
Criminal proceedings against Masters in pollution cases

Briefly set out below is the procedure for the commencement of criminal proceedings against a pollution offender in accordance with the Turkish Criminal Code (TCC):

- 1) The issuing public authority is obliged to file a criminal complaint and request for a public investigation with the public prosecutor's office when a pollution fine is issued.
(Articles 181 and 182 of TCC);
- 2) Even if the pollution is minor, the Public Prosecutor will examine the complaint and in his discretion, decide whether to dismiss the complaint or issue an indictment order in initiating criminal proceedings.
- 3) Although the parties are not able to influence the progress of this criminal action, the attorney for the offender may attend the proceedings and argue for the relevant legal articles which are in favour of his client.
- 4) Accordingly, it is recommended that the criminal action procedure is observed to avoid any adverse outcome to the Master.
- 5) Possible outcomes of the criminal proceedings in accordance with Turkish law:
 - For offences with imprisonment of less than two (2) years, the Court may decide to defer the verdict. It should be noted however that if the offender does not accept this, the Court cannot rule such deferment. If the verdict is deferred, the offender will be placed under probation for a period of five (5) years during which if offender does not intentionally commit any crime, the verdict shall be dismissed.
 - For offences with imprisonment of one (1) year or less (also known as short term imprisonment), such imprisonment may be converted into a judicial fine after taking into account the nature of the offence, character of the offender, his socio-economical standing and his remorse throughout the adjudication process.
 - Article 51 of the TCC also provides conditions where a deferment of imprisonment of an offender sentenced to prison for two (2) years or less, is issued by the Court.

For your reference, we have set out the relevant Articles in the TCC which are applicable:

- Article 181 – Causing Environmental Pollution with Intent:
 - 1) A person, who intentionally releases waste or remnants into the soil, water or air other than through technical procedures determined in the relevant laws, causing damage to the environment shall be sentenced to imprisonment of from 6 months to 2 years.
 - 2) A person who brings waste or remnants into Turkey without permission shall be sentenced to imprisonment of from 1 year to 3 years.
 - 3) The sentences mentioned in the above sub-clauses shall be doubled if the waste or remnants reveal permanent characteristics in soil, water or air.
 - 4) In case the activities described in sub-clauses 1 and 2 are committed with wastes or remnants with characteristics that may cause illnesses to persons and animals which are difficult to cure or which causes atrophy in the ability of reproduction or alteration to the natural characteristics of animals or plants, such activity shall be punished by imprisonment of minimum 5 years and a judicial fine of up to thousand days.
 - 5) For legal entities, special security measures shall be ordered for activities stated in the clauses 2, 3 and 4.
- Article 182 – Causing Environmental Pollution with Negligence:
 - 1) A person who negligently causes discharge of wastes or remnants into the soil, water or air causing damage to the environment shall be subject to a judicial fine. In case those wastes or remnants have a permanent effect in the soil, water or air, such person shall be sentenced to imprisonment from 2 months to 1 year.
 - 2) A person causing discharge of wastes or remnants into the soil, water or air with negligence with characteristics that may cause illnesses to persons and animals which are difficult to cure or which causes atrophy in the ability of reproduction or alteration to the natural characteristics or animals or plants, shall be punished by imprisonment of from 1 to 5 years.

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