

**Law
on
Amendments to Some Laws**

Law No: 5397

Date of Acceptance: 3.7.2005

ARTICLE 1. – Following paragraphs have been added to the supplementary article 7 of Law No: 2559 on Duties and Powers of the Police, of 4.7.1934.

For the fulfillment of the duties provided in the first paragraph, in order to prevent the commitment of the crimes which are stated in the (a), (b) and (c) subparagraphs of the first paragraph of the article 250 of the Code of Criminal Procedure No: 5271 of 4.12.2004 except for the crimes of espionage, the communication which is performed via telecommunications can be detected and intercepted, its signals can be evaluated, and recorded with the written order of the Director of Security Department or the President of the Intelligence Department upon a court decision or where any delay is undesirable. The written order which is given where delay is undesirable shall be presented to the approval of the authorized and assigned judge in twenty four hours. The judge issues his decision in twenty four hours at the latest. In case this time is over or the judge gives a contrary decision, the injunction is immediately cancelled. Then the records regarding the content of the interception are deleted in ten days at the latest; the situation is recorded with a minutes and this minutes is kept to be produced during the supervision.

The authorized and assigned judge is the member of the high criminal court which is authorized in terms of the place of the law-enforcement unit which demands and was founded in accordance with the first paragraph of the article 250 of the Law No: 5271.

In the decision and the written order, identity of the person against whom the injunction shall be taken, type of the communication tool, telephone numbers he used, and the codes which were found allowing the detection of the communication, type, scope and duration of the injunction and the reasons for applying to the injunction are indicated. The decisions can be made in three months at the latest. And this duration can only be applied for three times more with the same procedure. However, if it is deemed necessary with regard to the ongoing dangers within the framework of the activity of the terrorist organization, the judge can make a decision for extending the duration for many times provided that it is not more than three months.

Where the injunction applied ends, records concerning the content of the interception shall be deleted in ten days at the latest. The situation is recorded with a minutes and this minutes is kept to be produced during the supervision.

In the intelligence activities, with a view to preventing the crimes provided in this article and on condition that court decision is received, monitoring can be performed with the technical tools. Moreover, it is possible to demand in writing in order to make use of the data and documents of the public institutions and organizations and the organizations

which provide public services provided its reason is stated. In case these institutions and organizations do not reveal these data and documents due to the legal reasons or commercial secrets, it is possible to make use of these only with the court decision.

The records which are obtained within the framework of the activities which are executed pursuant to the provisions of articles of this law cannot be used for any other purpose which is different than those mentioned in the first paragraph. Principle of confidentiality is valid for storing and protecting the data and records which are obtained. Direct investigation is initiated by the Public Prosecutors against those who act contrary to the provisions of this paragraph, even if they commit during working or due to working.

Court decisions and written orders are fulfilled by the officers of Directorate General of Security and Head Office of Intelligence Department. Date and hour when the proceeding is started and finished and the identity of the person conducting the proceeding are recorded.

Supervision of the activities which are provided in this article, commanders of the authority in a hierarchical sequence, Directorate General of Security and supervisors of the relevant Ministry and person or commission that shall be privately authorized by the Prime Minister.

Proceedings which are indicated in this article and the interception activities which shall be made in the scope of the article 135 of the Law No: 5271 are executed from one single center which was established with the name "Head Office of Telecommunications" which is directly connected to the President of the Authority. This Head Office is composed of a President and three experts, i.e., a technical, legal and administrative expert. This head office has one representative from the relevant units of the National Intelligence Organization, Directorate General of Security and General Command of Gendarmerie. Adequate personnel are employed in order to fulfill the duties which are assigned. President of Telecommunications is appointed by the Prime Minister with the proposal of the President of the Telecommunications Authority. President of Telecommunications has the employee personal rights which are also enjoyed by the members of the Board. Ministry of Transportation is liable to prepare the infrastructure regarding this center. Foundation expenses of this organization are met by the incomes of the Telecommunications Authority. Goods and services procurement and construction works with regard to the foundation of this center are exempt from the provisions of the Public Procurement Authority Law No: 4734 and Public Procurement Contracts Law No: 4735 except for the penalties and exclusion from the tenders.

Interception which is recorded contrary to the principles and procedures which are provided in this article is not valid in legal terms and provisions of Turkish Penal Code No: 5237 of 26.9.2004 shall be applied to those who record in this way.

Principles and procedures for the application of this article shall be set out in a regulation which shall be enacted by the Prime Ministry in three months by consulting to the Ministries of Justice, Interior and Transportation.

ARTICLE 2. – Following supplementary article was added to the Organization, Duties and Powers of Gendarmerie Law No: 2803 of 10.3.1983.

SUPPLEMENTARY ARTICLE NO 5: For the fulfillment of the duties provided in the first paragraph, in order to prevent the commitment of the crimes which are stated in the (a), (b) and (c) subparagraphs of the first paragraph of the article 250 of the Code of Criminal Procedure No: 5271 of 4.12.2004 except for the crimes of espionage, the Gendarmerie can detect, intercept, evaluate signal data of the communication which is performed via telecommunications and record it with the written order of the General Commander of Gendarmerie or the President of the Intelligence Department upon a court decision or where any delay is undesirable. The written order which is given where delay is undesirable shall be presented to the approval of the authorized and assigned judge in twenty four hours. The judge issues his decision in twenty four hours at the latest. In case this time is over or the judge gives a contrary decision, the injunction is immediately cancelled. Then the records regarding the content of the interception are deleted in ten days at the latest; the situation is recorded with a minutes and this minutes is kept to be produced during the supervision. These proceedings are executed by the center which is founded according to the paragraph ten of the supplementary article 7 of the Duties and Powers of the Police Law No: 2559 of 4/7/1934 and the article 135 of the Code of Criminal Procedure No: 5271 of 4/12/2004. The interceptions which were made according to the article 135 of the Code No: 5271.

The authorized and assigned judge is the member of the high criminal court which is authorized in terms of the place of the law-enforcement unit which demands and was founded in accordance with the first paragraph of the article 250 of the Law No: 5271.

In the decision and the written order, identity of the person against whom the injunction shall be taken, type of the communication tool, telephone numbers he used, and the codes which were found allowing the detection of the communication, type, scope and duration of the injunction and the reasons for applying to the injunction are indicated. The decisions can be made in three months at the latest. And this duration can only be applied for three times more with the same procedure. However, if it is deemed necessary with regard to the ongoing dangers within the framework of the activity of the terrorist organization, the judge can make a decision for extending the duration for many times provided that it is not more than three months.

Where the injunction applied ends, records concerning the content of the interception shall be deleted in ten days at the latest. The situation is recorded with a minutes and this minutes is kept to be produced during the supervision.

With a view to preventing the crimes provided in this article and provided that the court decision is received, monitoring can be performed with the technical tools. Moreover, it is possible to demand in writing in order to make use of the data and documents of the public institutions and organizations and the organizations which provide public services provided its reason is stated. In case these institutions and organizations do not reveal

these data and documents due to the legal reasons or commercial secrets, it is possible to make use of these only with the court decision.

The records which are obtained within the framework of the activities which are executed pursuant to the provisions of articles of this law cannot be used for any other purpose which is different than those mentioned in the first paragraph. Principle of confidentiality is valid for storing and protecting the data and records which are obtained. Direct investigation is initiated by the Public Prosecutors against those who act contrary to the provisions of this paragraph, even if they commit during working or due to working.

Court decisions and written orders are fulfilled by the officers of Directorate General of Intelligence Organization of General Command of Gendarmerie. Date and hour when the proceeding is started and finished and the identity of the person conducting the proceeding are recorded.

Supervision of the activities which are provided in this article, commanders of the authority in a hierarchical sequence, General Command of Gendarmerie and supervisors of the relevant Ministry and person or commission that shall be privately authorized by the Prime Minister.

Interception which is recorded contrary to the principles and procedures which are provided in this article is not valid in legal terms and provisions of Turkish Penal Code No: 5237 of 26.9.2004 shall be applied to those who record in this way.

Principles and procedures for the application of this article shall be set out in a regulation which shall be enacted by the Prime Ministry in three months by consulting to the Ministries of Justice, Interior and Transportation.

ARTICLE 3. – First paragraph of the article six of the State Intelligence Services and National Intelligence Organization Law No: 2937 of 1.11.1983 was amended as follows and the following paragraphs were added to the same this article following this paragraph.

National Intelligence Organization;

a) Can establish a direct connection with the administrators of the ministries and other public institutions and organizations and the organizations which provide public service and the people who are responsible for the intelligence services and apply the appropriate coordination methods in the subjects of direction, production and resisting to the intelligence.

b) In order to benefit from the subjects which are within his own fields from the archives belonging to Ministries, other public institutions and organizations and the other organizations which provide public services and electronic data processing centers, the infrastructure of the communication and to contact with these and receive data and documents, it is possible to request in writing provided that its reason is given.

With a view to fulfilling the duties which are provided in the article 4 of this Law, in case of an existence of a serious danger against the basic qualities which are stated in the article 2 of the Constitution and democratic state of law, for ensuring the security of state, uncovering the espionage crimes, finding that the state secrets are revealed and preventing the terrorist activities, the communication which is performed via telecommunications can be detected and intercepted, its signal data can be evaluated and recorded with the written order of the Undersecretary of National Intelligence Organization or his deputy upon a court decision or where any delay is undesirable.

The written order which is given where delay is undesirable shall be presented to the approval of the authorized and assigned judge in twenty four hours. The judge issues his decision in twenty four hours at the latest. In case this time is over or the judge gives a contrary decision, the injunction is immediately cancelled. Then the records regarding the content of the interception are deleted in ten days at the latest; the situation is recorded with a minutes and this minutes is kept to be produced during the supervision. These proceedings are executed by the center which is founded according to the paragraph ten of the supplementary article 7 of the Duties and Powers of the Police Law No: 2559 of 4/7/1934 and. The interceptions which were made pursuant to the article 135 of the Code of Criminal Procedure No: 5271 of 4/12/2004 are executed via this center.

The authorized and assigned judge is the member of the high criminal court which is authorized in terms of the place of the unit which demands and was founded in accordance with the first paragraph of the article 250 of the Law No: 5271.

In the decision and the written order, identity of the person against whom the injunction shall be taken, type of the communication tool, telephone numbers he used, and the codes which were found allowing the detection of the communication, type, scope and duration of the injunction and the reasons for applying to the injunction are indicated. The decisions can be made in three months at the latest. And this duration can only be applied for three times more with the same procedure. However, if it is deemed necessary with regard to the ongoing dangers within the framework of the activity of the terrorist organization, the judge can make a decision for extending the duration for many times provided that it is not more than three months.

In case the injunction applied ends, records concerning the content of the interception shall be deleted in ten days at the latest. The situation is recorded with a minutes and this minutes is kept to be produced during the supervision.

The records which are obtained within the framework of the activities which are executed pursuant to the provisions of articles of this law cannot be used for any other purpose which is different than those mentioned in the first paragraph. Principle of confidentiality is valid for storing and protecting the data and records which are obtained. Direct investigation is initiated by the Public Prosecutors against those who act contrary to the provisions of this paragraph, even if they commit during working or due to working.

Court decisions and written orders are fulfilled by the officers of Undersecretariat of National Intelligence Organization. Date and hour when the proceeding is started and finished and the identity of the person conducting the proceeding are recorded.

Supervision of the activities which are provided in this article, commanders of the authority in a hierarchical sequence, supervisors of the Prime Ministry and person or commission that shall be privately authorized by the Prime Minister.

Interception which is recorded contrary to the principles and procedures which are provided in this article is not valid in legal terms and provisions of Turkish Penal Code No: 5237 of 26.9.2004 shall be applied to those who record in this way.

Principles and procedures for the application of this article shall be set out in a regulation which shall be enacted by the Prime Ministry in three months by consulting to the Ministries of Justice, Interior and Transportation and Undersecretariat of National Intelligence Organization.

“PROVISIONAL ARTICLE – The center which is laid down in article 7 of the Law No: 2559 is established in six months at the latest”. Decisions and written orders with regard to the interception of the communication, its detection, evaluation of its signal data and recording it are immediately fulfilled by the institutions and organizations which provide telecommunications services and the current systems of the relevant intelligence authorities are maintained to be used pursuant to the provisions of the supplementary article 7 of the Law No: 2559, supplementary article 5 of the Law No: 2803 and article 6 of the Law No: 2937.

ARTICLE 4. – This Law enters into force at its date of issue.

ARTICLE 5. – Provisions of this law are executed by the Council of Ministers.