

**LAWS AFFECTING
US PERSONNEL IN TURKEY**

INCIRLIK LEGAL OFFICE

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NATO SOFA

US presence in Turkey is covered by the NATO SOFA; (North Atlantic Treaty Organization - Status of Forces Agreement and its Implementing Agreements), the DECA; (Agreement for Cooperation on Defense and Economy), and the SHAPE (Supreme Headquarters Allied Powers in Europe) Agreements. These agreements, especially the NATO SOFA, have the force of US Treaties and, therefore, are superior in law to DoD Service regulations when in conflict with them. NATO SOFA applies to US personnel to include those on exercises, joint training, meetings, and long-term stationing.

JURISDICTION (NATO SOFA)

a. Exclusive jurisdiction rests with that party which labels a particular act as a crime when the other country does not consider the same offense to be a crime. For example: Insulting the Turkish flag is a violation of Turkish law but not of U.S. law, so Turkey has exclusive jurisdiction.

b. Concurrent jurisdiction applies to all other crimes, with each party designated in certain instances as having the primary right to such concurrent jurisdiction.

(1) Offenses by a U.S. member for the force solely against another member of the force and/or U.S. Property place the primary right of jurisdiction to the U.S.

(2) Offenses performed by military while on official duty (duty certificates) also give the primary right of concurrent jurisdiction to the U.S.

(3) All other offenses give the primary right to Turkey.

TURKISH JURISDICTION

You are living in Turkey and your presence here, as mentioned above, is covered by the NATO SOFA. However, the NATO SOFA does not provide any immunity from prosecution and punishment for violating Turkish laws. Unlike some other NATO countries, Turkey almost never turns over criminal suspects for trial by U.S. courts.

If a local law is violated, the force member and/or his/her dependents and the civilian components face the same judicial procedure as any Turkish citizen. The only case when the U.S. retains criminal jurisdiction is when the offense is committed while performing an official duty or if the offense is committed by an American against another American. Most criminal offenses require pretrial confinement. However, the Turkish authorities may waive pretrial confinement of an American on the promise from the Air Force that the accused will be available for the trial in a local court. But again, the determination is made by a Turkish magistrate, not by U.S. authorities.

The NATO SOFA guarantees that whenever members of the U.S. forces, civilian component, or their dependents are prosecuted by the Government of Turkey, they are entitled to:

- Prompt and speedy trials;
- Be informed, in advance of trial, of the specific charges made against them;
- Be confronted with the witnesses against them;
- Have compulsory process for obtaining witnesses in their favor if the witnesses are within the jurisdiction of Turkey;
- Have legal representation of their own choice for their defense or to have free or assisted legal representation;
- Have the services of competent interpreters;

- To communicate with the representative of the U.S. Government and, when the rules of the court permit, to have such representatives present at their trials.

TURKISH LEGAL SYSTEM

Though similar in many ways, the Turkish court system differs in important aspects from that of the U.S. All trials in Turkey are before a judge. An accused does not have the right to a jury trial. Additionally, rather than having a trial of one or more days which includes the presentation of evidence, a decision on guilt, and then a sentencing decision; Turkish trials are usually broken into a series of hearings. Each hearing will deal with a specific portion of the total trial. Depending on the type of case, the hearings may be spaced from several weeks to several months apart. Therefore, a case before a Turkish court may take considerably longer than a comparable case before a U.S. court.

INTERNATIONAL HOLD

When a military member is criminally charged, they are placed on "International Hold". Dependents and civilians are also placed on hold to the extent that the U.S. Armed Services are not to pay for their transportation or aid them in attempting to leave Turkey. Certain minor traffic cases, which result in no injury, do not require that a hold be placed on individuals.

DUTY-FREE PROPERTY

The NATO SOFA allows the U.S. to import duty-free equipment, provisions, supplies and other goods for the exclusive use of the force. It also allows a member of the force to import a car and household goods free of duty. Base Exchanges, Commissaries and Consolidated Clubs can also import duty free goods for the exclusive use of U.S. Forces. These goods are allowed duty free only for members of the force and their families and civilian components and their families who come from outside Turkey on official duty. For this reason, retired military personnel are not entitled to use the Base Exchange or the Commissary.

To implement or control the duty free privilege specified in the NATO SOFA, Turkey uses a customs receipt (beyanname). Those items specified for a customs listing are commonly referred to as "beyanname items". Major beyanname items are motor vehicles, furniture, televisions and electronic items. If the items are carried into the country, annotation will be made on your passport. You must have all beyanname items with you at the time of your departure from Turkey.

The important point here is that criminal liability attaches to any wrongful transfer of a beyanname item to a person with no privileges (e.g. Turkish citizen) just as criminal liability attaches to a wrongful transfer of a non-beyanname but duty free item. Please make sure to have a Turkish Police Report plus a Governor's Report of any theft related to your beyanname items. Otherwise you will end up paying a large fine and import taxes that may be more than the value of the beyanname item.

BLACK MARKETING

Persons accused of making any unauthorized transfer of BX, Class VI, Commissary, or any other goods brought into Turkey tax-free, can be tried in Turkish courts for smuggling.

Unauthorized transfer is interpreted as giving duty-free goods to those not otherwise authorized duty-free goods (e.g., Turkish citizens, retired military). In the past, our personnel have been involuntarily held in Turkey by U.S. authorities pending their conviction or acquittal in smuggling cases. Conviction is usually punished by a fine. However, where profit is involved, it can result in imprisonment for up to five years. Black Marketing by service members is also punishable as a UCMJ offense. In this regard, do not

transfer, sell, or lend any beyanname or duty-free items. Also, do not purchase items in the BX, Class VI, or commissary for those people not authorized to shop in these establishments. When in doubt, do not make the purchase!

DRUGS

Turkish drug laws are very harsh. Most of the Americans in Turkish jails are there because they violated the Turkish drug laws. According to the Turkish Criminal Code:

- Possession or simple use of drugs is punished by a sentence of 1 - 2 years + heavy fines.
- Conspiracy to import is punished by a minimum sentence of 10 years + heavy fines.
- Conspiracy to export is punished by a minimum sentence of 10 years + heavy fines.
- Selling, buying, or transferring of drugs is punished by a sentence of 5 - 7.5 years + heavy fines.
- If these offense result in another person's death, the offender shall be sentenced to life long confinement.

TURKISH INSULT LAWS

You can be imprisoned if you call a Turkish person a degrading or insulting name or make comments or act in an insulting manner. It is also considered an insult to speak or act in an insulting manner toward the Turkish nation, Turkish flag, national anthem, Turkish government officials, and Ataturk, the founder of the modern Turkish Republic.

Article 301 is the most violated Turkish Law by foreigners because foreigners are not usually even aware that they are violating it.

The article states "Whoever overtly insults or vilifies the Turkish nation, the Republic, the Grand National Assembly, or the moral personality of the Government or the military or security forces of the State or the judicial authorities, shall be punished by imprisonment for six months to two years."

Article 300 is also violated by foreigners who are not aware that tearing, damaging, burning, or removing the Turkish flag, or any other sovereign emblem of the State, is a crime in Turkey. The charges for insulting the Turkish flag or other related emblems of the State are one to three years of imprisonment. Insulting the Turkish National Anthem is also a crime and the punishment is six months to two years of imprisonment.

There is also a special law regarding crimes committed against Ataturk. This law's first article says, "Whoever overtly insults or vilifies the memory of Ataturk shall be punished by imprisonment for one to three years. Whoever breaks, damages, destroys the statues, busts and monuments or the grave of Ataturk shall be punished by imprisonment for one to five years." Insults towards Ataturk include defacing statues or pictures of Ataturk, including currency which bears his portrait.

TURKISH SEX LAWS

There are many adjustments to being in a foreign country. Being in Turkey you should be aware of the laws concerning sexual behavior. The purpose of this section is to warn you that your conduct, which may be socially acceptable in the U.S., may be both socially unacceptable and illegal in Turkey.

- Those who have sexual relations with a girl under 18 years of age (even if the girl consents) shall be imprisoned for 6 months - 2 years.

- Those who act indecently in public shall be imprisoned for 6 months - 1 year + heavy fines.
- Those who have sexual intercourse in public shall be imprisoned for 6 months - 1 year + heavy fines.
- Those lewdly conversing to children shall be imprisoned for 6 months - 2 years.
- Those molesting in other ways shall be imprisoned for 3 months – 2 years.

In connection with the offenses mentioned above, the court shall also order compensation, the amount of which will be determined by taking into consideration the social standing of the victim and the scope and nature of the offense.

RAPE

Whoever ravishes a minor who is under (15) years of age shall be punished by heavy imprisonment for not less than 8 years. A person who commits an act, which constitutes carnal abuse of a minor who is under fifteen (15) years of age, shall be sentenced to heavy imprisonment for 3 – 8 years.

Whoever ravishes a person who is over fifteen (15) years of age by using force, violence or threats, or ravishes a person who, because of a physical or mental defect or on account of a cause other than the perpetrator's action or on account of a fraudulent means used by the perpetrator, was not in a state to resist the offender, shall be punished by heavy imprisonment for not less than 8 years.

If the above mentioned offenses are committed by more than one person or by an ascendant, by the parent, legal guardian, tutor, or teacher of the victim, the offender shall suffer twice the punishment prescribed by law.

LANDLORD AND TENANT LAWS

Rental laws in Turkey provide a lessee with substantial protection once the lessee enters into a lease agreement. The landlord cannot raise the rent during the term of the lease without the tenant's approval. It is possible for the landlord to apply to a court to raise the rent. I would be beneficial to negotiate the percentage of the raise for each renewal term in the lease.

TO PREVENT PROBLEMS WITH THE LANDLORD:

- Go through the Housing Referral Office. Make your contract clear, and if you need help, seek assistance from the Legal Office.
- Do not forget to add the "normal wear and tear" clauses to your rental contract so you will not be responsible for such damages upon termination of your tenancy.
- If you pay a security deposit, make sure to get a receipt.
- Pay your rent on time. If you do not pay your rent on time twice during the annual term of the lease, the landlord can easily file an eviction suit against you.
- A tenant may terminate an original lease if written notice is given to the landlord at least 15 days prior to the expiration date of the lease. If the tenant fails to give such notice, the contract automatically extends for the length of the previous lease term unless the lease provides that the agreement may be terminated at a time other than the final effective day of the lease. The notification timeline may change in accordance with the terms of the contract.

MARRIAGE IN TURKEY

You are subject to Turkish law and procedures when marrying in Turkey. The minimum age for marriage is 18 years for both women and men. Marriage requires a civil ceremony, which is processed by the mayor of the town or his designated representative. Before starting to fulfill the Turkish side of the process, check with your Legal Office and ask for a marriage checklist. After doing that, apply to your districts municipal office with all the prerequisites to declare you want to get married. Your declaration will be advertised at the municipality for 15 days prior to the marriage ceremony. At the end of this 15-day period, you will obtain a certificate, which allows you to have the marriage ceremony anywhere in Turkey within 6 months. In case of an extreme condition, you may ask for a waiver of the 15-day period. If you desire information about the waiver procedure, consult the Legal Office.

If you marry a foreign national, you must apply for immediate-relative status in order to obtain a Visa for your spouse:

- Apply to the Passport Department of the Turkish Police for a passport (if your spouse is Turkish and does not have one already.)
- Check with the U.S. Consular Agent to submit your petition to the Embassy in Ankara.

DIVORCE IN TURKEY

If you want to get a divorce in Turkey, you must comply with the related laws concerning the matter. Turkish Civil code and Turkish Family Laws, which cover the marriage, also cover the divorce. If you are going to file a divorce case in accordance with Turkish Law, you are entitled to ask the Turkish judge to apply your state-side divorce laws if you have a common residence with your spouse in the U.S. The reason for filing the case must meet with at least one of the reasons listed below:

- Threat to life or ill treatment
- Committing a felony and having a dishonored life
- Abandonment for at least three months
- Mental Illness
- If the common life is unbearable, not trustworthy, not reliable and cannot be treated

The last reason provides the opportunity to have a speedy divorce if the marriage is at least one year old and if both parties have the required consent for divorce. The parties will arrange a written settlement for financial matters and the status of the children, if there are any. The judge is free to accept their protocol for divorce or he can make the necessary changes and additions. If changes are made and the parties approve the changes, the judge takes their statements and decides in favor of the divorce.

A party who filed a divorce case which was denied at least three years prior, may initiate a new divorce stating that they could not rebuild the relationship in that time frame. The judge will then immediately decide in favor of the divorce.

The party at-fault cannot file a divorce case. Fault is only considered for divorces with a settlement and for cases re-filed after three years. At the end of a divorce, each party gets his/her property that he/she can prove they own, if not agreed to otherwise.

When thinking about bringing children 16 years of age or younger to Turkey, it is important to obtain the consent of anyone with whom you share custody rights. The Hague Abduction Convention, an international law, requires the prompt return of children, who were wrongfully taken by a parent, to their previous place of residence.

ALIMONY

In general, the party who is not at fault may ask for compensation of his/her substantial losses due to the divorce and also for the moral losses of personal benefits. The judge may take temporary measures to provide for the spouse and children if they are in poor financial condition at the very beginning of the trial. At the end of the trial, the judge will decide on alimony, which is more accurate and detailed and estimated according to the financial status of the husband. If the wife is the offender and if the husband asks for alimony, the husband must prove that he is in poor financial condition and the wife's financial status is capable for paying alimony. Contrarily, when estimating the alimony for the wife and children, the judge takes all the necessary actions to find out the financial status of the husband. The alimony is terminated upon the death of one of the spouses, or if the spouse taking the alimony remarries or starts living with a man like husband and wife, living a dishonored life, or if he/she can earn his/her own living.

Defense Finance and Accounting Services (DFAS) will honor certified wage garnishment orders from Turkish courts. DFAS is authorized, under U.S. law, to garnish the pay of active, reserve, and retired members of the military and the pay of civilian employees of the federal government for the payment of child and/or spousal support.

AUTOMOBILE INSURANCE IN TURKEY

Every car brought into Turkey by military personnel or purchased while stationed here must have a mandatory minimum liability insurance policy with Ergo Turkiye or a Turkish insurance company which covers damages to third parties. Even if you have full coverage stateside, a Turkish policy must be purchased. It is your responsibility to select an appropriate insurance company. Owners of POVs must maintain at least the minimum personal liability and property damage insurance currently required under Turkish law.

Although the foregoing is the minimum considered adequate for reasonable protection, personnel are encouraged to obtain additional insurance coverage, such as comprehensive and collision coverage.

BEFORE YOU DRIVE

The major reasons for traffic accidents with injuries or fatality are: excess speed, wrongful lane changing, following the vehicle in front too closely, drinking and driving, driving without license or proper training, and pedestrian faults. The fines and charges for some major faults are as follows:

- Driving without a license: the driver and the owner will be punished by 1 – 3 months imprisonment + a fine.
- Drinking and driving: the driver will be charged with a heavy fine plus 6 months confinement for the first offense and 2 years confinement and confiscation of the license for a second offense. For a third offense, 6 months imprisonment, psychiatric treatment and confiscation of the license for 5 years plus fines.

The legal limit of alcohol in your system is .05 alcohol/promil. Approximately .063 BAC. Also, driving after drinking will shift the burden of fault in an accident. Turkish insurance companies will not pay insurance coverage if the police report shows alcohol was present in the system of the driver.

- Using drugs and driving: 6 months of imprisonment and a heavy fine, plus the driver's license will be seized **forever**.

- Not obeying speed limits: the driver will be charged with a heavy fine. If a driver has 5 incidences of speeding in a year, their license will be seized for 1 year.

In addition to the above, you should not loan your car to anyone. You are liable for any damage or injuries they cause while driving your vehicle. Leaving your car in the possession of a third person while you are not in the car, is a violation of the NATO SOFA and Turkish Customs and Smuggling Codes. These violations have very severe punishments. For example, your car can be deported and you may be required to pay fees almost as high as your car's value!

WHILE DRIVING

Wear your seatbelts. Seatbelts are mandatory for the front seats and backseats. Children under the age of 10 cannot ride in the front seat alone.

Obey the traffic signs and speed limits. Do not drive your car in a manner which disturbs the order and peace of the public.

IN CASE OF A TRAFFIC ACCIDENT

Protect the scene. **Do not** move **your** car and try to prevent the other driver from moving his. If you have a camera with you, take pictures of the scene of the accident. Call the Security Forces Law Enforcement Desk for assistance if you are close to base. If you are not near a base, contact the nearest American Embassy or Consulate. Seek medical help for the injured. Call 112 for an ambulance and 155 for traffic police. Write down the other driver's license and plate number. Decide whether or not to summon the Turkish Police. You must summon the Turkish Police if there is a fatality or someone is injured or there is major damage to either vehicle. If there are no personal injuries, the parties involved are not required to have the police investigate. You may then fill in the Turkish Form for Vehicle Accidents required to be in all POV's operated in Turkey. It is not necessary to call the police if all the following circumstances apply:

- when the accident involves 2 more vehicles
- when there is only material damage
- when no one is injured or killed; and
- where all concerned parties agree to the cause and agree who is liable for the accident, and provided each driver completes the correct form and all parties involved sign each form.

Once the Turkish Police have been summoned to the scene of an accident, a criminal charge against at least one of the drivers is likely to follow.

- Follow the instructions of the Turkish Police
- The police officer has the authority to take your driver's license and car registration papers.
- Be sure to report your accident to Security Forces, the Legal Office, and your insurance company as soon as possible, because Turkish insurance companies have very short notice requirements.

DEBTS

Pay your debts and always keep the receipt. Do not wait for a bill to arrive to pay your water, phone, cable, internet, electric bills, etc. They normally are due the same date every month, so if there is a delay in mail you will still be responsible for not paying your bill. Go to the same bank you pay your bills with a previous bill and find out how much you owe to utility companies if you do not receive that month's bill.

VALUE ADDED TAX (VAT)

As with many countries of the world, Turkey has a VAT. VAT is similar to a national-level sales tax. A few commodities, such as fresh produce, do not have any VAT charged against them. However, VAT is currently charged at the rate of 8 - 18% on the purchase of most goods and services. VAT is not charged on purchases at the commissary or Base Exchange. It is collected on purchases from off-base merchants. All persons, including Americans (except those who are part of the diplomatic corps) are liable for the tax if purchasing a product which is covered by the VAT law. A tax refund is available only in certain establishments that bear the TAX REFUNDS sign, and with a receipt you can claim the tax upon departure from Turkey in the tax offices located in international airports.

RESIDENCY PERMITS

All American civilians staying in Turkey longer than 90 days are required to have residency permits. Request for permits should be made at the base Pass and Registration Office within 30 days of arrival in Turkey. When a U.S. national baby is born in Turkey, the parents should apply for a residency permit within 30 days.

TRAVEL ORDERS/PASSPORTS

Upon arriving in Turkey, be sure to have orders stamped by the Turkish authorities at the airport or at the port of entry. Safeguard these documents. When you leave the country, be sure to have your stamped orders or passport with you. Do not send them in your luggage or arrive at the point of exit without them. It will be substantially more difficult to leave the country without them.

FIREARMS

Turkish law prohibits importing firearms without express permission from the Ministry of the Interior. Smooth bore shotguns (no rifled barrels) are the only type of firearms you are allowed to import into the country. Once you obtain that permission, securing gun registration and hunting licenses may involve paperwork and time. Foreigners are limited on the types of game they may hunt. Information on firearms importation is available at the Turkish Consulates in the U.S.

PHOTOGRAPHY

Turkey offers the photographer many opportunities for great pictures. Be forewarned, photographing military installations and some official buildings is forbidden by Turkish law. The penalties may be severe, including lengthy imprisonment and heavy fines. It is also wise to ask permission before photographing a Turkish citizen. Most are happy to comply, but some, particularly women, may prefer their pictures not be taken.

CULTURAL AND NATURAL ASSETS

It is against the law to excavate objects of archeological or historical value. Do not touch anything above earth at a historical site. Keeping a piece of stone for souvenir or changing the place of it may result in criminal prosecution. Anyone found digging at an ancient site or trying to leave Turkey with antique coins, pottery, or similar items may be detained for criminal prosecution. Any suspected antiquities will be confiscated.

If you are unsure whether the item is an antique, contact the nearest museum to have it inspected by experts before you buy it. The museum will issue a letter stating whether or not it is an antique.

On 21 July 1983, a law went into effect concerning movable and immovable cultural and natural assets. According to this law, movable cultural and natural assets to be preserved are as follows:

- All movable cultural and natural assets belonging to geological, pre-historic and historical periods. These items have geology, anthropology, prehistory, proto-history, archaeology, art and ethnography value and/or reflect the social, cultural, technical and scientific stages of the period they are related to.
- All items related to the National War of Liberation, the establishment of the Turkish Republic, and houses of M. Kemal Atatürk

Immovable cultural and natural assets to be preserved are as follows:

- Natural assets to be preserved and immovable that were made before the end of the 19th century.
- Immovables that were made after the above stated date, but due to their importance and uniqueness, their preservation is required by the Ministry of culture and Tourism.
- Immovable cultural assets within the "Sit" areas.
- Regardless of time, all buildings and areas which have been the scenes of a great historical event in the National War of Liberation, the establishment of the Turkish Republic and houses of M. Kemal Atatürk.
- Rock graves, stones with inscription, picture or reliefs, caves with pictures, artificial mounds or hills, tumuli, "oren sites" acropolis and necropolis, castles, forts, towers, and other such historical buildings.

FINES RELATED TO THIS LAW

Individuals willfully causing damage to immovable, cultural and natural assets in any way will be sentenced between 2 to 5 years of heavy imprisonment and heavy fines. If these acts are committed with intent to smuggle assets out of the country, the above-mentioned penalties will be doubled.

Individuals violating the restriction on taking antiquities out of the country will be sentenced between 5 to 10 years of heavy imprisonment and heavy fines. Also, the related asset(s) will be confiscated and delivered to a museum.

Individuals making unlawful excavations at an ancient site will be sentenced between 5 to 10 years of heavy imprisonment and heavy fines.

WHERE CAN I GO FOR HELP?

If you have questions or need assistance with any legal matters, contact the legal office at 676-6800.

The information contained in this handout is of a general nature and is provided for your convenience. It is not intended as legal advice or as a substitute for legal counsel.

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