

TERRORISM AND THE POLITICAL OFFENCE EXCEPTION TO EXTRADITION - THE CASE OF TURKEY

*Teröristlerin İadesi Davalarında Politik Suç İstisnası Sorunsalı ve
Türkiye'nin Durumu*

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ABSTRACT

The current situation in Turkey shows that like many other countries, Turkey suffers from a lack of support and sensitivity in the extradition of terrorist suspects. To explain that, in practice, treaties which include a political offence exception protect against the extradition of suspected political criminals of all types, including terrorists; and that restricts the effectiveness of the law in fighting terrorism. Extradition of terrorist suspects also suffers from some serious weaknesses in the form of international arguments. As a result of the lack of agreement and the absence of consistent rules to manage the extradition procedure, this results in intricate negotiations between states. On this foundation, this study examines the extradition process operating through resolutions, cases, and multilateral counter-terrorism. This paper will commence with an introduction containing its main argument and will then proceed to set this within the appropriate legal context.

Key Words: Terrorism, extradition, political offence exception, state sovereignty, extradition cases.

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ÖZ

Türkiye’deki son durum, birçok devlet gibi Türkiye’nin de teröristlerin iadesi konusunda sorun yaşadığını ve diğer devletler tarafından yeterince desteklenmediğini göstermektedir. Teröristlerin iadesine ilişkin sözleşmelerin birçoğu, terör suçlarının iadesine yönelik politik suç istinası getirmektedir. Bu yöndeki düzenlemeler terörle mücadeleye birçok açıdan engel teşkil etmektedir. Teröristlerin iadesi davaları, bu alanda düzenlenen uluslararası sözleşmelerin zayıflığından dolayı da çıkmaza girmektedir ve uzamaktadır. Başka bir deyişle, uluslararası düzenlemelerin eksikliği ve tutarsızlığı, iade talep eden ve talep edilen devlet arasındaki iade sürecini karmaşıklştırmaktadır. Bu çalışma, teröristlerin iadesi konusunu, Birleşmiş Milletler Güvenlik Konseyi kararları, Türkiye’nin iç hukuku ve uluslararası sözleşmeler ışığında inceleyecektir. Giriş bölümünde teröristlerin iadesi davaları ile ilgili ana sorunlar sunulduktan sonra, ulusal ve uluslararası yasal düzenlemeler altında ayrıntılı bir analiz yapılacaktır.

Anahtar Kelimeler: Terör, teröristlerin iadesi, politik suç istinası, devlet egemenliği, iade davaları.

INTRODUCTION

Terrorism as a highly internationalised phenomenon threatens all the states and all the regions of the world. In this sense, as the European Council declares: ‘No country in the world can consider itself immune’.¹ In our time, terrorists commonly escape prosecution through the assistance of other terrorist groups in different countries. Thus, a problem encountered is that, frequently, acts of terrorism will be neither prosecuted nor penalised.² An important issue is bringing terrorists to justice, either by trying their cases under national law, or extraditing (*aut dedere aut judicare*) which is, unfortunately, not simple in practice.³ This is because extradition reaches an impasse when terrorists constitute the subject of extradition, as the term ‘terrorism’ is now widely deployed in both political debate and legal

¹ Council of the European Union, Brussels, 29 March 2004. (Available from: <http://data.consilium.europa.eu/doc/document/ST-7906-2004-INIT/en/pdf> , Accessed date: 01.03.2018).

² Petersen, A. C. (1991). "Extradition and the political offense exception in the suppression of terrorism." *Indiana Law Journal*, 67(3): 767-796. (p.772).

³ Kelly, M. J. (2003). "Cheating Justice by Cheating Death: The Doctrinal Collision For Prosecuting Foreign Terrorists - Passage Of *Aut-dedere Aut-judicare* Into Customary Law & Refusal to Extradite based on The Death Penalty" *20 Arizona Journal of International Law & Comperative Law*. (p.494).

discourse.⁴ Moreover, this term is of a highly subjective and politicised nature.⁵ As a result, such a huge risk as terrorism is not defined as such in international law.⁶ This means that states may extend this term to include political crime. In other words, one state may regard an act as criminal terrorism, whilst another may categorise it as the act of a freedom movement meriting support rather than penalty.

In relation to political offence, terrorist crime is in a distinct category; it is clearly not an ordinary crime, because it is committed with a political intention, but it is also not a political offence either.⁷ The political intention of terrorism brings this crime closer to a political offence.⁸ In this regard, it can be said that the political offence exception may hamper extradition of terrorists because virtually all extradition treaties incorporate the political offence exception,⁹ which in general is abused by terrorists.¹⁰ As is acknowledged, the political offence exception aims to provide protection for political offenders from unjust trial, not for terrorists. Moreover, there is no universally recognised criterion to what constitutes a political offence.¹¹ As Feder notes, the definition of political crimes differs because of the different historical background and judicial discretion in every domestic law.¹² Therefore, the decision concerning extradition, which is based on subjective criteria, is left to the individual government.¹³ The reason for leaving

⁴ Golder, B. and Williams, G. (2004). "What is' terrorism'? Problems of legal definition." *University of New South Wales Law Journal*, 27(2), pp. 270-295. (p.271).

⁵ Joyner, C. C. (2002). "International Extradition and Global Terrorism: Bringing International Criminals to Justice." *Loyola Los Angeles International & Comparative Law Review*, 25(3): 493-542. (p.496).

⁶ Golder, and Williams, (2004). (p.272).

⁷ Baydemir, B. (2011). "The Political Offense Exception to Extradition, the Case of Fehriye Erdal". *Saarbrücken: Lap Lambert Academic Publishing*. (p.50).

⁸ For further information, see also Ercan, M. (2016). "15 Temmuz Sonrası Türkiye–Ab İlişkileri; İlişkilerin Gelecek Öngörüsü." (Turkey-EU Relations in the Post 15 July Process: Future Preconditions on the Relations). *Akademik Bakış Uluslararası Hakemli Sosyal Bilimler Dergisi*, (63), 14-28. (pp.3-5).

⁹ See Turkish Law on International Judicial Cooperation in Criminal Matters, Law No: 6706, Adopted on: 23.4.2016, Published in the Official Gazette no. 29703 on 05.05.2016.

¹⁰ Dugard, J. (1977). "International terrorism and the Just War." *Stanford Journal of International Studies*, 12: 21-38. (p.98).

¹¹ Joyner, (2002). (p.501).

¹² Feder, L. G. (1985). "In Re Doherty: Distinguishing Terrorist Activities From Politically Motivated Acts Under the Political Offense Exception to Extradition." *Temple International & Comparative Law Journal*, 1(132): 99-132. (p.108).

¹³ For further information, see also Ulutaş, A. (2012). "Avrupa İnsan Hakları Sözleşmesi Işığında Suçluların Geri Verilmesi." (Extradition in the Light of European Convention on Human Rights) *Türkiye Barolar Birliği Yayınları*. (pp. 151-169).

arbitration to individual states is sovereignty, because traditional penal law relied on the concept of absolute sovereignty.¹⁴

Almost all international agreements leave a power of discretion to the states, which reserve to their own trials or executive the right to determine extradition cases.¹⁵ As Goldstone and Simpson remark, ‘prosecutions of acts of terrorism falling within the various treaties tend only to occur in domestic legal fora.’¹⁶ However, frequently, states invoke their sovereignty and may thus avoid fulfilling their responsibilities. As Magnuson remarks, ‘states comply with their extradition obligations out of a respect for comity and the equality of sovereigns.’¹⁷ It is often recognised that a state’s sovereignty is one of the major principles of public international law and there is an obligation of non-intervention into the sovereign area of other states.¹⁸

The aim of this paper is to describe and explain the difficulties of the extradition process related to Turkey. In common with many other countries, Turkey faces problems because of the nebulous international legal agreements and the failure of international institutions adequately to define the terms ‘political offence’ and ‘terrorism’.¹⁹ Because of this inability of international constitutions to define the terms, international extradition agreements cannot be effective tools in the fight against terrorism.²⁰ In relation to the importance of international law, it can be said that extradition is an international phenomenon; hence extradition cannot be evaluated merely as a state-level subject. Therefore, although this issue is going to be examined with particular regard to Turkey, international law will make a major contribution towards the analysis of extradition. Since, as a result of lack of agreement and the

¹⁴ Haywood, R. and French, J. (2009). "Potential Roles for Nonstate Actors and Nonterritorial Sovereign Organizations in Reducing Armed Violence." *One Earth Future Foundation White Paper*. (p.4).

¹⁵ Dugard, (1977). (p.98).

¹⁶ Goldstone, R. J., & Simpson, J. (2003). Evaluating the role of the International Criminal Court as a legal response to terrorism. *Harvard Human Rights Journal*, **16**(13). (p.13).

¹⁷ Magnuson, W. (2012). "The Domestic Politics of International Extradition." *Virginia Journal of International Law*, **52**: 839-995. (p.843).

¹⁸ Hassan, Ü. (1943). "Siyasi Suç Kavramı." *Ankara Üniversitesi SBF Dergisi*, **26**(01), (p.198). (The Concept of Political Offence"), Perrez, F. X. (1996). "The Relationship between Permanent Sovereignty and the Obligation Not to Cause Transboundary Environmental Damage" *Environmental Law*, **26**(4): 1187-1212. (p.1187).

¹⁹ For example, following the July 15 coup attempt in Turkey, many states have failed to extradite FETÖ members. However, it is not the purpose of the author to elaborate these cases here as they can be a subject to another research.

²⁰ Petersen, (1991). (p.772).

absence of uniform rules to manage the procedure of extradition causes complicated practices between states.²¹

The paper has been organised in the following way. It examines the extradition process operating through resolutions and multilateral counter-terrorism. This paper will commence with an introduction containing its main argument, and will then proceed to set this within the appropriate legal context. Part II provides a brief introduction to the extradition process, and to the manner in which it is exercised internationally and nationally. In Part III, a brief definition of terrorism related to the political offence exception will be considered. This section will outline the provisional framework for terrorism in treaties, conventions and resolutions and assesses how each instrument contributes to international extradition law.

The thrust of the analysis comes in Part IV, where the political offence exception and the relationship between terrorism and political offence are pointed out. Special attention is devoted to the issue as to why this exception could blunt the efficacy of implementing the extradition process in the instrument. Moreover, legal arguments are analysed in depth to help us understand the difficulties involved in the extradition process. Finally, the major debatable issues, which will have been developed in this paper, will be summarised, and solutions will be presented.

THE EVOLUTION OF THE EXTRADITION OF OFFENDERS

A-Definition of Extradition and Brief Introduction to Political Offence

At the present time, criminals are finding it easy to leave the state with jurisdiction over their crimes.²² In this regard, travelling easily across the world constitutes the background to the concept expressed by the word 'extradition'. Extradition is the procedure by which someone charged with or convicted of an offence under the laws of one state is detained in another state and returned to the former state for judgment or punishment.²³ In other words, '[t]he term extradition denotes the process whereby one state surrenders to another state at its request a person accused or convicted of a criminal offence committed against the laws of the requesting state usually within the territory of the requesting state the latter being competent to try the alleged offenders.'²⁴

²¹ Joyner, (2002). (p.499).

²² Petersen, (1991). (p.772).

²³ Joyner, (2002). (p.499).

²⁴ Starke, J. G. (1965). *The ANZUS treaty alliance*. Melbourne University Press. (Cited in Giles, B. (1967). "Extradition and International Law." *Auckland University Law Review*, 1(4): 111-129. (p.111).

This is the general definition of extradition. Similarly, the concept of extradition has been established in Turkish Law on International Judicial Cooperation in Criminal Matters²⁵ Article 10(1), which provides; ‘A foreigner against whom the judicial authorities have initiated a criminal investigation or prosecution or rendered a conviction for an offence committed in a foreign country may be extradited, upon request, to the requesting State, in order for the investigation or prosecution to be concluded or for the execution of the imposed sentence.’ In brief, an individual perpetrated a crime in one state, escaped to another, and was afterwards arrested for extradition to the country where he/she committed the crime.²⁶

In relation to the concept of extradition, Joutsen lists the conditions for this; first, the principle of double criminality²⁷ (see also the Turkish Law on International Judicial Cooperation in Criminal Matters Article 10). It means that ‘the offence for which extradition is sought must be one for which the requested state would in turn be able to demand extradition.’²⁸ In other words, the simple definition is that the offence must be accepted as criminal in both demanding and requested countries. Secondly, there is the rule of speciality (see also the Turkish Law on International Judicial Cooperation in Criminal Matters Article 10 (4)), which stipulates that a ‘[i]f extradited, the person may only be tried for offences constituting the basis of the decision of extradition or only the sentence imposed on the person for that offence may be enforced.’²⁹

Thirdly, there is the non-extradition of nationals,³⁰ as has been established in Constitution of Republic of Turkey, Article 38, ‘No citizens shall be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court.’ (see also the Turkish Law on International Judicial Cooperation in Criminal Matters Article 11(1)(a)). Fourthly, we have the objection to surrender on the

²⁵ Turkish Law on International Judicial Cooperation in Criminal Matters, Law No: 6706, Adopted on: 23.4.2016, Published in the Official Gazette no. 29703 on 05.05.2016.

²⁶ Magnuson, (2012). (p.841).

²⁷ Joutsen, M. (2002). "International Cooperation against Transnational Organized Crime: Extradition And Mutual Legal Assistance In Criminal Matters." *Annual Report for 2000 And Resource Material Series No. 59*: 364. (p.366-373).

²⁸ Williams, S. A. (1991). "Double Criminality Rule and Extradition: A Comparative Analysis." *Nova Law Review*, 15(2): 581-624. (p.582).

²⁹ For further information, see also Levitt, K. E. (1991). "International Extradition, the Principle of Speciality, and Effective Treaty Enforcement." *Minnesota Law Review*, 76(4): 1017-1040. (p.1018).

³⁰ See also, European Court of Human Rights, *Güzelyurtlu And Others V. Cyprus and Turkey – Judgment*, Application no. 36925/07, 29 January 2019, para.165.

grounds of the danger of persecution or unjust trial, or of the expected penalty³¹ (see also the Turkish Law on International Judicial Cooperation in Criminal Matters Article 11(1)(b)). Finally, the political offence is one of the exceptions to extradition (see also the Turkish Law on International Judicial Cooperation in Criminal Matters Article 11(1)(c)(1)). As it says, '1) The extradition request shall not be accepted if:.. c) The offence constituting the basis of the extradition request is; 1) a thought crime, political offence or an offence connected with a political offence...'³²

As will be seen, political offence is one of the exceptions to extradition in Turkish National Law as well.³³ Very briefly, a political crime is an act directed against the security of the state.³⁴ In olden times, extraditable offences were mostly of a political nature; common criminals were not viewed as a danger to society. At that time, people who acted against the state were punished harshly. In this connection, asylum was only granted if it was to the advantage of the country.³⁵ However, this position has been totally reversed. After the French Revolution of 1789, the crucial aim of extradition became to return political offenders. The reason was the regime changes. European monarchies were replaced by democracies. As a result, governments started rejecting the practice of extraditing people for political acts.³⁶ However, nowadays, the concept of the political offence can produce a dilemma. It has two opposite sides; one of these is of huge importance in the sense of human rights, as in some cases there is a real need for asylum.³⁷ However, in other cases, the criminals frequently abuse the benefits conferred by the exception.

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³¹ See Turkish Constitutional Court, *Application of W.S.*, Case No:2016/5687, 25.10.2017. paras.35-47.

³² The Turkish Law on International Judicial Cooperation in Criminal Matters Article 11(1)(c)(1).

³³ See, European Court of Human Rights, *Case Of Batyrkhairov V. Turkey- Judgement*, Application no. 69929/12, 5 June 2018, para.51.

³⁴ Sofaer, A. D. (1986). "The Political Offense Exception and Terrorism." *Denver Journal of International Law & Policy*, **15**(1): 125-134. (p.126).

³⁵ Cervasio, C. E. (1999). "Extradition and the International Criminal Court: The Future of the Political Offense Doctrine." *Pace International Law Review*, **11**(2): 419-446. (p.421).

³⁶ Sapiro, M. E. (1986). "Extradition in an era of Terrorism: the Need to Abolish the Political Offense Exception." *NYUL Review*. **61**(4): 654-702. (p.658).

³⁷ Cervasio, (1999). (p.423).

d- Applicable Law in the Light of Turkish Domestic Law

In international law, extradition practice has become common and is nearly universal.³⁸ Even if it is accepted universally, it still remains a complicated process. In this sense, the main issue is the applicable law and the question; ‘who is entitled to extradition?’ In this regard, the law of extradition includes domestic law and international documents, but the focal point is that extradition is ultimately concluded by the domestic courts, as international law confers authority on the individual state. In this connection, extradition is based on three systems: one of them charges government to govern extradition requests; another charges only court to manage the extradition process; and the last imposes a duty to decide on extradition on both government and the courts, which is called a mixed system.³⁹

According to the Turkish Law on International Judicial Cooperation in Criminal Matters Article 15 (1), ‘The high criminal court, which is located in the place where the person is present, shall be competent to make a decision on the extradition request. If the place where the person is present is unknown, Ankara High Criminal Court shall be competent. (2) Chief Public Prosecutor's Office shall request the High Criminal Court to make a decision concerning the extradition request.’ Article 19 of the same regulation says that:

“Where the High Criminal Court decides that the extradition request is acceptable, the execution of this judgment shall be subjected to the proposal of the Ministry of Justice and the approval of the Prime Ministry, after the opinions of the Ministries of Foreign Affairs and Interior have been taken. (2) The Central Authority shall inform the requesting State and the person who is requested to be extradited whether the extradition request has been accepted or rejected.”

As is apparent, the Turkish extradition procedure is a mixed system, in which both executive and judicial branches play a role. Consequently, it is within the domestic jurisdiction of a state to adjudge the occasions on which it will agree to extradite people within its borders and to decide procedurally how this will be done.⁴⁰ The reason is right of jurisdiction, as Eagleton claims; ‘the most important right-and duty-of a state is jurisdiction’.⁴¹

³⁸ Greenwood, C. (2002). "International law and the ‘war against terrorism’." *International Affairs*, **78**(2): 301-317. (p.303).

³⁹ Hafizogullari, Z. (2008). *Türk Ceza Hukuku Genel Hükümler*, Ankara: US-A Yayıncılık (“General Provisions of Turkish Criminal Law”. Ankara: USA publishing.) (p.55).

⁴⁰ Giles, B. (1967). "Extradition and International Law." *Auckland University Law Review*, **1**(4): 111-129. (p.111).

⁴¹ Eagleton, C. (1957). International Law Association Meeting at Dubrovnik. Cited in Bassiouni, M. C. (1974). "Theories of Jurisdiction and Their Application in Extradition Law and Practice." *California Western International Law Journal*, **5**(1): 1-61. (p.4).

Therefore, in practice, the community interferes very little with their internal administration.⁴² Furthermore, according to the sovereignty approach, jurisdiction refers to internal sovereignty.⁴³ However, in our time, it could be argued that sovereignty is not absolute.⁴⁴ Accordingly, some restrictions have been imposed by international law. It means that 'the state not only administers its own affairs, but acts also as the agent of the community of nations to enforce international law within its territory.'⁴⁵ Thus, in common with the law in other states, Turkish national laws also are very much regulated by the effect of international legal concepts. In this context, it is widely accepted, there is an interesting merger between national law and international law.⁴⁶

In order to appreciate the binding force of international arguments, the position of Turkey should be explained. Turkey joined the United Nations in 1945, and in 1952 it became a member of NATO. In 1964, it also became an associate member of the European Community. As is known, with reference to Security Council decisions, under Charter Articles 25 and 48(1), the Security Council can adopt decisions that are binding on United Nations members. In this context, the Turkish Plenary Session of Administrative Law Division clarifies that, in relation to the letter of Article 25 of the Charter and Turkish Constitution Article 90, the decisions reflected in Security Council resolutions have the same value as national law (Docket No. 2006/2824, Decree No. 2007/115, Date: 22.02.2007).

In contrast, determinations of the General Assembly are non-binding. As Higgins remarks, the General Assembly has a recommendatory power rather than mandatory powers.⁴⁷ Moreover, Sloan points out that resolutions of the General Assembly are not only officially binding, however, can be enforced, to the opposite position that no resolution can create either a legal or a moral obligation.⁴⁸ As a result, when Turkey applies the respective decisions of the

⁴² Haywood and French, (2009). (p.4).

⁴³ Jayasuriya, K. (1999). "Globalization, law, and the transformation of sovereignty: the emergence of global regulatory governance." *Indiana Journal of Global Legal Studies*, 6(2): 425-455. (p.437).

⁴⁴ Perrez, (1996). (p.1187).

⁴⁵ Eagleton, (1957). (p.4).

⁴⁶ Giles, (1967). (p.111).

⁴⁷ Higgins, R. (1972). "The Advisory Opinion on Namibia: Which UN Resolutions Are Binding under Article 25 of the Charter?" *International and Comparative Law Quarterly*, 21(02): 270-286. (p.272).

⁴⁸ Sloan, F. B. (1948). "Binding Force of a Recommendation of the General Assembly of the United Nations." *British Yearbook International Law*, 25: 1-33. (p.1).

General Assembly and the Security Council, it will evaluate the binding force of these resolutions.

As regards extradition, as well as Turkish domestic law, international agreements are also applicable. As has been established in the Turkish Law on International Judicial Cooperation in Criminal Matters Article 18 (1) ‘In the event that the person does not accept the procedure for extradition based on consent, the court shall examine the circumstances of the extradition according to this Law and the international agreements to which Turkey is a party and shall decide whether the extradition request is acceptable.’ In accordance with this Article, the judges will apply international arguments to decide about extradition. Moreover, the original version of paragraph 5 of Turkish Constitution Article 90 reads as follows:

“International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

From a strict reading of Article 90 of the Constitution, it may be said that international agreements, which were duly put into effect, have the same value as domestic laws.⁴⁹ With regard to the applicable law in relation to extradition, Turkish Penal Department No.6 observes that, according to domestic law, the resources for extradition process are Article 38 of the Constitution of Republic of Turkey, and the other international bilateral and multilateral agreements, European Convention on the Suppression of Terrorism and the Article 18 of Turkish Criminal Code⁵⁰ (Penal Department No. 6 of the Supreme Court, Docket No. 2006/8782, Decree No.2007/8971).

Turkey also recently ratified the European Convention on Mutual Assistance in Criminal Matters⁵¹ and the protocols related to this Convention on 22 March 2016. These international arguments were confirmed by the Turkish parliament on 25 April 2016. Thus, all these international agreements

⁴⁹ Özbudun, E. (2007). "Democratization reforms in Turkey, 1993–2004." *Turkish Studies*, 8(2): 179-196. (p.189).

⁵⁰ The Law on International Judicial Cooperation in Criminal Matters (Law no: 6706) replaced Article 18 of Law no: 5237.

⁵¹ see European Court of Human Rights, *Güzelyurtlu And Others V. Cyprus and Turkey – Judgment*, Application no. 36925/07, 29 January 2019, para.168.

and the conventions to which the Turkish Republic is a party concerning extradition contain complementary provisions carrying the force of law. They will be applicable in relation to political crime, terrorism, and, more importantly, the extradition process.

Article 2 of this Convention clarifies that extradition may be refused in the following circumstances ‘(a) if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;’ or ‘(b) if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.’⁵² However, the Convention does not provide a definition for the political offence.

TERRORISM: THE PROBLEMS OF DEFINITION

It should be noted here that there is still a huge disagreement about a universally accepted definition of terrorism by 2019. Reaching a consensus on the definition of terrorism is of great value because if an agreement cannot be reached regarding the definition of a terrorist act, then this situation will complicate the process of extradition of terrorists. Moreover, the absence of definition takes the states to an untenable situation, so that the concept of terrorism appears to be necessary.⁵³ Therefore, before launching into a critical assessment of the political offence exception, this section will point out the defining issues of terrorism and identify its characteristics in the light of international law. Hopefully, its contents will prove useful to bring about a better understanding of the phenomenon and how to deal with extradition for terrorism.

a- Reasons for the Elusiveness of Terrorism

Schmid and Jongman, in their book *Political Terrorism*, list 109 different definitions of terrorism in existence between 1936 and 1981.⁵⁴ Moreover, as Golder and Williams say, the number would be more, but all efforts to create generally recognised legal definition of terrorism have failed in international law.⁵⁵ On reflection, there are many reasons for not reaching a consensus on the definition; the chief of these is cultural relativism.⁵⁶ Because of this, the

⁵² European Convention on Mutual Assistance in Criminal Matters, Article 2.

⁵³ Begorre-Bret, C. (2005). "Definition of Terrorism and the Challenge of Relativism." *Cardozo Law Review*, 27(5): 1987-2004. (p.1993).

⁵⁴ Ganor, B. (2002). "Defining terrorism: Is one man's terrorist another man's freedom fighter?" *Police Practice and Research*, 3(4): 287-304. (p.290).

⁵⁵ Golder, B. and Williams, G. (2004). (p.270).

⁵⁶ Fish, S. (2002). "Don't blame relativism." *The Responsive Community*, 12(3): 27-31. (p.30).

definition of terrorism shows differences even from community to community.⁵⁷ Likewise, it has been defined differently by politicians, security experts and journalists.⁵⁸ As Begorre-Bret remarks ‘failure is in their interest because it strengthens ethical and juridical relativism’.⁵⁹

In this sense, it can be said that cultural relativism is acknowledged as a reason. Moreover, as Ganor claims, in the absence of an objective and authoritative description, which is acknowledged by all nations, fighting against terrorism will suffer from cultural relativism.⁶⁰ The problem arises from the fact that we are seeking a firm definition of untenable terms. As Ganor claims, ‘there is a tendency to believe that an objective and universally recognized definition of terrorism can never be achieved because this term is a variable.’⁶¹ For instance, ‘one man’s terrorist is another man’s freedom fighter’ and he adds that the answer will alter according to subjective view of the describer.⁶²

The second reason is the concept of terrorism. According to some scholars the inability to define terrorism in international law can be acceptable because as Schmid points out “terrorism is a ‘contested concept’ and political, legal, social science and popular notions of it are often diverging.”⁶³ Therefore, it can be said that terrorism is not a mere legal issue; it is in the scope of politics and law. In consequence, law is inadequate to designate the concept of terrorism. It may well be that the problem is the political side of terrorism,⁶⁴ and possibly for this reason the definition of terrorism differed throughout history.

As Begorre-Bret notes, over the years: ‘the member states did not manage to reach any consensus concerning the definition of terrorism’ because every state has different backgrounds and regimes.⁶⁵ However, if one state defines

⁵⁷ Schmid, A. P. (1992). "The response problem as a definition problem." *Terrorism and Political Violence*, 4(4): 7-13. (p.7).

⁵⁸ Ganor, (2002). (p.290).

⁵⁹ Begorre-Bret, (2005). (p.1993).

⁶⁰ Ganor, (2002). (p.290).

⁶¹ *Ibid.*, (p.287).

⁶² Howard, M. (2002). "What's in a name? How to fight terrorism." *Foreign Affairs*, 8-13. (p.10).

⁶³ Schmid, A. (2004). "Terrorism-the definitional problem." *Case Western Reserve Journal of International Law*, 36(2-3): 375-420. (p.395).

⁶⁴ For further information, see also Devrim, A. (2003) "Terör Eylemlerinin Siyasal Suç Açısından Değerlendirilmesi." (Evaluation of Terrorist Acts with Respect to Political Crime). 39.

⁶⁵ Begorre-Bret, (2005). (p.1988)

terrorism broadly and the other has a narrow one, a constant consensual policy will be a difficult goal.⁶⁶ Concordantly, the subjective concept of terrorism, it is not feasible to define terrorism since it is impossible to discern objectively between legitimate force and illegitimate violence, ‘between the hero and the barbarian, and between the warrior and the murderer.’⁶⁷ This author further adds that ‘[t]here is no objective [explanation] of terrorism but only several partial and ideological characterisations of the violence of the enemy.’⁶⁸ The defining of ‘terrorism is embedded in a person’s or nation’s philosophy.’⁶⁹ Therefore, it should be accepted the determination to what constitutes terrorism is subjective.⁷⁰

The third reason is the interests of states. In other words, when the states define terrorism they focus on their own priorities in reference to their national interest; therefore, the definition should be disinterested. For example, Ganor remarks that ‘if all the enlightened countries do not change their priorities, and do not disenable their political and economic interest, it will not be feasible to wage an effective war against terrorism.’⁷¹ In this regard, Begorre-Bret argues that many states aim to create disputes and confusion regarding the definition of terrorism as they do not want to limit their reasons to use of force.⁷²

As a final reason, it can be said that the international community evinces a reluctance to define terrorism. More importantly, although international organisations are aware of the definition issue, they arguably hesitate to create universally accepted definition. They condemn terrorism but they do not define, so what do they reflect on? On this ground, it should be noted here that it is a significant necessity to create a consistent legal definition of terrorism. Hence, the next section will analyse whether or not international law creates a generally accepted description of terrorism.

b- Legal Arguments on Definition of Terrorism in International Law

The first attempts to provide definition had been made in 1937, with the League of Nations’ Convention for the Prevention and Punishment of

⁶⁶ Schmid, (1992). (p.7).

⁶⁷ Begorre-Bret, (2005). (p.1992).

⁶⁸ *Ibid.*, p.1992).

⁶⁹ Griset, P. L. and Mahan, S. (2003). *Terrorism in perspective*, California: Sage Publications, Inc. (p.13). See also Gürbüz, U. (Ed.). (2013). *Future Trends and New Approaches in Defeating the Terrorism Threat* (Vol. 111). IOS Press.

⁷⁰ Griset and Mahan, (2003). (p.13).

⁷¹ Ganor, (2002). (p.290).

⁷² Begorre-Bret, (2005). (p.1995).

Terrorism. However, this Convention never obtained enough support to put it into practice, therefore, it never entered into force.⁷³ After 1963, many decisions and conventions have been accepted within the United Nations.⁷⁴ If the United Nations Treaty Collections on terrorism are examined, i.e the 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft, the 1970 Convention for the Suppression of Unlawful Seizure of Aircraft, and the 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, it will be seen that none of these include a definition of terrorism. Furthermore, in 1977 the Council of Europe had arranged a convention, called the European Convention on the Suppression of Terrorism 1977, on ending terrorism, yet it refrained from providing a definition of the term.⁷⁵ Twenty years later, in 1999, there was enacted the International Convention for the Suppression for the Financing of Terrorism; in this Convention an effort had been made to define terrorism, but it failed too.⁷⁶

Some regional treaties have established general definitions; the differences in these definitions ‘militate against emergence of any shared international conception of terrorism.’⁷⁷ Moreover, some regional definitions are so wide as to be indistinguishable from other forms of political violence.⁷⁸ The International Court of Justice (ICJ) also refers to this distinctness, because the absence of definition affects extradition of terrorists. In an asylum case in the ICJ, it was stated that ‘these treaties reflect so much uncertainty and contradiction, so much constant and uniform usage, accepted as law.’ (Colombian- Peruvian Asylum Case, ICJ Reports, 1950). Moreover, in a fisheries case, the Court observed on the same subject ‘too much importance needs to be attached to a few uncertainties or contradictions.’ (Anglo-Norwegian Fisheries case, ICJ Reports, 1951).

⁷³ Franck, T. M. and Lockwood, B. B., (1974). "Preliminary Thoughts Towards an International Convention on Terrorism." *American Journal of International Law*, **68**(1): 69-90. (p.70).

⁷⁴ Guillaume, G. (2004). "Terrorism and international law." *International and Comparative Law Quarterly*, **53**(03): 537-548. (p.537).

⁷⁵ *Ibid.*, (p.539).

⁷⁶ *Ibid.*, (p.539).

⁷⁷ Saul, B. (2006). "*Defining terrorism in international law*." New York: Oxford University Press Inc. (p.190). See also Kenneth Watkin, O. M. M. (2016). "*Fighting at the Legal Boundaries: Controlling the Use of Force in Contemporary Conflict*." Oxford University Press.

⁷⁸ Saul, (2006). (p.190).

Apart from these Conventions, the United Nations General Assembly produces resolutions concerning international terrorism. Maybe the most important measure of the Security Council is Resolution 1373, which established the Counter-Terrorism Committee.⁷⁹ Resolution 1373 permits every member states to publish the concept of terrorism under its domestic law.⁸⁰ However, this situation cannot end definition chaos because every state will define terrorism divergently in its legal order. Conversely, Security Council Resolution 1566 attempts to provide a definition:

“Recalls that criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organisation to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and calls upon all States to prevent such acts and, if not prevented, to ensure that such acts are punished by penalties consistent with their grave nature.”

However, according to Schmid this Resolution is non-binding, lacking legal authority in international law.⁸¹ Moreover, Saul claims, the Council adapted this resolution in which the definition of terrorism has been generically given, but not explicitly framed as a description.⁸² From the above it may be deduced that there are consensus emerging on some concept of terrorism. As Ganor defines; ‘terrorism is the intentional use of, or threat to use, violence against civilians or against civilian targets, in order to attain political aims.’⁸³ This definition refers to three main elements; first, to use of violence or threat to use force, secondly, to political aim, and thirdly that the terrorist attack would be perpetrated against civilians. The other definition is given by Goodwin ‘terrorism is the strategic use of violence and threats of violence by an oppositional political group against civilians or non-

⁷⁹ Rosand, E. (2003). "Security council resolution 1373, the counter-terrorism committee, and the fight against terrorism." *The American Journal of International Law*, **97**(2): 333- 341. (p.333).

⁸⁰ *Ibid.*, (p.333).

⁸¹ Schmid, A. P. (2012). "The Revised Academic Consensus Definition of Terrorism." *Perspectives on Terrorism*, **6**(2): 158-159. (p.158).

⁸² Saul, (2006). (p.247).

⁸³ Ganor, (2002). (p.294)

combatants, and is usually intended to influence several audiences.⁸⁴ This definition shows that, the attack or treat to attack should be able to effect targets psychologically.

In this sense, the age-old adage summarises that point ‘terrorists want a lot of people watching, not a lot of people dead.’⁸⁵ More importantly, the aim of the terrorist should be political. In summary, and simply, terrorism is killing innocent people for political, ideological, religious reasons.⁸⁶ As is widely acknowledged, political crime is an exception to extradition and the political motivation is the most important element of the definition of terrorism so international law and domestic law cannot easily discern what constitutes political crime and terrorism.⁸⁷ Therefore, the latter should be defined clearly in order to remove ambiguity.

THE POLITICAL OFFENCE EXCEPTION RELATED TO TERRORISM

In this section, the political offence exception will be examined in relation to the line between terrorism as a crime and as a political offence. As same as the definition of terrorism, the conventions and international law, more crucially Turkish Domestic Law, refer to political offence, but these legal arguments do not include the description of political offence. In other words, at an international level there is wide disagreement as to the circumstances in which it is justifiable to use violence for political ends.

a- The Difficulties of Definition of the Political Offence and Extradition

Political offence in relation to extradition has been published in different resources. These resources explicitly accept that political crimes are not common crimes, but the interpretation of this term has been left to the judges.⁸⁸ Therefore, when the Turkish Courts examine this case, they will

⁸⁴ Goodwin, J. (2006). "A theory of categorical terrorism." *Social Forces*, **84**(4): 2027-2046. (p.2028).

⁸⁵ See Jenkins, B. M. (2006). "The new age of terrorism." *Terrorism and Political Islam* 25.

⁸⁶ Aktan, G. (2002). "The European Parliament and Turkey." *New Trends in Turkish Foreign Affairs: Bridges and Boundaries*. Lincoln: Writers Club Press. (p.107).

⁸⁷ For further information, see also Polat, D. Ş. (2017). "Uluslararası Terörizmle Mücadele Yaklaşımları." *Ankara Üniversitesi Sosyal Bilimler Dergisi*, **6**(1). (p.121).

⁸⁸ Hannay, W. M. (1979). "International Terrorism and the Political Offense Exception to Extradition." *Columbia Journal of Transnational Law*, **18**(3): 381-412. (p.385). See also, European Court of Human Rights, *Case Of Parmak and Bakır V. Turkey – Judgement*, Applications nos. 22429/07 and 25195/07, 3 December 2019, paras.22,63,68,74.

apply the national and international law, resolutions, conventions,⁸⁹ and more importantly unilateral or multilateral applicable treaties.⁹⁰ However, the problem is that there is a lack of consensus among governments and domestic courts about the concept of political offences for the expulsion of criminals.⁹¹ On this point, Rubin says; "Different evaluations of the relationship between 'criminal' behaviour and social policy are made by different countries, each consistent with its own traditions and policies."⁹² For that reason, defining clearly the concept of political offence remains polemical; and states avoid extraditing criminals who are charged with such acts.

Feder says: 'The political offender is a person who violates the criminal law on the grounds of his political and ideological convictions.'⁹³ In this sense, the problem is that a terrorist who escapes from the country in which the offence was committed by him/her and who is not a fugitive political offender can be made subject to the extradition procedures. However, a fugitive terrorist who asserts that his/her acts were politically motivated causes a problem because the acts can be both political as well as legal.⁹⁴ However, according to Feder, the sole relevant criterion is that of motivation, which relies on political and ideological convictions, and this serves to distinguish political criminals from common offenders, because there is no difference in the actual felony committed.⁹⁵ This author also believes that political motivation distinguishes political crime from common crime, but at the same time this concept assimilates political crime to terrorism. For this reason, a political offence may be a common crime in one country but in another it will not be.⁹⁶ Therefore, as Joyner and Rothbaum explain 'the political offence exception is a prickly impediment to extradition in terrorist cases.'⁹⁷

⁸⁹ Petersen, (1991). (p.770).

⁹⁰ Joyner, C. C. and Rothbaum, W. P. (1992). "Libya and the aerial incident at Lockerbie: what lessons for international extradition law." *Michigan Journal of International Law*, **14**(2): 222-261. (p.232).

⁹¹ Larschan, B. (1986). "Extradition, The Political Offense Exception and Terrorism: An Overview of the Three Principal Theories of Law." *Boston University International Law of Journal*, **4**(2): 231-284. (p.243).

⁹² Rubin, A. P. (1987). "Extradition and "terrorist" offenses." *Studies in Conflict & Terrorism*, **10**(2): 83-102. (p.85).

⁹³ Feder, (1985). (p.104).

⁹⁴ Costello, D. (1975). "International Terrorism and the Development of the Principle aut dedere aut judicare." *Journal of International Law & Economics*, **10**(2-3): 483-502. (p.483).

⁹⁵ Feder, (1985). (p.104).

⁹⁶ Garcia-Mora, M. R. (1962). "Nature of Political Offenses: A Knotty Problem of Extradition Law." *Virginia Law Review*, **48**(7): 1226-1257. (p.1229).

⁹⁷ Joyner and Rothbaum, (1992). (p.243).

Some attempts have been made to resolve this issue. In this context, Resolution 1566, which provides a definition of terrorism, marks a focal point and recognises that terrorism cannot be justified even though it has been committed for a political goal. The United Nations Resolution 1373 also touched on the identical point; states must make provision to ensure that refugee status is not granted to those who organise or support terrorist acts and cannot refuse to extradite so-called terrorists based on claims of political motivation. Furthermore, Resolution 73 provides that ‘the political motive alleged by the authors of certain acts should not have as a result that they are neither extradited nor punished.’ (Resolution 73(3), adopted by the Committee of Ministers at its 53rd session).

The Turkish Parliament also published an independent Anti-Terror Law (Act No: 3713) which came into force on 12 April 1991. In contrast to international law, in Turkey there is a definition of terrorism in Anti-Terror law. The definition of terrorism is provided in the first Article of Anti-Terror Law. According to Article 1 (1);

“Terrorism is any kind of act done by one or more persons belonging to an organization with the aim of changing the characteristics of the Republic as specified in the Constitution, its political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening or destroying or seizing the authority of the State, eliminating fundamental rights and freedoms, or damaging the internal and external security of the State, public order or general health by means of pressure, force and violence, terror, intimidation, oppression or threat.”

The anti-terror law however provides a definition of terrorism which is quite over-broad.⁹⁸ Thus, to clarify the differences between terrorism and political crime, some commonalities should be explored. Accordingly, many states categorise political offences into two types, one of which is pure political offences and the other, relative political offences.⁹⁹ On analysis, pure political crimes are found to possess two main features; the first is that they are acts clearly directed against the state or its political organisation without causing damage to innocent people and their property. The second is that the

⁹⁸ Rumelili, B., & Boşnak, B. (2015). “8 Taking stock of the Europeanization of civil society in Turkey. *The Europeanization of Turkey: Polity and Politics*, 127.” (p.136).

⁹⁹ Lubet, S. (1982). "Extradition Reform: Executive Discretion and Judicial Participation in the Extradition of Political Terrorists." *Cornell International Law of Journal*, 15(2): 247-292. (p.253).

attacks are not accompanied by the commission of a common offence.¹⁰⁰ It is not difficult to determine pure political crimes because these kinds of acts are not treaty offences. It may be said that there is a consensus on pure political crime, such as treason, espionage, and sedition are accepted as usual examples of pure political offences.¹⁰¹

On the other hand, more problematic are relative political offenses, because they involve a common crime implicit in or connected with the political act. Moreover, these crimes also carry the common crimes elements, which serve to diminish the political character of the offence; thereby making it difficult to classify the act as political for extradition purposes.¹⁰² As Deere points out, relative political crimes have been commonly assorted into connected and complex offences.¹⁰³ Also, according to Feder, 'Evaluation of political elements of relative political offences is a difficult process involving questions of ideology, morality, and human rights.'¹⁰⁴ Therefore, it is hard to distinguish relative political offence from terrorism.

Although the Turkish Penal Code does not define political offence, it arguably includes some political offences,¹⁰⁵ such as; breach of national unity and territorial integrity,¹⁰⁶ cooperation with the enemy, provocation of war against the state, movements against basic national interests, recruitment of soldiers against a foreign country, physical and financial assistance to hostile country, offenses against constitutional order and operation of constitutional rules.¹⁰⁷ The crimes listed will be accepted as political crimes by the judges. However, if the crime is not one of those, the judge will subjectively decide whether it is a political or an ordinary crime (non-political offence).¹⁰⁸

¹⁰⁰ For further information see Feder, (1985). (p.108).

¹⁰¹ Banoff, B. A. and Pyle, C. H. (1983). "To Surrender Political Offenders: The Political Offense Exception to Extradition in United States Law." *NYUJ International Law & Policy*, **16**(2): 169-210. (p.178).

¹⁰² Kinneally III, J. J. (1987). "The Political Offense Exception: Is the United States-United Kingdom Supplementary Extradition Treaty the Beginning of the End?" *American University International Law Review*, **2**(1): 4. (p.209).

¹⁰³ Deere, L. L. (1933). "Political Offences in the Law and Practice of Extradition." *American Journal of International Law*, **27**(2): 247-270. (p.248).

¹⁰⁴ Feder, (1985). (p.109).

¹⁰⁵ For further information, see Haluk, Ç. (1998). Siyasal Suçların 3005 Sayılı Kanuna Göre Yargılanabilmeleri Sorunu. *Türkiye Barolar Birliği Dergisi*. (p.592). (The Problem of Prosecution of Political Offences Under The Act of 3005)

¹⁰⁶ Bayraktar, K. (1982). *Siyasal Suç*, İstanbul: İstanbul Üniversitesi Hukuk Fakültesi Yayınları.(p.71). (*Political Offence*, İstanbul Law Review).

¹⁰⁷ For further information, see *Ibid.*, (p.77).

¹⁰⁸ *Ibid.*, (p.42, 71).

b- Legal Arguments in International Law

The global response to terrorism has been predicated on two levels; ‘states have entered into multilateral agreements to prevent acts of terrorism on their territory and they have made bilateral agreements for the trial or extradition of some alleged terrorists.’¹⁰⁹ Therefore, extradition treaties have a huge importance in fighting against terrorism. The European Convention on Extradition (1957) especially focuses on extradition. In this Convention, political offences are touched upon in Article 3 (1); ‘Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence or as an offence connected with a political offence.’ As seen, in this Article the political offence exception applies, but it does not explain exactly what a political crime is. Moreover, if it is interpreted broadly, terrorist crimes may be deemed to have fallen into the definition.¹¹⁰

However, in 1975 the Additional Protocol to the European Convention on Extradition imposed restrictions in respect of the Extradition Convention’s notion of the political offence.¹¹¹ The first Article of the Additional Protocol provides that, for the application of Article 3 of the Convention, political crimes shall not be considered to involve the following; first, the crimes against humanity¹¹² specified in the Convention on the Prevention and Punishment of the Crime of Genocide, the violations specified in Article 50 of the 1949 Geneva Convention.

Secondly, Article 51 of the 1949 Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of Armed Forces at Sea, Article 130 of the 1949 Geneva Convention relative to the Treatment of Prisoners of War and Article 147 of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War. Thirdly, any similar violations of the laws of war having effect at the time when this Protocol takes effect and of customs of war existing at that time, which are not already provided for in the above-referred provisions of the Geneva Conventions. As may be seen, the Additional Protocol gives a list of

¹⁰⁹ Larschan, (1986). (p.234).

¹¹⁰ Chiappetta, H. (2001). "Rome, 11/15/1998: Extradition or Political Asylum for the Kurdistan Workers Party's Leader Abdullah Ocalan." *Pace International Law Review*, **13**(1): 117-150. (p.125).

¹¹¹ Köprülü, T. (2005). "Yeni Türk Ceza Kanunu Bakımından Suçluların ve Sanıkların Geri Verilmesi" *Hukuki Perspektifler Dergisi*, sayı:4, s.221-229. ('Evaluating Extradition in the Light of New Turkish Criminal Code', *Legal Perspectives Journal*, (pp.221-229).)

¹¹² For further information, see Bayraktar, (1982). (p.154).

what cannot be deemed political crime, so these crimes will not constitute exceptions to extradition either; but this Additional Protocol is not applicable to Turkey, because it is not a party thereto.

The other important point about this Convention is procedure. The relevant matter concerning this subject has been published in Article 22, which provides: 'except where this Convention otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.' It is obvious that the European Convention on Extradition leaves an important duty to the parties. It confers discretionary power upon the national law of the parties.¹¹³ As Blakesley claims, the Extradition Convention does not exclude the authority of a state's judicial branch from making the difficult political crime decision or, even worse, 'suggest use of their courts as an arm of the foreign victor in a civil conflict to punish its opponents.'¹¹⁴ In this context, Noteboom remarks, for political offences, extradition is left to the discretion of the state.¹¹⁵

The other important legal source in relation to extradition is the European Convention on Terrorism (1977). The first article of this Convention cites numerous acts of terrorism which cannot be accepted as a political crime, including hijacking, kidnapping, or offences involving the use of explosives.¹¹⁶ Article 1 of the Convention declares that, for the purposes of extradition between party states, none of the following crimes shall be considered as a political crime or as an offence connected with a political offence or as a crime instigated by political motives:

"a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, b) an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, c) a serious offence involving an attack against the life, physical integrity or liberty of internationally protected persons, including diplomatic agents; d) an offence involving kidnapping, the taking of a hostage or serious unlawful detention; e) an offence involving the use of a bomb, grenade, rocket,

¹¹³ For further information, see European Court of Human Rights, *Güzelyurtlu And Others V. Cyprus and Turkey – Judgment*, Application no. 36925/07, 29 January 2019, para.163

¹¹⁴ Blakesley, C. L. (1986). "The Evisceration of the Political Offence Exception to Extradition." *Denver Journal of International Law & Policy*, **15**(1): 109-124. (p.116).

¹¹⁵ Noteboom, A. J. (2002). "Terrorism: I Know It When I See It." *Oregon Law Review*, **81**(2): 553-586. (p.567).

¹¹⁶ Phillips, R. S. (1996). "The Political Offence Exception and Terrorism: Its Place in the Current Extradition Scheme and Proposals for Its Future" *Dickinson Journal of International Law*, **15**(2): 337-360. (p.354).

automatic firearm or letter or parcel bomb if this use endangers persons; f) an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.”

The Convention on Terrorism precludes these offences from being covered by the political crime exception, as is mentioned in Article 1(e): ‘the use of a bomb, grenade, rocket, automatic firearm, letter bomb, or parcel bomb, if the use endangers persons.’¹¹⁷ Additionally, Article 1 of the 1977 Convention establishes the characteristics of crimes that shall not be accepted as a political offence, as an offence connected with a political offence, and as an offence inspired by political motives. In addition, Article 3 of the Convention provides that:

“the provisions of all extradition treaties and arrangements applicable between Contracting States, including the European Convention on Extradition, are modified as between Contracting States to the extent that they are incompatible with this Convention.”

However, the 1977 Convention not only clearly explains how the 1957 Convention is to be interpreted, but also precisely delimits the characteristics applicable to a political offence.¹¹⁸ Another important Article of this Convention is Article 2(1), which confers power of discretion on states. As Chiappetta states, Article 2 of the 1977 Convention extended the applicability of Article 1, providing, in Article 2(1), that:

“For the purpose of extradition between Contracting States, a Contracting State may decide not to regard as a political offence or as an offence connected with a political offence or as an offence inspired by political motives a serious offence involving an act of violence, other than one covered by Article 1, against the life, physical integrity or liberty of a person.”¹¹⁹

Clearly there is a difference between Article 1 and Article 2. Article 1 brings firm commitment to parties; it means the parties have to accept the concept of Article 1. Nevertheless, in Article 2 there is granted a discretionary power to decide whether it is a political crime or not. Chiappetta says that, in spite of the clear list given by Article 1 of the 1977 Convention, the European states have explicated and applied these laws differently.¹²⁰ Therefore, according to Phillips, states which have ratified the European Convention

¹¹⁷ Blakesley, (1986). (p.116).

¹¹⁸ Chiappetta, (2001). (p.125).

¹¹⁹ *Ibid.*, (p.125).

¹²⁰ *Ibid.*, (p.126).

have shown their intent to abide by its terms, and routinely grant extradition for terrorists.¹²¹ Furthermore, he added ‘until there is worldwide unanimity, however, the political offence exception will be open to abuse.’¹²² It must be added that Article 13 of this Convention also allows parties to use discretionary power. According to Article 13;

“Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, declare that it reserves the right to refuse extradition in respect of any offence mentioned in Article 1 which it considers to be a political offence, an offence connected with a political offence or an offence inspired by political motives, provided that it undertakes to take into due consideration, when evaluating the character of the offence, any particularly serious aspects of the offence,...”

As may be seen, this Article is a kind of mental reservation, thereby rendering this Convention ineffective.¹²³ Also Article 8 (1) of this convention confers another discretionary power on states. It provides that;

“Contracting States shall afford one another the widest measure of mutual assistance in criminal matters in connection with proceedings brought in respect of the offences mentioned in Article 1 or 2. The law of the requested State concerning mutual assistance in criminal matters shall apply in all cases. Nevertheless this assistance may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.”

This Article is connected with the European Convention on Mutual Assistance in Criminal Matters (1959).¹²⁴ In this Convention, Article 2(a) states: ‘Assistance may be refused: if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence or a fiscal offence’. These two articles related to each other because Article 8 of the Convention limits the concept of Article 2(a) of the European Convention on Mutual Assistance in Criminal Matters.

In order to remove diversity of lawful order systems and practice among the States, in 1995 a Convention on simplified extradition procedure and in 1996 a Convention relating to extradition between the Member States of the European Union were drawn up. The reason for these Conventions is that such

¹²¹ Phillips, (1996). (p.358).

¹²² *Ibid.*, (p.358). See also European Court of Human Rights, *Case of Öcalan V. Turkey*, Application no. 46221/99, 12 May 2005, paras.14,15,24.

¹²³ Köprülü, (2005). (pp.221-229).

¹²⁴ *Ibid.*, (pp.221-229).

differences as may exist may be resolved only on a regional scale. Hence their operation is restricted to countries which are closer and whose ties involve common tradition and culture as well as shared values.¹²⁵ However, these Conventions could not break with the conventional extradition process which is by definition political and intergovernmental.¹²⁶

As is evident, in nearly every treaty there exists a method of excluding certain crimes from the political offence exception. Moreover, this method, which is accepted in anti-terror treaties, is accepted by many states and the international community. Apart from this excluding method, however, the international community has failed to reach a commonly accepted definition of the term 'political offence'.¹²⁷

CONCLUSION

A very recent case would be a good example to summarise the whole argument of this paper. As is known, a coup d'état was attempted in Turkey on the night of 15 July 2016. This coup d'état is linked to the Gülen movement which is categorised as a terrorist organisation (Fetullahist Terror Organization- FETO). After the failed coup attempt, members of the movement mostly fled to Greece and applied for political asylum in order to escape prosecution. The Turkish government officially requested extradition of those members who committed crimes during the attempted coup. However, Greek Supreme Court has rejected Turkey's extradition request on the ground that coup d'état in order to overthrow the Turkish government is political.¹²⁸ Moreover, Department of Justice of the United States discusses whether actions of FETO could be categorised as political crimes. For this reason, it is argued whether the members of this organisation could be extradited to Turkey.¹²⁹

It is argued that the decision concerning extradition is left to the individual government. However, the definition of political crimes, terrorism,

¹²⁵ Plachta, M. (2003). "European Arrest Warrant: revolution in extradition" *European Journal Crime Criminal Law & Criminal Justice*, **11**(2): 178-194. (p.179).

¹²⁶ Kedikli, U. (2006). "Avrupa Birliği'nin Terorizmle Mücadele Politikaları ve Hukuki Boyutu." *Review International Law & Politics*, **2**: 54. ("United Nations Policy to Fight Against Terrorism and Legal Status"). (p.62).

¹²⁷ Baydemir, (2011). (p.23).

¹²⁸ Greece - Supreme Court, 20 February 2015, 186/2015. See also Rachovitsa, A. (2016). On the Sidelines of the Failed Coup d'État in Turkey: Can Greece Extradite the Eight Turkish Military Officers to Turkey?. *European Human Rights Law Review*, **6**: 645-655. (p.648).

¹²⁹ For further information, see Yücel, H. (2018). Untangling the Extradition Case of Feto, SETA: Foundation for Political, Economic and Social Research.

extradition process, political offence exception differ in every domestic law because of the different historical background and judicial discretion. Turkey has a definition of terrorism, but for the other states this definition is overbroad. Moreover, Turkish domestic law does not define political offence, but it has political offence exception in its domestic extradition law. Thus it is a significant necessity to create a consistent legal definition of terrorism, political offence and political offence exception to the terrorism under international law. This is because, it has been shown how the inconsistencies of anti-terrorist treaties create barriers against effective international cooperation in relation to extradition of terrorists.

Despite the fact that, currently, extradition cases are determined by the domestic courts, extradition is nonetheless manifestly an international phenomenon, and accordingly, international bodies must be sensitive to the need to create solutions in relation to the extradition of terrorists. These bodies should be responding to the urgent necessity for removal of the ambiguities surrounding the extradition process. From the Turkish viewpoint, the weaknesses of extradition treaties hamper the war against terrorism, since Turkey and many European countries are parties to these multilateral agreements.

In relation to the elusiveness of the terms, in the first instance, political motivation related to terrorism has been referred to as a focal point for this subject because, as Carberry points out 'terrorism is usually the genus of the species of political discord between nations[,] [t]he terrorist is well aware of this situation and usually exploits political disharmony among nations.'¹³⁰ As has been argued, there is a line between terrorism and political crime, which is the main reason for the present complication about the political offence exception. The reason for this is the ongoing struggle to define the concept of 'political offence', a situation which causes unnecessary chaos and prevents international cooperation in regard to the extradition of terrorists.

Moreover, it has been suggested, international law should provide a universally accepted definition of political offence, since the absence of uniformity between different treaties in defining a political offence complicates the issue and, more significantly, states suffer from the ambiguity of this term. In this sense, the necessity for achieving harmonised international legal agreements, which have been ratified by Turkey, in relation to the extradition of terrorists, has been emphasised, as only the existence of a

¹³⁰ Carberry, J. A. (1998). "Terrorism: A global phenomenon mandating a unified international response." *Indiana Journal Global Legal Study*, 6(2): 685-721. (p.718).

uniform law will bring the individual states into line and provide unity in regard to extradition. The failure of international institutions to create an applicable uniform law is critically assessed. Apart from the necessity for creating uniformity, the difficulties entailed in the creation of a uniform law in relation to terrorism and political offences have been mentioned. ‘Conflicting legislative initiatives, differing legal systems, varying conceptions of terrorism, and restricting notions of State sovereignty’ are all listed as reasons.¹³¹

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¹³¹ Carberry, (1998). (p.719).

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