

## Survey Instructions

- This survey contains 5 questions. In questions Q1-Q3 we ask you to comment on the existing corruption-related provisions in the Turkish Penal Code and the Code of Criminal Procedure. In questions Q4-Q5 we ask you to comment on our reform proposals. For doing so, we provide you with a short overview on the reasoning of our reform proposal prior to the questions.
- Answers to all questions can be given both in English and Turkish.
- All personal data will be made anonymous.
- For further information please contact Prof. Dr. Vahit Biçak ([vahit@justandfair.com](mailto:vahit@justandfair.com)) or Mr. Mathias Nell ([mathias.nell@uni-passau.de](mailto:mathias.nell@uni-passau.de)).

## Your personal information

Name (optional):

Occupation:

## Questions

### Existing legislation

**Q1:** From your perspective, what are the main difficulties in the prosecution of corruption offences in Turkey? (Please give and list your answers according to priority.)

Answer:

**Q2:** Do these difficulties in the prosecution of corruption offences partly stem from the formulation of the corruption-related provisions in the Turkish Penal Code (e.g. Article 252 and 254) and/or the Code of Criminal Procedure and if so, why?

Answer:

**Q3:** Given your answers to question Q2, which changes in the corruption-related provisions in the Turkish Penal Code and/or the Code of Criminal Procedure would you recommend?

Answer:

## Reform proposals

Deterrence is often understood as the threat of suffering from heavy and prompt legal sanctions. When related to ‘organized crimes’ (i.e. crimes for which more than one individual is required, as corruption-related offences), however, deterrence may also encompass the possibility of being cheated by one’s counterpart: A public official may not deliver a service after having received a bribe; or a bribe-giver does not pay the bribe after having received the service from the public official. These acts of opportunism are risks that may also increase deterrence because they may induce potentially corrupt actors to abstain from participating in corrupt deals.

Our reform proposals are suggestions for designing the corruption-related provisions in the Turkish Penal Code so as to induce corrupt actors to behave opportunistically, thereby potentially increasing deterrence.

We kindly ask you to comment on our reform proposals from your perspective as a prosecutor.

## Reform proposals related to Articles 252 (1) and 254 (1)

Article 252 (1) states that “Any public officer who receives a bribe shall be sentenced to a penalty of imprisonment of four to twelve years.” In conjunction with Article 252 (1), Article 254 (1) states that “Where, prior to the commencement of investigation, the person in receipt of the bribe presents the consideration of such, in its original state, to the authorities, no penalty shall be imposed for the offence of bribery. Where, prior to the commencement of investigation, a public officer, after having agreed to receive a bribe, informs the authorities of such, no penalty shall be imposed.”

In order to induce the public officer to behave opportunistically, i.e. not to deliver a service after having received a bribe, we suggest the following changes to Article 245 (1) (highlighted in italics):

Where, prior to the commencement of an investigation, the person in receipt of the bribe presents the consideration of such, in its original state, to the authorities, no penalty shall be imposed for the offence of bribery. Where, prior to the commencement of an investigation, a public officer who, after having agreed to receive a bribe *but before he has fulfilled the desired demand even partly*, informs the authorities of such, no penalty shall be imposed.

Making exemption from punishment for the public official conditional on his not delivering a service after having received the bribe (“before he has fulfilled the aspired demand even partly”) would induce the public official to behave opportunistically.

**Q4:** How do you evaluate this reform proposal?

Answer:

## Reform proposals related to Articles 252 (1) and 254 (2)

Article 252 (1) states that “The person giving the bribe shall be sentenced as if he were a public officer.” Article 254 (2) states that “Where, prior to the commencement of an investigation, a person who offered and gave a bribe to a public officer informs the authorities responsible for investigation of such, no penalty shall be imposed and the bribe he gave to the public officer shall be taken from the public officer and handed back to him.”

According to Article 254 (2) no punishment is imposed on a bribe-giver if he notifies the authorities responsible for investigation before the commencement of investigation. Exemption from punishment is conditional on the bribe-giver self-reporting his act to the authorities only before the authorities get wind of the offence. However, Article 254 (2) grants leniency at any stage of a corrupt deal. Thus, bribe-givers can misuse the option of turning to the authorities for threatening the public official with blowing the whistle should he behave opportunistically – thereby forcing the public official into delivering what was agreed upon.

Thus, Turkish legislation in fact supplies a bribe-giver with the option of making a “credible threat” to the public official. Hence, to eliminate this credible threat option, Turkish legislators should consider granting leniency only if the bribe-giver ultimately has received what was agreed upon with the bribe-taker, i.e. after the public official has reciprocated the bribe. By doing so, legislation is designed in a strategic way that undermines both players’ trustworthiness: The bribe-giver cannot credibly promise that he will remain silent once the bribe has been reciprocated; and, as a direct consequence, the public official will abstain from reciprocating. Ultimately, this may lead to the collapse of the corrupt deal in the first place.

We suggest the following changes to Article 254 (2) (highlighted in italics):

No punishment is imposed due to the offence of bribery if the person offering and giving a bribe to the public officer [...] notifies the authorities responsible for investigation about this fact before the commencement of investigation <i>but after the public officer has performed a task beyond his responsibility; then</i> , also the bribe is taken from the public officer and returned to the deliverer.
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Making exemption from punishment for the bribe-giver conditional on his reporting only after the public officer has performed a certain task eliminates the “credible threat” and induces the bribe-giver to behave opportunistically.

**Q5:** How do you evaluate this reform proposal?

Answer: