

Protection of Public Interest in Criminal Proceedings in the Turkish Law and Individual Guarantees

Distinguished Participants, Ladies and Gentlemen,

I would like to extend my deepest regards to each and every of you before I begin my speech.

Let me, first of all, thank the Prosecutor General's Office of the Russian Federation for organizing this congress.

I hope that this conference, providing us with the opportunity of exchanging opinions on such an important topic together with the general prosecutors and government officials from different countries, representatives of international organizations and academia, will be very fruitful.

For this reason, we are attending this conference with a high level and big delegation from the Ministry of Justice and General Prosecutor's Office of the Supreme Court of Appeals.

Esteemed Participants,

Cognizant of its international obligations, Turkey is a party to nearly all human rights mechanisms in the regional and universal level. The rules and principles on the rule of law, human rights and freedoms and democratic governance are guaranteed in the Constitution.

Our Constitution grants superiority to international conventions on human rights and freedoms against our national legislation and they have become a part of our domestic law. Therefore, the understanding of a state underpinned by human rights has been brought in line with the international standards.

Undoubtedly, the sine qua non of human-rights-based governance is the independent and impartial judicial system.

Today, I would like to give you information on the guarantees concerning the protection of public interest in criminal proceedings in Turkey, while displaying utmost respect to the rights and freedoms of individuals.

As expressed in the relevant recommendations of both the United Nations and Council of Europe, prosecutors are tasked with investigating criminal acts within the legal framework and imposing sanctions. For this reason, prosecutors play an effective and indispensable role in the criminal

justice system from the beginning of investigations up until the end of the proceedings and even until completion of execution of sentences.

Undoubtedly, the ability of prosecutors to pursue their roles on the basis of rule of law and respect for human rights depends on their acting independently and impartially.

Different from many other legal systems, prosecutors in Turkey enjoy a complete independence from the executive organ both organically and functionally. Prosecutors carry out judicial activities by enjoying a full independence. Just like judges, prosecutors are granted with guarantees in our Constitution. It is clearly stipulated that prosecutors shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution, nor shall they be deprived of their rights relating to their status.

Likewise, just like in the case of judges, appointment, promotion, disciplinary procedures of prosecutors are carried out by the Council of Judges and Prosecutors established on the basis of tenure of judges and independent from the executive organ. In addition, prosecutors must conduct investigations in an objective and just manner away from any and all interventions. No organ or individual may give orders or instructions to prosecutors in the exercise of their duties. Even the Minister of Justice does not have the power to instruct prosecutors to file a case. Such power was lifted in 2004.

While discharging their judicial duties, public prosecutors take into consideration the provisions of the Constitution and law, international conventions to which we are a party and judgments of supreme courts. Moreover, the Council of Judges and Prosecutors adopted in 2006 the Council of Europe Budapest Guidelines that lay down international code of conduct for prosecutors. Likewise, the Council of Judges and Prosecutors adopted in 2019 the “Declaration of Ethics for the Turkish Judiciary”. Hence, prosecutors must act in line with these ethical rules.

Whether prosecutors discharge their duties in accordance with the principles I have just mentioned, and whether they violate ethical conduct are supervised by the Council of Judges and Prosecutors as required by the Constitution.

In short, prosecutors in our Country are granted with constitutional guarantees in order to discharge their duties in line with international standards and within the framework of the principle of independence and impartiality

Ladies and Gentlemen,

Having talked about these guarantees afforded to prosecutors with the aim of protecting public interests, I would like to briefly mention what types of individual guarantees are provided to ensure a just and equitable balance in criminal investigations.

In line with the principle of reaching the accused from evidence, a prosecutor must conduct investigations by observing procedural rules stipulated in the laws and by protecting the rights and freedoms of suspects. Within this scope, statement taking and inquiry procedures which are against the law and ethics are prohibited. It is explicitly stated in the law that the statement of the suspect and accused must be based on their free will. In order to boost this principle, our legislation clearly rules that statements taken by using prohibited procedures shall not be used as evidence even if consent is granted.

Similarly, guarantees are introduced to ensure that illegally obtained evidence by adoption of the prohibited evidence principle, shall not be used against individuals.

The policy of zero tolerance for torture has been implemented effectively for the last 20 years. Within this scope, numerous reforms have been made including continuous and unannounced inspections by prosecutors to detention centers and investigating the allegations of torture directly. Statute of limitations is lifted for torture offences. Currently, legal arrangements are underway to lift the statute of limitations for disciplinary procedures on account of allegations of torture.

Likewise, within that framework, the individual who is arrested or detained, has the right to access to lawyer as indicated in the judgments of the ECHR.

The right of the suspect to see their lawyer may be restricted by a decision of the judge until 24 hours as an exception and only under certain circumstances. This is in line with the principles identified in *İbrahim vs. UK* judgment of the ECHR. Besides, it is explicitly stated in the law that the suspect shall not be interrogated nor is their statement taken in this process under any circumstances.

The right to access to lawyer is also granted to the widest extent possible. Those individuals, who cannot afford to retain a lawyer, may benefit from the assistance of a lawyer, who is assigned ex officio, free of charge if they request so. For offences requiring imprisonment with a lower limit of more than 5 years, minors and disabled can benefit from lawyers without seeking their request.

Furthermore, another guarantee explicitly stated in the law is that statements taken by the police without the presence of a defense counsel shall not be taken as a basis in the judgment unless that is validated by the suspect or the accused before the court.

Esteemed Participants,

Please allow me to address other guarantees afforded to individuals in criminal investigations.

Those who are suspected of committing an offence are subject to a duly executed identification from the very beginning of their arrest, and they are reminded in writing of all their rights and guarantees stipulated in Criminal Procedure Code.

Ensuring that those who are under arrest or placed in detention are brought before the judge as soon as possible is a prerequisite for the right to liberty and security.

If detention of the suspect is decided within the scope of investigation, the individual has a right to submit an objection with Criminal Peace Judgeship to ensure an immediate release. The period of detention shall not exceed 24 hours. It can be extended up to 96 hours for certain offences and decisions of extension are also subject to an appeal.

Again, those who are under arrest go through a medical check first.

It is also stipulated in our law that the relatives of the arrested suspect should be informed of this situation. If, those individuals and victims, who are under arrest or detained, do not speak Turkish, they can benefit from the assistance of an interpreter free of charge.

Besides, the principle of trial without arrest is adopted in our law. To this end, decision of detention is subject to very strict conditions.

In order to deliver the decision of detention:

- There must be a strong suspicion of an offence based on concrete evidence,
- There must be a reason of detention such as escape, destroying and concealing evidence, exerting pressure on witnesses.

Under these circumstances, only the judge may deliver a detention decision.

In addition, upon requesting for detention, the prosecutor must indicate the reasons why judicial control measure would be insufficient.

There is prohibition of detention in certain cases. Accordingly, detention shall not be decided for offences requiring a judicial fine only and those the upper limit of which is not more than two years.

The principle that detention must be an exception is strengthened by such guarantees as the right to appeal the detention decision, right to request for a release in every stage and the obligation of conducting detention reviews ex officio within a period of 30 days at the latest.

Furthermore, a legal upper limit is introduced for detention. Thus, as a rule, the period of detention shall not exceed 1 year for normal offences and 2 years in offences falling under the purview of high criminal courts. These periods may be extended in cases indicated in the law. The upper limit of detention in the investigation stage is determined as 6 months and 1 year.

Besides, in our legal system, all other measures such as search, seizure, detection of communication, bodily examination that are mandatory in the investigation stage, can only be decided by a judge. Parties may also appeal such decisions.

Let me stress within this scope that despite all these guarantees, individuals are also entitled to request for compensation due to shortcomings that may occur in the implementation or interpretations against the law or due to mistakes.

In the fields of justification of detention decisions, effective mechanism for appeal and compensation, the measures foreseen in the case laws of ECHR are taken.

Likewise, defense counsels can have access to investigation file and attend the processes in an effective manner and ask for collection of evidence in favor of the suspect. The right of the defense counsel to access to the investigation file may only be restricted by the decision of a judge and under exceptional cases as described in the law. Even in such a case, the defense counsel can always have access to minutes of statement of the suspect, expert reports and other procedures in which they are entitled to attend.

Distinguished Participants, Ladies and Gentlemen,

In this part of my speech I would like to briefly touch upon certain guarantees introduced within the framework of powers granted to prosecutors in respect of launching and finalizing of investigations.

According to our Criminal Procedure Code, as soon as the public prosecutor is informed that an offence has been committed, they shall immediately investigate the factual truth with the assistance of the police.

As you know, upon launching of an investigation against someone for commission of an offence, the relevant person acquires the status of a suspect. Although the status of a suspect does not

prejudice the innocence of a person, this status itself may humiliate the individual in their social life. Above all, in publicly known and high profile investigations, the suspects may be labelled as offenders by the media from the very beginning. With a view to eliminating all these drawbacks and strengthening the right to privacy and presumption of innocence, we made an arrangement in 2017 regarding the right against being labelled as a suspect. With this, we lifted the liability of prosecutors to launch immediately and automatically an investigation upon any denunciation.

In cases where it is clearly understood without a need for any inquiry that the act subject to a complaint or denunciation does not constitute an offence or the denunciation or complaint is of abstract or general nature, prosecutors can now render a “Non-Prosecution Decision”.

In that case, the person in question is not labelled as a suspect, neither is their statement taken. Thereby, on the one hand, sufficient powers are granted to prosecutors so that they can conduct an effective investigation in the name of public and on the other hand individuals are not victimized through unfounded or abstract denunciations and complaints and a balance is stricken between two best interests.

Again, prosecutors must collect all evidence in favor of and against the suspect and protect the rights of the suspect.

Upon completion of investigation, if the evidence collected does not create sufficient suspicion pointing that the suspect committed an offence, the prosecutor renders a decision of non-prosecution in the name of the public. They terminate the investigation and protect the rights of the suspect.

Otherwise, if there is sufficient suspicion pointing that they committed an offence, then the prosecutor will file a public case against the suspect.

Distinguished Participants,

Finally, I would like to provide you with information on the recent legal reforms in our Country.

Action Plan on Human Rights, prepared to further raise the standards regarding rights and freedoms was unveiled by our President on 2 March 2021.

The vision of our action plan, finalized after a 1,5 years of work, is “free individual, strong society and more democratic Turkey”.

Action Plan on Human Rights, foreseen as a milestone for the new Constitution, addresses the legislative and administrative activities on the basis of legal foreseeability, transparency and accountability. Strong emphasis is placed on the right to liberty and security, freedom of expression, individuality of crime and punishment and presumption of innocence.

Action Plan on Human Rights includes significant activities to strengthen the independence and impartiality of the judiciary, tenure of judges and prosecutors and access to justice.

In this scope, there are 11 main principles, 9 aims, 50 goals and 393 activities envisaged in the Action Plan on Human Rights.

The Action Plan is foreseen for a period of two years, and in 2023 our goal is to further raise the standards regarding rights and freedoms in our Country by implementing the activities set out in the Plan.

Distinguished Participants, Ladies and Gentlemen,

While concluding my words, I would like to thank you for your attention.

I hope that this conference will contribute to comparing practices of different countries with the international standards and thereby to raising the standards on the rule of law in our geography.

On this occasion, I would like to thank once again the Prosecutor General's Office of the Russian Federation for organizing such an important congress.