

2019/14136816-TURKUNO DT/23481642

The Permanent Mission of the Republic of Turkey to the United Nations presents its compliments to the Office of Legal Affairs of the Secretariat of the United Nations, and with reference to the Latter's Note no: LA/COD/50/1 dated 8 January 2019, in relation to General Assembly resolution 73/196 of 20 December 2018, entitled "Criminal Accountability of United Nations Officials and Experts on Mission" has the honour to submit the following for its inclusion in the report to be issued by the Secretary-General:

"I- Relevant UN documents and Conventions

A) The first and fifth paragraphs of Article 90 of the Constitution of the Republic of Turkey entitled "Ratification of International Treaties" stipulates that the ratification of treaties with foreign states and international organisations on behalf of the Republic of Turkey shall be subject to an adoption by the Grand National Assembly of Turkey by a law approving its ratification. Moreover, it is provided that international treaties duly put into effect have the force of law; that no appeal to the Constitutional Court shall be made with regard to these treaties on the grounds that they are unconstitutional; and, that in case of a conflict between international treaties, duly put into effect, concerning fundamental rights and freedoms and the laws due to differences in provisions on the same matter, the provisions of international treaties shall prevail.

B) The UN Charter, to which Turkey is also a Party, entered into force following its approval by Law numbered 4801 and dated 15 August 1945 and its publication in the Official Gazette numbered 6092. According to Article 105 of UN Charter, the Organization shall enjoy in the territory of each of its Members such privileges and immunities as necessary for the fulfilment of its purposes. Representatives of United Nations Members and officials of the Organization shall similarly enjoy such privileges and immunities as necessary for the independent exercise of their functions in connection with the Organization. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

C) The Convention on the Privileges and Immunities of the United Nations was approved by the Law numbered 5595 dated 15 March 1950 and published on the Official Gazette numbered 7462 and dated 21 March 1950. The scope of the immunities of UN officials and experts on mission is as follows under sections 18, 19 and 22 of the abovementioned Convention:

**Office of Legal Affairs
Secretariat of the United Nations
New York**

“Section 18 - Officials of the United Nations:

shall be immune from legal process in respect of words spoken or written and all acts performed by them in their official capacity,

Section 19 - In addition to the immunities and privileges specified in Section 18, the Secretary-General and all Assistant Secretaries-Generals shall be accorded in respect of themselves, their spouses and minor children, privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

The experts on mission for the United Nations:

Section 22 - Experts, other than officials coming within the scope of Article V, performing missions for the United Nations shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions, including the time spent on journeys in connection with their missions. In particular, they shall be accorded:

(a) immunity from personal arrest or detention and from seizure of their personal baggage,

(b) in respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer employed on missions for the United Nations.

(c) inviolability for all papers and documents.”

II- Turkish Criminal Code and relevant Turkish Legislation

A) The fact that officials or experts from Turkey performing an official duty within the United Nations in the name of Turkey commit a serious crime in a foreign country concerns the exercise of jurisdiction within the scope of Articles 10, 11 and 13 of Turkish Criminal Code No. 5237.

In this regard, Article 5 of Turkish Criminal Code stipulates that national courts shall have jurisdiction *ratione loci* for the crimes committed within the borders of the country, and mechanisms shall be established for the punishment of perpetrators under the “principle of territoriality” regardless of who committed the crimes in Turkey against whom. The privileges or immunities arising from diplomatic immunities or conventions that are considered to be an exception do not allow trying the assigned person in the country to which he/she has been sent. The “active personality principle” is included in our legislation for removing the negativities arising from this situation.

According to Article 10 of Turkish Criminal Code, a new trial can be filed in Turkey for a person who commits an offence in a foreign country while performing an official duty in the name of Turkey, even if he is convicted in a foreign country due to execution of such act. What is considered is not whether the person sent to a foreign country is a national of Turkey or not, but whether he/she is performing an official duty in the name of Turkey. Furthermore, a national could be punished by Turkey provided that the crime he/she commits in a foreign country fulfils the conditions put forth in Article 11 or corresponds to one of the crimes stated in Article 13. In this way, jurisdiction is fully exercised with regard to the crimes committed both by the officials performing an official duty abroad and by the nationals abroad.

B) The proceedings coming within the scope of judicial cooperation coalesced into our domestic law through Law No. 6706 on International Judicial Cooperation in Criminal Matters, which entered into force following its publication in the Official Gazette numbered 29703 and dated 5 May 2016. It is seen that Turkish legislation is compatible with the support and sharing of the states, in accordance with the principle of reciprocity, regarding the application of procedural provisions in Article 5, usage of information and documents in Article 6, demands of Turkish judicial authorities in Article 7 and demands of foreign judicial officials, gathering and sharing of the evidence forwarded in the annex and stated in the articles, usage of information and documents and satisfying the demands of support in Article 5.

Article 58 of Code of Criminal Procedure No. 5271 on witness protection enables hiding the identity of people to be heard as witness concerning the organizational criminal activities if revealing witness's identity causes grave danger for the witness or his/her relatives. Article 234 and Article 236 of the above-mentioned Procedure No. 5271 set out the provisions for the rights of the victim and the claimant and hearing of the victim and the claimant, respectively, and the measures for protecting the victim and witness. The measures for witness protection are stated in Article 5 of Law No. 5726 on Witness Protection.

In this respect, it is considered that Turkish legislation has sufficient regulations on the exercise of jurisdiction, sharing of evidence and protection of witnesses regarding the criminal accountability of UN officials and experts on mission."

The Permanent Mission of the Republic of Turkey to the United Nations avails itself of this opportunity to renew to the Office of Legal Affairs of the Secretariat of the United Nations the assurances of its highest consideration.

New York, 30 May 2018

