**

**Article 95-**(1) Punishment determined according to the above article is increased by one half if the offense results with;

a) Weakening of sensual or bodily functions of the victim,

b) Continuous difficulty in speaking,

c) Distinct facial mark,

d) Risk of life,

e) Premature birth of a child.

(2) Punishment determined according to the above article is increased by one fold if the offense results with;

a) Incurable illness or causes vegetative existence of the victim,

b) Loss of sensual or bodily functions,

c) Loss of ability to speak and to give birth to a child,

d) Distinct facial change,

e) Abortion, if the offense is committed against a pregnant woman.

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(3) In cases where the torture causes break of bones in the body, the offender is sentenced to imprisonment from eight years to fifteen years according to affects of broken bone on vital functions.

(4) In case of death of a person from torture, the offender is sentenced to heavy life imprisonment.