

Regulation

From the Prime Ministry:

Regulation on Principles and Procedures for the Detection, Interception, Evaluation of the Signal Data and Recording of Communication via Telecommunications, and Organization, Duties and Powers of Telecommunications Head Office

PART ONE

Aim, Legal Basis, Definitions and Principles

Aim

Article 1- This Regulation was prepared with a view to;

- a) Formulating the principles and procedures for the detection, interception of the communication via telecommunications, evaluation of its signal data and recording it within the framework determined as per the supplementary article 7 of the Duties and Powers of the Police Law No: 2559 of 4/7/1934, article 5 of the Organization, Duties and Powers of Gendarmerie Law No: 2803 of 10/3/1983, article 6 of the State Intelligence Services and National Intelligence Organization Law No: 2937 of 1/11/1983 and the article 135 of the Code of Criminal Procedure No: 5271 of 4/12/2004
- b) Setting out the organization, duties and powers of the Head Office of Telecommunications.

Legal Evidence

- c) **Article 2-** This regulation was prepared as per the supplementary article 7 of the Law No: 2559 of 4/7/1934, article 5 of the Law No: 2803 of 10/3/1983, article 6 of the Law No: 2937 of 1/11/1983 and the article 135 of the Code No: 5271 of 4/12/2004.

Definitions

Article 3- For the purposes of the regulation,

- a) Call means a connection which is established via a public telecommunications service allowing communication,
- b) President means the Telecommunications President
- c) Head Office means the Telecommunications Head Office
- d) A case where delay is undesirable means a situation whereby trace, production, circumstantial evidence and evidence have the probability of being lost or the suspect may run away and may not be identified when immediate action is not taken.

- e) Interception of the communication and recording it means the processes for secretly listening to or recording the conversations and all of the communications which are realized via telecommunications
- f) Detection of the communication means the processes for calling, being called and data of location and identity information with regard to the communication which are established by the communication tools with the other communication tools without intervening the content of the communication.
- g) Relevant authority means Undersecretariat of National Intelligence Organization, Intelligence Head Office of Directorate General of Security, Intelligence Head Office of General Command of Gendarmerie, or the authorized units which are assigned as per the Code No: 5271 as the case may be,
- h) Operator means any capital stock company, including Turkish Telecommunications, Inc., providing telecommunications services and/or operating telecommunications infrastructure under an authorization agreement, a concession agreement signed with the Authority, a telecommunication license granted by the Authority or within the framework of a general authorization.
- i) Authority means Telecommunications Authority,
- j) President of the Authority means the of President of the Telecommunications Authority
- k) Signal data means any data which is processed with a view to transmission of a communication in a network or to billing.
- l) Telecommunications means the transmission, emission and reception through cable, wireless, optical, electric, magnetic, electro magnetic, electro chemical, electro mechanic and other transmission systems of all kinds of sign, symbol, voice and image and all kinds of data which can be converted into electric signals,

Principles

Article 4- Communication is essentially confidential.

No one can detect, intercept, evaluate the signal data of and record another's communication via telecommunications except for the principles and procedures which are set out in this Regulation.

Records and data which are obtained within the framework of the activities which are conducted as per the provisions of this Regulation cannot be used for the pursuant to the provisions of the supplementary article 7 of the Law No: 2559 of 4/7/1934, supplementary article 5 of the Law No: 2803 of 10/3/1983 and article 6 of the Law No: 2937 of 1/11/1983 and the article 1325 of the Code No 5271 of 4/12/2004.

It is essential to keep confidential the storage and protection of the data, document and records which are obtained.

PART TWO

Principles and Procedures for Prevention of the Crime or Measures with the Purpose of Intelligence

Article 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 except for the crimes of espionage, the written orders which are given by the Director General of Security and President of Intelligence Department are submitted to the technical expert for the required actions to be taken upon a court decision or where any delay is undesirable.

Demands which are found to be contrary to this Regulation are returned to Intelligence Head Office of General Command for Gendarmerie in order for the deficiencies to be remedied.

Actions to be taken under Law No: 2937

Article 7- With a view to fulfilling the duties which are provided in the article 4 of the Law No: 2937, 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, with the written order of the Undersecretary of National Intelligence Organization or his deputy upon a court decision or where any delay is undesirable.

Demands which are found to be contrary to this Regulation are returned to Undersecretariat of National Intelligence Organization in order for the deficiencies to be remedied.

Written Order

Article 8- In the cases where delay is undesirable, the written order of the Undersecretary of National Intelligence Organization or his deputy, Director of Security Department or General Commander of Gendarmerie and the President of the Intelligence Department to detect, intercept, evaluate the signal data of and record the communication shall be submitted to the authorized and assigned judge for his approval in 24 hours, which is given in first paragraph of the article 26. The judge issues his decision in twenty four hours at the latest.

Points which have to be stated in the decisions and written orders

Article 9- In the judges' decisions and written orders which are given by the authorized bodies with regard to the detection, interception of the communication and evaluation of its signal data and recording it;

a) 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,

- b) Type, scope and duration of the injunction
- c) 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 extended 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.

Implementation of the decisions or the written orders

Article 10- Judges' decisions and written orders are not sent to the operators. At the end of review made with the decisions, the written orders which were found to be in accordance with this Regulation are fulfilled under the supervision of the technical expert by the agency of the relevant Authority officials and employees of the Head Office.

Date and hour when the proceeding is started and finished and the identity of the person conducting the proceeding are recorded.

The written orders which are given contrary to this Regulation shall not be fulfilled.

Deletion of the records

Article 11- Developments of the judges' decisions and written orders shall be immediately notified to the Head Office by the relevant authority.

Where the injunction applied ends, the judge gives a contrary decision about the written order submitted or it is not possible to receive the approval of the judge in twenty four hours in the cases where delay is undesirable, Head Office immediately cancels the implementation of the decision or the written order.

Records which belong to the content of the interception are deleted under the supervision of the President and the highest commander of the relevant authority in ten days at the latest. The situation is recorded with a minutes and this minutes is kept to be produced during the supervision.

PART THREE

Detection, Interception, Evaluation of the Signal Data and Recording of Communication pursuant to the Code of Criminal Procedure

Detection, Interception, Evaluation of the Signal Data and Recording of Communication

Article 12- In an investigation or prosecution which is made due to a crime, where it is not possible for the existence of the solid suspicion reasons with regard to the fact that the

crime is committed and to collect evidence in any other way, the communication of the suspect or the accused person, which is performed via telecommunications can be detected, intercepted, recorded and its signals can be evaluated with the written decision of the Public Prosecutor, upon a court decision or where any delay is undesirable.

The Public Prosecutor shall immediately submit his decision to the judge and the judge issues his decision in 24 hours at the latest. In case this time is over or the judge gives a contrary decision, the injunction is immediately cancelled by the Public Prosecutor.

The communication between suspect or the accused person and the persons which avoids from being a witness cannot be recorded. After the recording is completed, if this situation is understood, the records which are obtained shall be immediately disposed of.

In the decision which is made according to the provision of the first paragraph, type of the crime which was imposed, identity of the person against whom the injunction shall be taken, type of the communication tool, telephone number, and the codes which were found allowing the detection of the communication, type, scope and duration of the injunction shall be indicated.

Injunction can be made in three months at the latest. And this duration can only be extended for once more. However, if it is deemed necessary with regard to the crimes within the framework of the activity of the organization, the judge can make a decision for extending the duration for many times provided that it is not more than one month.

In order to catch the suspect or the accused person, the location of the mobile phone can be detected based on the decision of the Public Prosecutor upon a court decision or where any delay is undesirable. In the decision which is made with regard to this situation, number of the mobile phone and the duration of the detection process shall be indicated. Detection process can be made in three months at the latest; this time can be extended for once only.

The decision and the processes which are made according to the provisions of this article shall be kept confidential during the injunction.

Limitations

Article 13- Intercepting and recording the communication and evaluating its signal data can only be applied with respect to the following crimes in the scope of the article 12.

- a) The following crimes which are provided in Turkish Penal Code;
1. Abduction of the immigrants and human trafficking (article 79, 80),
 2. Deliberate killing (article 81, 82, 83),
 3. Torture ((article 94, 95),
 4. Sexual assault (article 102 except for the first paragraph),
 5. Sexual exploitation of the children (article 103),
 6. Manufacturing and trading the drugs and stimulant substances (article 188),
 7. Money counterfeiting (article 197),

8. Establishing an organization for committing crimes (article 220 except for the paragraphs two, seven and eight),
 9. Prostitution (article 227, paragraph 3),
 10. Rigging a competitive bidding process (article 235),
 11. Bribery (article 252),
 12. Laundering the assets stemming from the crimes (Article 282),
 13. Armed organization (article 314) or supplying weapons to these organizations (article 315),
 14. Crimes for the state secrets and espionage crimes (article 328, 329, 330, 331, 333, 334, 335, 336, 337),
- b) Armory smuggling crimes which are defined in the Law about the firearms, knives and the other instruments (article 12),
 - c) Embezzlement crime which is defined in the paragraphs one, two, three of the article 160 of the Banking Law,
 - d) Crimes which are defined in the Anti-Smuggling Law and require imprisonment
 - e) Crimes which are defined in articles 68 and 74 of the Law on Preservation of Cultural and Natural Assets.

Fulfillment of the decisions

Article 14- The decisions which shall be made as per the article 12 shall be transferred to the Head Office by the Public Prosecutor or law-enforcement officers whom he assigns. The decisions shall not be sent to the operators. The said decisions are fulfilled under the supervision of the technical expert by the agency of the relevant Authority officials and employees of the Head Office.

Date and hour when the proceeding is started and finished and the identity of the person conducting the proceeding are recorded.

Deletion of the records

Article 15- Where the injunction applied ends, it is decided not to sustain the proceedings about the accused person during the implementation of the decision or in the cases where any delay is undesirable, the judge gives a contrary decision about the orders submitted, the Public Prosecutor shall immediately notify to the Head Office that the injunction is cancelled.

If the decision which is given by the Public Prosecutor is not sent to the Head Office by being approved by the judge in its duration, implantation of the decision is immediately cancelled by the Head Office.

Records regarding the detection and interception are deleted in ten days at the latest under the supervision of the Public Prosecutor in the authorized and assigned court and this is recorded with a minutes.

PART FOUR

Duties and Powers of the Head Office, Experts, Relevant Authority Officials

Organization

Article 16- Telecommunications Head Office acts within the Telecommunications Authority directly related to the President of the Authority.

The Head Office is composed of Telecommunications President, technical expert, legal expert and administrative expert.

In the Head Office, in line with the view of the President, an adequate number of technical, legal and administrative experts shall be assigned.

In the Head Office, one representative from the relevant units of National Intelligence Organization, Directorate General of Security and General Command of Gendarmerie shall be present. These representatives obey the instructions of the President during their term of office in the Head Office and in-house regulations which are determined by the Head Office.

Duties of the Head Office

Article 17- Duties of the Head Office are as follows:

- a) Managing the works and processes from one center with regard to the detecting, intercepting, evaluating the signal data of the communication via telecommunications, and recording it pursuant to 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,
- b) Managing the works and proceedings from one center with regard to the detecting, intercepting, evaluating the signal data of the communication via telecommunications, and recording it pursuant to article 135 of Code No: 5271,
- c) Reviewing whether these requests in the scope of (a) and (b) subparagraphs are in accordance with this Regulation and the other relevant legislation and apply to the authorized bodies when necessary,
- d) Transferring the data and information which are obtained as a result of the proceedings as per the (a) and (b) subparagraphs, to Undersecretariat of National Intelligence Organization, Directorate General of Security and General Command of Gendarmerie and the courts and Public Prosecutor Offices in case they demand so, as far as they are concerned.
- e) Ensuring and causing the others to ensure that any technical infrastructure which allow the activities of detecting, intercepting, evaluating the signal data of the communication via telecommunications, and recording it which shall be conducted within the framework of this Regulation are performed by the public institutions and organizations and the other organizations and operators which provide public service and taking the necessary actions for penalizing the operators who do not establish the required infrastructure.
- f) Without prejudice to the paragraph three of the article 11, paragraph two of the article 12 and paragraph three of the article 15, ensuring that any data, documents and records

from the public institutions and organizations and the other organizations and operators which provide public services with respect to the activities of Head Office, are securely archived pursuant to the criteria of data security.

- g) Following the developments which occur in the legislation involving his own fields of duty at national and international level,
- h) Determining any materials, system, software and hardware which are needed to be supplied from domestic or foreign sources for the activities of Head Office and notify it to the President of the Authority,
- i) Providing information to the Prime Minister immediately upon his request regarding the activities of the Head Office.
- j) Fulfilling the other duties which are assigned by the laws.

President

Article 18- The President is appointed by the Prime Minister upon the proposal of the President of the Head Office.

The President is directly accountable against the President of Head Office for the general administration of the Head Office and activities of those who are under his command.

In the absence of the President, expert who shall represent the Head Office shall be appointed by the President of the Authority upon the proposal of the President.

Duties of the President:

Article 19- Duties of the President are as follows:

- a) Representing the Head Office, arranging and executing the relations of the Head Office with the Authority, the public institutions and organizations and the other organizations and operators which provide public services,
- b) Ensuring that the Head Office functions effectively and efficiently
- c) Submitting the relevant authorities a report which is about the works of the relevant authority representatives at least once in a year and when it found out that the relevant authority representatives have attitudes and behaviors which hinder the effective and efficient functioning of the Head Office, notifying the relevant authority and ensuring that they are replaced.
- d) Settling the disputes in duties and powers which may arise between the technical, legal and administrative experts,
- e) Ensuring coordination with the other countries,
- f) Fulfilling the other duties which are assigned by the laws.

Duties of the Legal Expert

Article 20- Duties of the legal expert are as follows:

- a) Reviewing whether these requests in the scope of (a) and (b) subparagraphs of the article 17 are in accordance with this Regulation and the relevant legislation and inform the President when he finds something which is contrary to Regulation and the relevant legislation,
- b) Expressing his legal views with regard to the subjects which are assigned by the President,

- c) Compiling and evaluating the legislation on the subjects which are within the duties of the Head Office and inform the President and the others concerned of the amendments by following these changes,
- d) Following the domestic and foreign developments regarding the activities of the Head Office and giving proposals in order for these to be reflected upon the Services of Head Office
- e) Fulfilling the other duties which are assigned by the President.

Duties of the Technical Expert

Article 21- Duties of the technical expert are as follows:

- a) Ensuring that the requests in the scope of (a) and (b) subparagraphs of the article 17 are fulfilled in accordance with the Regulation,
- b) Establishing the systems which are required for the activities of the Head Office, setting up the infrastructure and causing the others to do the same, operate, maintain and repair it and causing the others to do the same, following the technological developments in this field and expressing his views to the President
- c) Where court decision, decision of Public Prosecutor and written order is issued by more than one relevant authority on the same communication, ensuring that the requests are met simultaneously and transferred to each of the relevant authorities in real time,
- d) Setting up the infrastructure of secure communication between the points which are required at the amount and capacity which is needed by the relevant authorities in order for the relevant authorities to access to the system in an uninterrupted, fast and real time manner,
- e) Delivering the voice, fax, data and any communication data including the Internet to the relevant authorities in joint format as solved and ensuring that the system functions on 24- hour basis,
- f) Keeping the records, content of the communication and the data belonging to the Internet apart from the communication as long as the injunction is maintained,
- g) Where enciphered communication is found in the records, sending the relevant authority the original version of the record to work on the decipherability and ensuring that the encipherment mechanism is integrated into the system when requested by the relevant authorities,
- h) Keeping the records belonging to the relevant authorities, computer records and data of any activity which Head Office or relevant authorities perform in the system, within the framework of the compartmentalization principles and making them accessible to the relevant authorities in line with the authorization levels to be established,
- i) Ensuring the security of the established and operated systems and the recorded data,
- j) Expressing his views on the supply of any materials, system, software and hardware from domestic or foreign sources for the activities of Head Office and notify it to the President of the Authority,
- k) Ensuring that the data flow is regularly and securely performed over an individual and special line which shall be established for the Head Office and ensuring the security of the connections to be made,
- l) Fulfilling the other duties which are assigned by the President.

Duties of the Administrative Expert

Article 22- Duties of the technical expert are as follows:

- a) Without prejudice to the paragraph three of the article 11, paragraph two of the article 12 and paragraph three of the article 15, ensuring that any data, documents and records from the public institutions and organizations and the other organizations and operators which provide public services with respect to the activities of Head Office, are securely archived pursuant to the criteria of data security.
- b) Ensuring the coordination of the relevant units of the Authority in order to conduct any services in terms of personnel, accounting, finance, logistics and supply of the Head Office, which are found appropriate by the President and taking any physical security measures which can be required by the Head Office.
- c) Processing the documents regarding the Head Office, arranging and executing the services and activities of documents,
- d) Ensuring the coordination of the relevant units of the Head Office with regard to the supply of the tools, instruments and materials which are required for the services of the Head Office,
- e) Saving the letters and messages which are sent to the Head Office in the computer media and transfer it to the concerned people and submitting the required ones to the Head Office,
- f) Following the domestic and foreign developments regarding the activities of the Head Office and giving proposals in order for these to be reflected upon the Services of Head Office,
- g) Preparing and executing the in-service trainings of the personnel which are employed within the Head Office and ensuring that the security research is conducted by the relevant authorities in supply of the personnel,
- h) Fulfilling the other duties which are assigned by the President.

Duties of the relevant Authority representatives

Article 23- Duties of the relevant Authority representatives are as follows:

- a) Implementing the decisions which come from the own authorities in the scope of the (a) subparagraph of the first paragraph of the article 17 and are found appropriate to be fulfilled by the Head Office and executing them under the supervision of the technical expert together with the personnel of the Head Office.
- b) Fulfilling the other duties which are assigned by the President.

PART FIVE

Miscellaneous and Final Provisions

Supervision

Article 24- Supervision of the Head Office with respect to the activities which are set out in the Regulation shall be conducted by the person or commission that shall be privately authorized by the Prime Minister.

Supervision of the Directorate General of Security with respect to the proceedings in its own units activities which are set out in the Regulation shall be conducted by commanders of the authority in a hierarchical sequence, supervisors of the Directorate General of Security and Ministry of Interior and the person or commission that shall be privately authorized by the Prime Minister.

Supervision of the General Command of Gendarmerie with respect to the proceedings in its own units which are set out in the Regulation shall be conducted by commanders of the authority in a hierarchical sequence, supervisors of the General Command of Gendarmerie and Ministry of Interior and the person or commission that shall be privately authorized by the Prime Minister.

Supervision of the Undersecretariat of National Intelligence Organization with respect to the proceedings in its own units which are set out in the Regulation shall be conducted by commanders of the authority in a hierarchical sequence, supervisors of the Prime Ministry and the person or commission that shall be privately authorized by the Prime Minister.

Books to be kept

Article 25- In the Head Office of Telecommunications

- a) Registration book
- b) Debit book
- c) Supervision book

and the other books needed can be kept.

The paragraph three of the article 11, paragraph two of the article 12 and paragraph three of the article 15 are reserved.

Authorized and assigned judge

Article 26- The judge who is authorized and assigned for the detection, interception, evaluation the signal data of the communication and recording it within the framework of the Part Two of this Regulation is the member of the high criminal court which is authorized in terms of the place of the unit which demands, of the relevant authorities, and was founded in accordance with the first paragraph of the article 250 of the Law No: 5271.

The judge who is authorized and assigned for the detection, interception, evaluation the signal data of the communication and recording it within the framework of the Part Three of this Regulation is appointed in accordance with the provisions of the Law No: 5271.

Penal Provisions

Article 27- The data which are obtained within the framework of the activities which are executed pursuant to the provisions of this Regulation cannot be used for any other aims and purposes which are laid down in the laws which constitute the basis of this Regulation. Principle of confidentiality is valid for storing and protecting the data, documents 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.

Where the points which are set out in the (e) subparagraph of this article 17 are not fulfilled by the operators, the President informs the Head Office of the requirement of initiating the necessary proceedings in the scope of the Regulation on Administrative Monetary Penalties and Other Sanctions and Injunctions to be Applied to the Operators

by the Telecommunications Authority which is issued in the Official Gazette dated 5/9/2004 and numbered 25574 and notifies the subject to the relevant authority which demands.

Provisional Article 1- Goods and services procurement and construction works regarding the organization of the Head Office 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. Procurement of the said goods and services and construction works shall be executed by the principles and procedures to be determined by the Ministry of Transportation.

Entry into Force

Article 28- Article 5, 6, 7, 10, 11, 14 and 15 of this Regulation enter into force from 23/1/2006 and the other articles at their date of issue.

Execution

Article 29- Provisions of this Regulation shall be executed by the Prime Minister.