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“OUTLOOK OF FREEDOM OF ASSOCIATION IN TURKEY”

**Monitoring Report of Guidelines for EU Support to Civil
Society in Enlargement Countries**





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Society in Enlargement Countries**



Report Title

Outlook of Freedom of Association in Turkey

Editor

Dr. Tezcan Eralp Abay

Outlook of Freedom of Association in Turkey

Dicle akmak

Appendix-An assesment of amendments on law of associations, which imposes a membership notification requirement for associations in Turkey, based on the national and international legislation.

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PREFACE

Freedom of association is an integral part of a democratic society. It is, by its very nature, a collective exercise of freedom of expression. In fact, freedom of expression, when exercised through association, becomes more effective than individual expression. Individuals' voices can be heard louder when they join with others in an association. Further, freedom of association is the most powerful tool of a participatory democracy. Citizen engagement in daily decision-making mechanisms, well beyond simply voting in elections every few years, provides the basis of participation. A participatory democracy is based on active, not passive, citizenship. Associations, where active citizens gather and join forces, offer the most vital tool to ensure active citizen engagement in decision-making mechanisms. It is through association that an individual can overcome the financial, economic and social challenges of becoming an active citizen. Besides, civil society organizations which contribute to a wide range of issues including design of dialogue processes in society, promotion of diversity, questioning and discussion of all matters in the public sphere and development of a more transparent system where public institutions are under public scrutiny, can sustain their existence only by exercising freedom of association.

Monitoring and reporting of legal and administrative framework and also of the implementation thereof is a key factor in expanding the field of freedom of association. In this context, this report attempts to provide a general outlook of freedom of association in Turkey in view of universal norms and standards set forth in the Guidelines for EU Support to Civil Society in Enlargement Countries. Civil society organizations constitute a fundamental form of organization in the civil sphere, thus monitoring and reporting of civil society organizations, as well as data collection and analysis of main issues concerning civil society organisations ranging from their membership structures, to areas of activity, the extent they can enjoy rights and freedoms, problems they encounter and financial structures, would help us understand the big picture with all its details, including the current stance of organisation of civil society as well as its major problems.

Since its establishment, STGM's primary purpose has been to promote and strengthen civil society organisations that adopt rights-based approaches. Considering the difficulties faced in data collection and the fact that monitoring and reporting of civil society organisation in Turkey is not yet as systematic as the expected level, STGM has launched a periodic monitoring and reporting work based on data collection by skimming all sources of references.

This report contains data of 2018 and is prepared under the project titled "Capacity Building for CSOs and Civil Networks for Further Development of Freedom of Association and Right to Participation" with Directorate for EU Affairs of the Ministry of Foreign Affairs as the beneficiary and the Central Finance and Contracts Unit (CFCU) as the contracting authority. The report for 2019 is underway for publication. I would like to thank the members of the project steering board and our project team for their contribution to the preparation of this report.

We hope that our annual reports will fill a much-required need in the field and offer an insight on civil society work.

Dr. Yakup Levent Korkut
Chair of Executive Board

INTRODUCTION

Civil society organizations (CSOs) have an important role in promoting democracy and in the effective functioning of public administration. The capacity of civil society to effectively perform this role depends on the presence of an enabling environment, in other words on the breadth of freedom of association. In Turkey, freedom of association, as well as closely linked freedoms of peaceful assembly and expression, have been guaranteed both by the Constitution and by several international conventions to which Turkey has become a party. There have been numerous studies made in the last 15 years to recall these obligations and to determine how many of the obligations have been fulfilled. Major reports on freedom of association and the development of civil society in Turkey are as follows:

1. Civil Society Index (CSI) Project Reports

Civil Society Index (CSI) Project, developed by World Alliance for Citizen Participation (CIVICUS) and conducted in more than 50 countries including Turkey, is a comparative, extensive and participatory research project¹. The purpose of the project, conducted in 2005 for the first time and then between 2008-2010 for the second time was to analyse the status of civil society and to strengthen civil society so that it can perform its role in democratization and development. Research reports on the status of civil society were published at the end of each stage of the project, respectively in 2006 and 2011, named as "Civil Society in Turkey: An Era of Transition"² and "Civil Society in Turkey: A Turning Point"³.

2. Barriers encountered by Associations in Turkey in terms of freedom of association

Third Sector Foundation of Turkey (TUSEV) and Civil Society Development Center (STGM) carried out the project on "Preparation of Methodology for the Monitoring of Freedom of Association in Turkey". The report titled "Barriers to Freedom of Association of Associations in Turkey" published at the end of the project addressed the problems in legislation and implementation in the area of freedom of association.⁴

3. Civil Society Evaluation Report ⁵

This report, published by TUSEV covering the period between October 2009 and September 2010, addresses relations between civil society and the public in Turkey, the legislation concerning associations and foundations and the impact of civil society organizations on policy development processes.

4. Civil Society Monitoring Report

TUSEV reports, published within the scope of the Civil Society Monitoring Project conducted since 2011, address developments in the area of civil society under the main headings of legal studies, international relations, institutional capacity and research. These reports, based on desk study and drawn up with the contribution of CSOs' opinion and experience, also comprise case analyses on a broad range of topics concerning civil society.⁶

5. Monitoring Enabling Environment for Civil Society Development Project Reports for Turkey

Civil society organizations in Western Balkan States and Turkey have developed a monitoring matrix under the Monitoring Enabling Environment for Civil Society Development Project coordinated by Balkan Civil Society Development Network (BCSDN) since 2012, with TUSEV as the implementing partner in Turkey.⁷ The monitoring study based on this matrix addresses civil society development under the headings of Basic Legal Guarantees of Freedoms, Framework for CSOs Financial Viability and Sustainability and Public Sector-CSO Relationship.⁸

1. For detailed information on CSI Project, please see www.step.org.tr (Date of access: 21.12.2019)

2. Bikmen, Filiz; Meydanoglu, Zeynep. "Türkiye'de Sivil Toplum: Bir Değişim Süreci - Uluslararası Sivil Toplum Endeksi Projesi Türkiye Ülke Raporu." (Civil Society in Turkey: An Era of Transition - International Civil Society Index Project Country Report for Turkey) Istanbul: TUSEV Publications, December 2006. https://www.tusev.org.tr/userfiles/images/yayinlar/Uluslararası_STEP_Türkiye_Ülke_Raporu.pdf (Date of access: 21.12.2019)

3. İcduygu, Ahmet; Sert, S. Deniz; Meydanoglu, Zeynep. "Türkiye'de Sivil Toplum: Bir Dönüm Noktası - Uluslararası Sivil Toplum Endeksi Projesi Türkiye Ülke Raporu II." ("Civil Society in Turkey: At a Turning Point-International CSI Project Country Report II for Turkey) Istanbul: TUSEV Publications, March 2011. http://step.org.tr/images/UserFiles/File/-step2011_web%20SON.pdf (Date of access: 21.12.2019)

4. Ersen, T. Başak (ed.). "Türkiye'de Derneklerin Örgütlenme Özgürlüğü Önündeki Engeller" (Barriers to Freedom of Association of Associations in Turkey). Istanbul: TUSEV Publications, April 2010.

5. https://www.tusev.org.tr/userfiles/files/TUSEV_Sivil_Toplum_Degerlendirme_Raporu_2010.pdf (Date of access: 21.12.2019)

6. All reports and case analyses prepared as part of the civil society monitoring project are available at: <https://www.tusev.org.tr/arastirma-ve-yayinlar/siv-il-toplum-izleme-raporu-1/sivil-toplum-izleme-projesi-hakkinda-1> (Date of access: 21.12.2019)

7. Implementation Guideline for Civil Society Monitoring Matrix is available at: https://www.tusev.org.tr/userfiles/files/izleme_matrisi_rehberi_doc_23_08_2013.pdf (Date of access: 21.12.2019)

8. Reports prepared under the Monitoring Enabling Environment for Civil Society Development Project are available at: <https://www.tusev.org.tr/yasal-calismalar/sivil-toplum-gelisimi-icin-elverisli-ortamin-izlenmesi-projesi/proje-ozeti> (Date of access: 21.12.2019)

6. TUSEV Report: “Active Participation in Civil Society: International Standards, Obstacles in National Legislation and Recommendations”

The purpose of this report published by TUSEV under the “Strengthening Civil Society Development and Civil Society – Public Sector Dialogue in Turkey Project” was to identify the legal obstacles against active participation in civil society and offer recommendations to remove such obstacles.⁹

This report, with Directorate for EU Affairs of the Ministry of Foreign Affairs as the beneficiary and the STGM as the implementing partner, was prepared under the project titled “Capacity Building for CSOs and Civil Networks for Further Development of Freedom of Association and Right to Participation”, and builds on the above-mentioned efforts and evaluates the environment where CSOs operate. The evaluations in the report were based on the targets and indicators set forth in the Guidelines for EU Support to Civil Society in Enlargement Countries¹⁰ (2014-2020) published in 2014 by the European Commission's Directorate-General for Neighbourhood and Enlargement Negotiations.

Guidelines for EU Support to Civil Society in Enlargement Countries offer a framework that defines the proposed results for civil society in candidate countries by using quantitative and qualitative indicators. The Guidelines focus on the proposed results of EU support to civil society under three main headings: conducive environment where freedoms of expression, association and assembly are exercised, relations between the public administration and CSOs and, lastly, CSO capacity. The purpose of the Guidelines and the Results Framework in the annex covering the years 2014-2020 is to plan the EU support for civil society and to effectively and systematically monitor the efforts of EU candidate countries in this field. Technical Assistance for Civil Society Organizations (TACSO) undertook the monitoring of the guidelines between the years 2015-2017. The current report is drawn up by updating the latest 2017 report by TACSO according to the changing legislation and implementations.

The report aims to help improve the environment by using the indicators set forth in the Guidelines for identifying problems in legislation and implementation in the area of freedom of association; to induce relevant institutions to produce statistics compliant to international standards, which so far have fallen short of doing so, as well as to encourage official, public and systematic data collection about civil society. The data covering 2018 are basically based on press and media scans, applications for information filed submitted to relevant institutions and official statistics.

The report comprises three chapters. Chapter One offers a general framework on how the Guidelines for EU Support to Civil Society in Enlargement Countries addresses freedom of association. Chapter Two titled “Freedom of Association in Turkey” outlines the monitoring findings of 2018 under six main headings: Evaluation of the legislation regulating freedom of association, the number of staff working at civil society organizations, the legislation on volunteering and volunteers in CSOs, financial rules that apply to CSOs and their reporting obligations, fundraising tools of CSOs and CSO participation in political decision making processes. Chapter Three focuses on recommendations based on findings of the monitoring process. The report comprises an annex.

Annex-comprises an information note titled “Evaluation, Based on National and International Legislation, of Amendments Imposing an Obligation on Associations to Give Notice About Their Members to the Associations Information System”, analysing in detail a regulation amendment dated 1 October 2018 and the “Law no 7226 on the Amendment of Some Laws” issued in the Official Gazette on 26 March 2020, both of which impose new obligations on associations to give notice about their members.

This report which aims to offer an outlook of freedom of association in Turkey in 2018 was drawn up in 2019; however, due to a number of reasons, it was published in 2020.

9. <https://siviltoplum-kamu.org/tr/wp-content/uploads/2018/08/Sivil-Topluma-Aktif-Katilim.pdf> (Date of access: 21.12.2019)

10. https://eeas.europa.eu/sites/eeas/files/doc_guidelines_cs_support1.pdf (Erişim tarihi: 21.12.2019)

CHAPTER-1

Freedom of Association
in the “Guidelines for
EU Support to Civil
Society in Enlargement
Countries”:
Conducive Environment

Freedom of Association in the “Guidelines for EU Support to Civil Society in Enlargement Countries”: Conducive Environment

It would be useful to summarize first how the Guidelines, which is the basis of this report, address freedoms of CSOs before looking into how freedom of association is covered in legislation and put in practice in Turkey.

According to the Guidelines, participatory democracy thrives when there is a conducive environment for civil society activities, and CSO capacity must be developed for CSOs to become independent actors. The subject matter of this report is to evaluate and determine whether the targets set by the Guidelines to provide a conducive environment have been reached in terms of civil society activities in Turkey¹¹. To facilitate such evaluation, it would be best to define conducive environment first.

Conducive environment, in its broadest term, is an environment where fundamental rights that directly affect CSOs such as freedoms of association and expression are protected and respected both by laws and in practice. Third Sector Foundation of Turkey defines conducive environment in its information note “Conducive Environment for Civil Society” as **“an entire combination of conditions where laws and regulations concerning civil society are supportive and facilitative, sufficient resources are available for CSOs to maintain their presence and provide social benefits, the role of civil society is recognized, a comprehensive and ongoing cooperation is ensured between civil society and public administration, and where effective cooperation channels among diverse civil society groups can be established”**¹².

Conducive environment can briefly be defined as a set of conditions which enable individuals to exercise freedom of association and organizations to freely carry out their activities. EU Guidelines define conducive environment as an enabling legal and administrative environment as well as an enabling financial environment for CSO activities and civil society involvement. First of all, an enabling legal and administrative environment would require transparent and equal registration processes customized for CSOs, regulations that allow CSOs to function and cooperate freely and independently and protection of CSOs from illegal and disproportionate state intervention. Indicators involve incentives for CSOs such as donations, membership dues, philanthropy and state funding. In addition, civil society involvement should be guaranteed to ensure good quality comprehensive legislation and to develop sustainable policies. The Guidelines define major indicators of civil society involvement as having structures and mechanisms for civil society cooperation with public institutions as well as free, clear and accessible flows of information on matters of public interest.

The Results Framework provided at the end of the EU Guidelines, and whose main headings are summarized above, is mentioned in Chapter Two of this Report on monitoring findings. Each sub-chapter starts with an indicators table that shows corresponding objectives, results and indicators of the EU Guidelines.

11. Targets and indicators for CSO capacity development will be evaluated according to the results of a study conducted by the Civil Society Development Center in 2020 and will be included in its report for 2019.

12. <https://tusev.org.tr/userfiles/images/ElverisliOrtam2019.pdf> (Date of access: 23.12.2019)

CHAPTER-2

**Freedom of
Association
in Turkey**



2.0 Freedom of Association in Turkey

Civil society organizations in Turkey involve associations, foundations, professional organizations, cooperatives and non-legal entities such as initiatives and platforms. Civil Society Development Center believes that all these organizations should exercise freedom of association; nonetheless, due to the limitations of this study, this report focuses primarily on regulations and implementations concerning **associations** and **foundations**.

2.1. Evaluation of the legislation regulating freedom of association

Objectives	Result	Indicator
An enabling legal and policy environment, for the exercise of the rights of freedom, expression, assembly and association	All individuals and legal entities can express themselves freely, assemble peacefully and establish, join and participate in non-formal and/or registered organizations.	Number of cases of infringement of basic constitutional rights of individuals and legal entities, and of these, the number of cases duly investigated and sanctioned
		Illegal interventions into CSO activities and internal functions
		Progress with the implementation of relevant legislation
	Central and local governments have enabling policies and rules for grass-root organizations at the local level.	Number of grass-root organizations
Number of and monetary value of grass-root projects supported by local/central administration (their place in budget planning)		

2.1.1. Current legal framework and policies

Freedom of Association

Current legal framework in Turkey allows everyone to establish an association, foundation and any other non-profit organisation; still there exists some exceptions. Article 33 of the Constitution of the Republic of Turkey regulates the freedom to form an association. As per article 33, everyone has the right to form an association, become an association member and leave membership without prior permission. No one may be compelled to become or remain a member of an association. Recognizing that everyone has the right to freedom of association, Article 33 lays out the limitations that may be imposed on this right and defines the procedure on how to terminate association activities:

"... Freedom of association may be restricted only by law on the grounds of national security, public order, prevention of commission of crime, public morals, public health and protecting the freedoms of other individuals. The formalities, conditions, and procedures to be applied in the exercise of freedom of association shall be prescribed by law.

Associations may be dissolved or suspended from activity by the decision of a judge in cases prescribed by law. However, where it is required for, and a delay constitutes a prejudice to, national security, public order, prevention of commission or continuation of a crime, or an arrest, an authority may be vested with power by law to suspend the association from activity. The decision of this authority shall be submitted for the approval of the judge having jurisdiction within twenty-four hours. The judge shall announce his/her decision within fortyeight hours; otherwise, this administrative decision shall be annulled automatically. Provisions of the first paragraph shall not prevent imposition of restrictions on the rights of armed forces and security forces officials and civil servants to the extent that the duties of civil servants so require."

In Turkey, associations may be formed by notifying the Directorate General for Relations with Civil Society of the Ministry of Interior; whereas foundations may be established when the foundation deed is registered by a court of first instance. Associations are considered to have been formed as soon as notification is given and can undertake activities on the date of notification. The Directorate General for Relations with Civil Society reviews the application within 60 days; and grants a 30-day period to the association to make necessary corrections in case of a missing document or a violation of rules in the application. However, in practice, there have been cases where the Directorate General, instead of receiving incomplete documentation, returned applications it found incomplete or missing a document only after a preliminary review during delivery of documentation.

Application by a minimum of 7 people is required to form an association. Nonetheless, an association should have at least 16 members to establish mandatory bodies (executive board and supervision board) during the general board meeting which should be held within 6 months. Unless these shortcomings are overcome, action will be taken to annul the association. According to the statistics published by the Directorate General for Relations with Civil Society, the number of active associations in 2018 was 114.205¹³. Although the graphic table below covering the last five years shows a yearly increase in the number of active associates, it is not possible to determine how many of these associations were actually formed in the year of reporting since it was not possible to find out the number of associations which gave notification of establishment or which were annulled in 2018. It would be useful in terms of following association trends to have a publication of statistical data which displays a yearly distribution of the number of associations that gave notification of establishment.

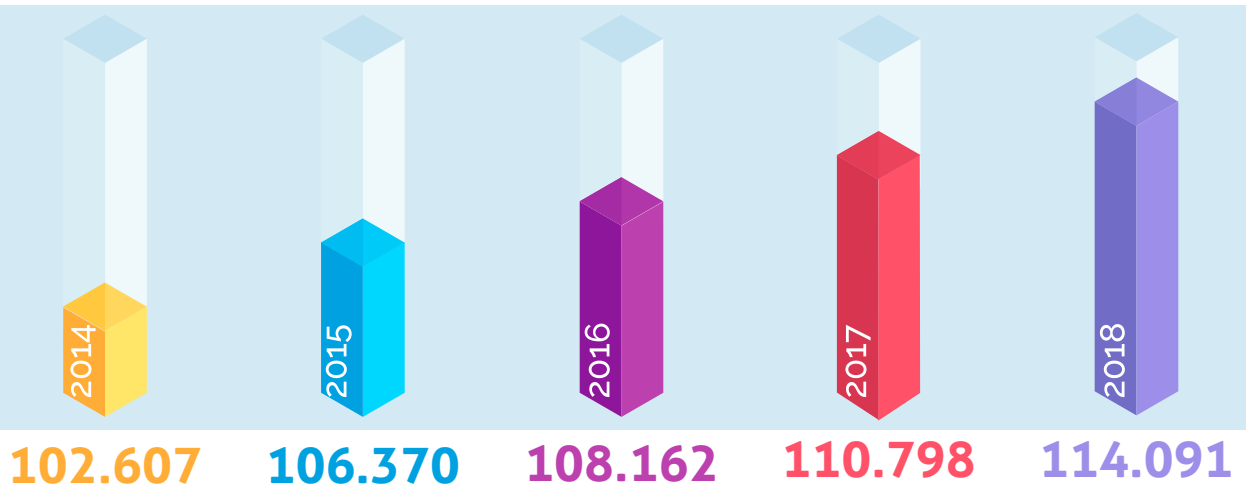


Table-1: Number of active associations between 2014-2018

13. Number of active associations per year is available at: <https://www.siviltoplum.gov.tr/yillara-gore-faal-dernek-sayilari> (Date of access: 20.12.2019)

The official process for establishing foundations may vary depending on the workload of the court where the application is filed. In 2018, the minimum asset limit for establishing a foundation was set as 60.000 TL and filing a legal action with the Civil Court of First Instance cost 186,65 TL. According to the data by the Directorate General of Foundations, the number of new foundations set up in the first half of 2018 is 155¹⁴. The total number of new foundations in the same period is 5212¹⁵.

Foreign organizations require a work permit to operate in Turkey. The Directorate General for Relations with Civil Society, in consultation with the Ministry of Foreign Affairs, reviews applications for work permit for 6 types of activity: Opening a Representation, Opening a Branch, Undertaking Activities in Turkey, Engaging in Cooperation, Becoming a Member of an Association or a Supreme Organisation, Forming an Association or a Supreme Organisation¹⁶. In 2018, a total of 12 foreign organizations obtained permission to undertake activities. Out of these 12 foreign organizations, 6 obtained permission to establish a higher association, 1 to open a branch, 4 to directly undertake activities and 1 to become a member of a higher association. The total number of CSOs authorized to operate in Turkey in 2018 is 130¹⁷.

In terms of types of association, Turkish laws recognize associations, foundations, federations, confederations, trade unions, unions and cooperatives as non-profit legal entities and disregard non-profit companies, social initiatives, social cooperatives and networks. Platforms are not considered as legal entity although they are defined by law. The fact that these types of association do not have legal entity and hence do not enjoy the same rights as associations and foundations, lead to a preference of these two main types of associations, namely associations and foundations, over others.

The legal framework regulating freedom of association generally provides for equal enjoyment of this right without any discrimination (based on age, national ethnicity, legal capacity, gender etc.); still there are some problems in transposing this principle into practice. Some provisions introduced by laws and secondary legislation impose restrictions on standards defined by the Constitution.

First and foremost, several regulations, which define who may exercise freedom of association, place restrictions on public officials, foreign nationals and children. The Law of Associations states that everyone who has turned 18 years of age and has legal capacity may form an association. Restrictions placed on the members of Turkish Armed Forces and law enforcement as well as public officials are addressed by specific laws on these professional groups. Besides, there are restrictions on foreign nationals who do not have a residence permit. The Civil Code only regulates the right of foreign nationals residing in Turkey to form an association or to become a member of an existing association. The principle of reciprocity is applied for foundations. Article 5 of the Law of Foundations states that. " Foreigners shall be able to establish new foundations in Turkey in accordance with the principle of de jure and de facto reciprocity."

Although children may exercise freedom of association, the Law on Associations imposes some restrictions on children's enjoyment of this right¹⁸. The Law places a restriction based on age but also provides for a category named as child associations. Article 3 of the Law states that. "Minors over fifteen years old, with the mental capacity, may found a child association or be a member of an already established child association subject to the written permission of their legal representatives, with the aim of maintaining and improving their social, spiritual, moral, physical and mental capabilities as well as their rights to sports, education and training, social and cultural existence and family structure and private life." Furthermore, children between the ages of 12 and 15 may become members of child associations with the permission of their legal representatives; however, they cannot fulfil duties in executive boards or supervision boards.

Legal framework is not adequate to prevent the public administration from interfering into the internal affairs of civil society organizations. Internal mechanisms of the administration are regarded as by-laws for issues not regulated by law or regulations. Legal Opinions published by

14. Number of new foundations established since 2000 is available at: https://cdn.vgm.gov.tr/genelicerik/genelicerik_945_290519/07-yil-icin-de-kurulan-yen.pdf (Date of access: 21.12.2019)

15. Number of new foundations per year is available at: https://cdn.vgm.gov.tr/genelicerik/genelicerik_945_290519/03-yeni-vakiflarin-yil-ba.pdf (Date of access: 21.12.2019)

16. For detailed information on types of activities and application procedures, please see: https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.govtr/is-lemler/YabanciStk/Yabanci_STKlar_icin_Basvuru_Rehberi.pdf (Date of access: 21.12.2019)

17. The list of Foreign CSOs authorized to operate in Turkey is available at: https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.govtr/isatistikler/YabanciSTK/izin_verilen_listesi_tr.pdf (Date of access: 17.06.2019)

18. <https://www.tusev.org.tr/urfiles/images/MevzuatRapor.15.09.15.pdf> (Date of access: 17.06.2019)

the Office of Legal Counsellor of the Ministry of Interior regulates important issues such as the contact address of associations, place of residence, common usage of residential areas, and usage of internet and digital tools to receive donations. For instance, the Office of Legal Counsellor, in reply to a question whether multiple associations could share the same address for their activities, issued the following opinion on 10/04/2013 after reciting relevant provisions of legislation:

“Although there are not any provisions in legislation prohibiting associations to share the same address for their activities, there might be some disadvantages arising from the implementation of article 21 of the Constitution, articles 19 and 20 of the Law no. 5352 on Associations and article 9 of the Law no. 2559 (...), hence it would not be appropriate for multiple associations or an association and another private or legal entity to operate from the same address”.

The Office of the Legal Counsellor bases its opinion on the fact that there might be major complications in case law enforcement officials conduct a “search and seizure” procedure. Nevertheless, since there are not any prohibitive provisions in legislation in this regard, as pointed out by the Office of the Legal Counsellor itself, and given the economic constraints on associations in our country, it is necessary to find other remedies that could be used by the administration instead of significantly restricting a major aspect of freedom of association such as undertaking activities. Opportunity to share the same address is an important factor of freedom of association in terms of both economic effectiveness and solidarity.

Freedom of Expression

Articles 25 and 26 of the Constitution of the Republic of Turkey clearly guarantee freedom of expression; however, restrictions imposed by laws and secondary legislation make it difficult to transpose this right into practice.

Several articles in the Constitution guarantee the right of real and legal persons to express their opinion; this protection covers traditional media as well as the internet. Article 25 protects freedom of opinion and the ensuing articles protect freedom of stating and circulating opinion, in other words, freedom of expression. Article 74 regulates the right to information, which is related to freedom of expression. Moreover, although article 5 of the Constitution defines the positive obligation of the state to protect the fundamental right and freedoms, it is difficult to assert that freedom of expression is completely protected by laws and secondary legislation. Turkish Penal Code, Law no. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publication and Anti-Terrorism Law no. 3731 provide the basis for violations of freedom of expression in Turkey and are in conflict with the guarantees given by the Constitution for freedom of expression¹⁹.

Broad definitions and ambiguous statements in laws and similar regulations give plenty of leeway to public administration and courts and undermine judicial review. For instance, paragraph 2 of article 6 of the Anti-Terrorism Law criminalizes publication of declarations and announcements made by terrorist organizations as follows “**Those who print or publish declarations or announcements of terrorist organisations which legitimise, praise or encourage the employment of their coercive, violent and threatening methods are imprisonable by one to three years**”. The term “legitimise, praise or encourage” in this article is quite ambiguous and might encompass all kinds of opinion statements, including statements and reports of civil society organisations, that do not cross the line beyond mere criticism. Article 7 of the Law regulates “**propaganda of a terrorist organisation**”. Paragraph three of the article poses a direct threat for civil society organisations. As per paragraph three of article 7, if propaganda of a terrorist organisation is broadcast at a building, premises, office or extension of an association or a foundation, a double sentence will be given. This regulation may lead to a heavy sentence for those who, in exercising their freedom of association, happen to express their opinions on a political issue at a location belonging to the CSO of which they are a member. This limitation in effect forces CSOs to keep quiet on political issues as much as possible.

ECHR ranks Turkey among the top countries in violation of freedom expression as Turkish laws are noncompliant with international standards. ECHR has delivered 321²⁰ judgments that found Turkey in violation freedom of expression between the years 1959-2018; 40 of these judgments are related to cases in 2018²¹.

Omission of hate speech among the restrictions imposed on freedom of expression has been a perennial problem. The Constitution does not clearly define hate speech; nonetheless, article 14 on the misuse of rights and freedoms may be interpreted as if hate speech falls outside the scope of freedom of expression. Besides the Constitution, articles 122 and 216 of the Turkish Penal Code are on the whole not enforced effectively or in line with international standards, despite the fact that they are supposed to protect disadvantaged groups against hate speech. Similarly, the Law no 6112 on the Establishment of Radio and Television Enterprises and Their Media Services has provisions (articles 8 and 9) that could be invoked to avoid hate speech, but it seems that measures are not taken adequately in this regard.

Freedom of Peaceful Assembly

Article 34 of the Constitution of the Republic of Turkey clearly guarantees freedom of expression, however the restrictive articles in some laws and secondary legislation make it difficult to transpose freedom of expression into practice.

The legal framework is not compliant with human rights standards and is a far cry from protecting everyone's right to assemble peacefully without any discrimination. Article 34 of the Constitution states that "everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission." This article evidently protects freedom of assembly, but it also lists conditions where the exercise of the right could be restricted. The right to hold meetings and demonstration marches is restricted only on grounds of national security, public order, prevention of commission of crime, protection of public health and public morals or the rights and freedoms of others. It is noteworthy that this restriction can only be placed by law.

The Law no. 2911 on Meetings and Demonstration Marches²² imposes severe restrictions on the right to peaceful assembly. Similarly, the Regulation on the Implementation of the Law on Meetings and Demonstration Marches is in contradiction with obligations arising out of international conventions. Consequently, ECHR ranks Turkey the top violator of freedom of peaceful assembly²³. ECHR has ruled that freedom of peaceful assembly and association has been violated in a total of 31 cases in 2018. 11 of these rulings were about cases in Turkey. Out of 262 ECHR judgments finding a violation of freedom of peaceful assembly and association, 95 are related to applications made from Turkey.

Parallel to the Constitution, article three of the Law on Meetings and Demonstration Marches states that everyone has the right to hold unarmed and peaceful meetings and demonstration marches without prior permission. However, in practice, the requirement to notify the office of the Governor or the District Governor serves as a permission. As a matter of fact, meetings and demonstration marches are considered illegal unless an advance notification is made. Association for Monitoring Equal Rights explains this confusion of notifications and permissions in its report on Monitoring Freedom of Assembly²⁴ as follows. "the Law no. 2911 on Meetings and Demonstration Marches sets out a notification requirement; however there is a public perception that the right is subject to permission, which in turn normalizes the common practices for a number of reasons ranging from claims that security forces interfere with peaceful assemblies on grounds of "lack of permission", to the fact that some notifications given to the governor's office result in "bans", to news reports portraying such incidents as "unauthorized demonstration/action" or reporting that "governor has not granted permission", and to statements by the administration referring to "permission".

Despite the fact that everyone has the right to assemble and demonstrate according to article 3, exceptions are introduced in the second paragraph of the same article as well as in article nine. The second paragraph of article 3 makes it almost impossible for foreign nationals to hold meetings and demonstration marches. As per this paragraph, foreign nationals require a permission by the Ministry

20. https://echr.coe.int/Documents/Overview_19592018_ENG.pdf (Date of access: 17.06.2019)

21. https://echr.coe.int/Documents/Stats_violation_2018_ENG.pdf (Date of access: 17.06.2019)

22. <http://www.mevzuat.gov.tr/MevzuatMetin/152911.pdf> (Date of access: 18.06.2019)

23. For ECHR statistics please see https://echr.coe.int/Documents/Stats_violation_2018_ENG.pdf and https://echr.coe.int/Documents/Overview_19592018_ENG.pdf (Date of access: 18.06.2019)

24. http://www.esithaklar.org/wp-content/uploads/2019/06/Toplantı_Gosteri_Hakki_2017.pdf (Date of access: 18.06.2019)

of Interior to hold meetings and demonstration marches. Moreover, foreign nationals are required to notify the authorities 48 hours in advance about all types of activities they may pursue during demonstration marches: "Foreign nationals may address the public during assemblies or demonstrations organized according to this Law and carry banners, placards, pictures, symbol flags, sign boards and various equipment provided that the highest administrative authority of the location be notified at least forty-eight hours before the assembly."

An amendment made in paragraph 2 of article 6 of the Law on 25 July 2018 imposed a requirement "not to excessively interrupt the daily life and make it unbearable for citizens" while planning the location and route of meetings and demonstration marches²⁵. This regulation sometimes results in an arbitrary restriction or even prevention of the enjoyment of the right to assembly and demonstration marches. Evidently, Saturday Mothers/People, a group gathering every week at Istanbul Galatasaray Square to seek justice and to find out the fate of their loved ones who disappeared in custody, are prevented from staging their weekly sit-in protests after this amendment came into effect²⁶. The Group has been gathering at the Istanbul Branch of Human Rights Association ever since.

Article 9 of the Law on Meetings and Demonstration Marches require that members of the board of organization for meetings have legal capacity and reach 18 years of age. Thus, freedom of children to assembly is restricted contrary to article 15 of the Convention on the Rights of the Child²⁷.

The law limits spontaneous, simultaneous and counter demonstrations. Article 23 states that meetings and demonstrations are unlawful unless notification is submitted to the authorities. According to article 10, in cases where different organizing boards file in notifications to hold assembly in the same location and on the same day, the first notification will be accepted.

Furthermore, article 15 grants extensive discretionary power to the office of the governor on grounds of security in the event that multiple meetings are held on the same day:

"In the event that more than one meeting is requested in a province for the same day and if the governor considers that security forces under his command and other forces which may also be useful cannot ensure the security of meetings, the governor may adjourn some of the meetings for once only and for at most ten days. During adjournment process, the first application shall be given the priority."

2.1.2. Amendments and improvements in current legislation and implementation

There have been some amendments to the legislation on freedom of association in the reporting period. Although some of these amendments are welcome, others may have a chilling effect on freedom of association.

Improvement in policies

2019 Annual Program of the Presidency of the Republic²⁸, approved on 27 October 2018, contains a separate section on civil society organisations. The program points out the need for an integrated legislation covering legal and administrative aspects such as legal status, institutional structures and activities of CSOs as well as their relations with public institutions, in order to promote, strengthen and support civil society. To this end, one of the planned actions for civil society organisations is to "develop an inclusive, legal and institutional regulation to strengthen the institutional capacity of CSOs and to ensure their sustainability and accountability". The following 4 measures have been introduced to carry out this policy:

- A. Studies will be conducted on secondary legislation concerning civil society organisations
- B. Information system on CSOs will be continued and integrated with public agencies and institutions

25. The Law no. 7145 on Amendments of Some Laws and Decrees with the Force of Law is available at <https://www.tbmm.gov.tr/kanunlar/k7145.html> (Date of access: 18.06.2019)

26. <https://www.gazeteduvar.com.tr/gundem/2018/08/25/cumartesi-annelerinin-700-eylemine-yasak/> (Date of access: 18.06.2019)

27. <https://www.tusev.org.tr/usfiles/images/MevzuatRapor15.09.15.pdf> (Date of access: 18.06.2019)

28. <http://www.resmigazete.gov.tr/eskiler/2018/10/20181027M1-1.pdf> (Date of access: 19.06.2019)

- C. Steps will be taken to increase the transparency and accountability of civil society organisations with a public-benefit status.
- D. Information on association membership of real and legal persons will be made available via e-government

The fact that the Annual Program of the Presidency of the Republic particularly sets an agenda to conduct a study on secondary legislation, listed as the first measure, is an important expression of will in terms of creating an environment conducive to discussion and to exchange of opinion for the development of civil society in Turkey. Allowing CSO contribution to these efforts and adopting an inclusive approach would be a major factor in reaching the goal of these measures.

Nevertheless, there are some discussions regarding the fourth measure. This measure seems to have a connection with the amendment made to the Regulation on Associations on 1 October 2018²⁹, prior to the announcement of the Presidential Program. The amendment requires associations to give notice about the identity of their members who are accepted as new members or whose membership is terminated through the Information System of Associations (DERBIS) within 30 days of such proceeding. Previously, associations were required only to notify the number of their members, whereas now they are obliged to reveal the names, surnames, Turkish identity numbers, professions, the beginning date of membership and the end date of membership of each of their members. There is widespread concern that this obligation will cause people to avoid becoming member to associations and that it will lead to violations of the right to privacy and the right to protection of personal data³⁰.

The Eleventh Development Plan³¹ which lays out development strategies for the years 2019-2023 contains a specific section on civil society. The Development Plan, adopted by the Turkish Grand National Assembly (TGNA) on 18 July 2019, sets main goals "to raise awareness on civil society, strengthen organised civil society, ensure that CSOs have a proper structure in line with principles of transparency and accountability, and to enable an effective CSO involvement in decision-making processes of the government". In view of these goals, 12 measures have been introduced to support the development of civil society. Compared to previous development plans, the 11th Plan has a more inclusive and integrated perspective, particularly of civil society. Implementation of these measures will significantly contribute to the development of civil society in Turkey.

Nonetheless, it is critical in terms of practice to identify the details of these broadly defined measures, such as how, when and with whom they will be put in practice as well as which resources will be used.

Specialized Committee on Civil Society Organisations During the Development Period, set up in 2017 as a part of the preparations of the Development Plan, prepared a preliminary report after some meetings³². Specialized Committee in itself provides a basis for discussion.

The state of emergency (OHAL), declared on 21 July 2016 following the coup attempt on 15 July 2016, was lifted on 17 July 2018. The two-year long state of emergency led to backsliding in the exercise of many rights and freedoms, including freedoms of association, expression and peaceful assembly. According to a report by Human Rights Joint Platform³³, 1607 associations were closed during the state of emergency by Decrees with the Force of Law numbered respectively 667, 677, 679, 689 and 695 and the decisions to close down 188 associations were overruled upon appeal. The number of closed associations by 20 March 2018 was 1419. Furthermore, 168 foundations were shut down by Emergency Decrees numbered 667, 689 and 695 and by the decisions of a commission set up under the Directorate General of Foundations (DGF). Decisions to close 23 of these foundations were overruled. The number of closed foundations by 20 March 2018 was 145. This fluctuation during the state of emergency is reflected in the below table shared by DGF displaying the year based distribution of foundations.

29. Regulation on Amendment to the Regulation on Associations is available at: <http://www.resmigazete.gov.tr/eskiler/2018/10/20181001-1.htm> (Date of access: 19.06.2019)

30. Articles 23 and 32 of the Law on Associations were amended by the "Law no. 7226 Amending Some Laws" published in the Official Gazette on 26 March 2020. Amendments made to the Regulation became law. Information note on these significant changes affecting freedom of association of individuals and organisations is available in the Annex.

31. For the Eleventh Development Plan published in the Official Gazette dated 23 July 2019 and numbered 30840 (duplicate), please see:

<http://www.resmigazete.gov.tr/eskiler/2019/07/20190723M1.pdf> (Date of access: 23.07.2019)

32. <http://onbirinciplan.gov.tr/wp-content/uploads/2018/01/Kalkinma-Surecinde-Sivil-Toplum-Kuruluslan-On-Rapor.pdf> (Date of access: 19.06.2019)

33. "21 July 2016-20 March 2018 State of Emergency Practices: Updated Status Report" is available at: http://www.ihop.org.tr/wp-content/uploads/2018/04/Olaganustu-HaL_17042018.pdf (Date of access: 19.06.2019)

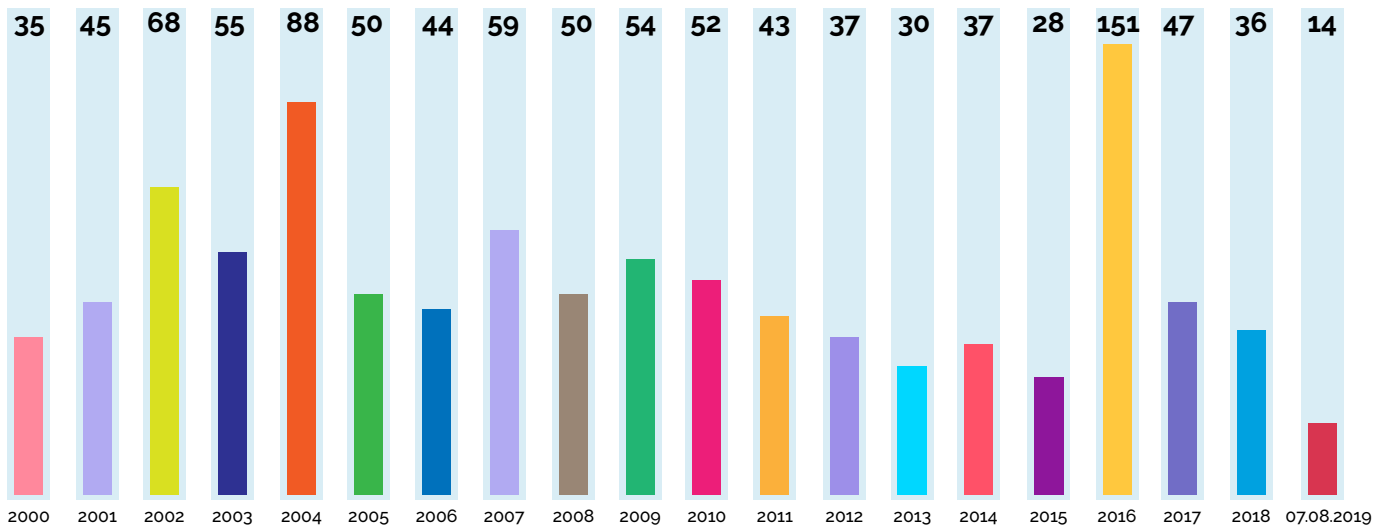


Image-2: Year based distribution of new foundations that were closed³⁴

Notwithstanding that everyone is free to establish associations and foundations in Turkey according to legislation, it is worth noting that in practice it is not possible for all real and legal persons to form associations, foundations or other type of non-profit civil society organisations. As mentioned above, there are restrictions on children, public officials and foreign nationals, and foreign civil society organisations require permission to undertake activities.

The requirement to provide an office address in order to establish an association restricts freedom of association. Restrictions may be placed on goals identified by CSOs; moreover, CSO activities could also be supervised in terms of compliance to such goals. As stated in Chapter 1.1.a., foreign CSOs require a permission by the Ministry of Interior to operate in Turkey. An informative note titled "Registration Processes of Foreign CSOs in Turkey Under Freedom of Association" by Third Sector Foundation of Turkey (TUSEV) analyses the current legal situation and practices in Western Balkan states, the USA, Belgium and Bulgaria. According to TUSEV, "In comparison to other countries, Turkey stands out as the only country which demands the most number of documents from foreign CSOs, sets different criteria than those set for national CSOs during the registration process and the review of registration applications, requires approval by a higher authority for registration and which does not set a period for official screening of applications."³⁵ Article 22 of the Regulation of Associations limits the operations of foreign foundations in Turkey to "cases which would be useful for cooperation in international areas" and imposes the condition of reciprocity³⁶.

In 2018, additional measures were taken concerning civil society organisations which provide social support and assistance to refugees. Ministry of Family, Labour and Social Services, in its letter³⁷ to governors in October 2018, states that civil society organisations and international organisations which would like to undertake activities such as psycho-social support, case management, household visits, individual and group meetings, consultation and referral, information seminars etc. in favour of special needs children, young people, women, men, people with disabilities, the elderly and their families who are under temporary protection should apply at provincial directorates and lays out the criteria for screening applications. The letter also states that civil society organisations and national/international organisations which provide support and assistance to Syrian nationals under temporary protection should be followed/checked and supervised every six months by the Provincial Directorates of Family, Labour and Social Services.

2018 saw numerous violations of freedom of peaceful assembly. Notwithstanding the right to hold assembly and demonstration marches recognized by the Constitution, the public administration occasionally places restrictions on the exercise of this right. For instance, open and closed meetings, press statements, hunger strikes, sit-in protests, concerts, festivities, feasts and similar actions and activities to be held in parks, gardens, main roads, front of public

35. <https://www.tusev.org.tr/usrfiles/images/yayinlar/OrgutlenmeBilgiNotu.23.06.16.pdf> (Date of access: 19.06.2019)

36. <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=75.8038&MevzuatIlski=0&sourceXmlSearch=Dernekler%20Yonetmeliği> (Date of access: 19.06.2019)

37. For a copy of the letter, please see: <https://bit.ly/36ZQK7g> (Date of access: 19.06.2019)

buildings and in public areas to protest the operation carried out by Turkish Armed Forces in Afrin were banned in January of 2018³⁸. Similarly, in 2018 the Office of Ankara Governor continued to apply the ban on LGBTI+ activities which was placed in November 2017. On 3 October 2018, a letter sent to Ankara Police Department imposed ban on actions/activities in the province held by agencies/institutions, civil society organisations or by real persons in various locations/halls such as movie screenings, cinevision, theatre plays, panels, conversations, press statements, meetings and demonstration marches about LGBTI+ etc., which refer to certain sensitive and delicate social issues.³⁹ There are cases where law enforcement officials interfere with and break up demonstrations that in fact fall outside the scope of previously announced bans without any exceptions. A traditional rally held by Ankara Women's Platform as part of activities organized on every 8th of March was dispersed by police interference and 15 women were placed under detention⁴⁰. The Law on Meetings and Demonstration Marches, the Law on State of Emergency and the Law on Provincial Administrations were invoked to impose bans on meetings and demonstrations during this period⁴¹. Ban decisions and interferences show that these laws were interpreted in favour of the administration, arbitrarily restricting freedom of peaceful assembly which is in fact guaranteed by the Constitution.

On 16 November 2018, 13 right defenders and academicians, some of whom were executive board members and staff of Open Society Foundation, were taken into custody and one of them was detained⁴². In a statement by the Police Department, it was reported that they were held in custody in connection with Gezi protests in 2013, claiming that rights defender and businessperson Osman Kavala had organised and financed Gezi protests and that those kept in custody had acted with Osman Kavala in a hierarchical order⁴³. The fact that the same police statement defined civil disobedience and non-violent actions as a justification for custody caused concern about how public officials perceived freedom of peaceful assembly. Open Society Foundation decided to halt its operations in Turkey on grounds that these incidents "made it impossible to continue its activities"⁴⁴.

Just as there are not any valid grounds for restricting meetings and demonstrations, so too are there cases where remedy of appeal is not used in practice albeit available by law. The law on Meetings and Demonstration Marches requires that a notification be given 48-hour in advance to the highest administrative authority, who has the power to cancel or postpone such notified meetings. The Law introduces several limitations to the location, time and route of meetings. Moreover, authorities may record meetings and demonstrations.

Although counter demonstrations are not held simultaneously, the State generally does not provide adequate protection against people who disrupt or obstruct meetings. The requirement of a 48-hour advance notification automatically renders spontaneous and unnotified assemblies and demonstrations illegal. In cases where notifications are given for two separate demonstrations to be held in the same place and time, the principle of "first come first served" is observed. Therefore, different locations and routes should be identified in order to hold counter demonstrations simultaneously.

Extensive use of force by law enforcement officers has become common practice; and organisers or participants of demonstrations may be taken into preventive custody. Besides, CSO representatives may face investigation, prosecution and penalty for participating in assemblies and demonstrations. According to the Report on Increased Pressures on Human Rights Defenders, Human Rights Association (HRA) and its Executives⁴⁵, published by the Headquarters of Human Rights Association, the number of investigations and prosecutions against HRA executives was 225 as of June 2018. There are two ongoing investigations into HRA activities and consequently 46 HRA executives and members are under investigation. Furthermore, the lawsuit is still pending against 11 right defenders, who had been taken into custody in Buyukada for holding an assembly and some of whom had later been placed under detention.

An analysis of interferences into CSOs' freedom of expression and association renders the loopholes in practice more visible. An investigation, initiated following the publication of a report on the curfew

38. <http://www.ankara.gov.tr/yasaklama-kararina-iliskin-basin-duyurusu-22012018> (Date of access: 19.06.2019)

39. <http://kaosgl.org/sayfa.php?id=26758> (Date of access: 19.06.2019)

40. <https://m.bianet.org/bianet/insan-haklari/194833-ankara-da-8-mart-eytemine-polis-mudahalesi> (Date of access: 19.06.2019)

41. Information about interferences with meetings and demonstration marches in Turkey in 2018 is available in journals issued by the Association for Monitoring Equal Rights. January-February: <https://bit.ly/2U1GGFy> March: <https://bit.ly/36TMPbW> 1st of September and Saturday Mothers: <https://bit.ly/2BlmLe1> October-November-December: <https://bit.ly/3ds923s> (Date of access: 19.06.2019)

42. <http://bianet.org/bianet/toplum/202662-hak-savunuculari-ve-akademisyenlere-operasyon-13-gozalti> (Date of access: 19.06.2019)

43. <http://bianet.org/bianet/insan-haklari/202673-sivil-toplum-ve-akademisyenlere-gozalti-icin-emniyet-ten-aciklama> (Date of access: 19.06.2019)

44. <http://bianet.org/bianet/siyaset/202956-acik-toplum-vakfi-tum-faaliyetlerini-durdurdu> (Date of access: 19.06.2019)

45. The report and the list of investigations/prosecutions can be found on the below link: <https://www.ihd.org.tr/insan-haklari-savunuculari-na-ihd-ve-ihd-yoneticilerine-yonelik-baskilar-raporu/> (Date of access: 19.06.2019)

imposed in Cizre by Human Rights Association (HRA), Human Rights Foundation of Turkey (HRFT), Agenda Child Association, Union of Health Workers and Diyarbakır Bar Association, is still underway⁴⁶. Moreover, the Preliminary Review Report on Cizre prepared by chairs of HRA and HRFT around the same dates was added as evidence to the lawsuit against Prof. Şebnem Korur Fincancı filed in connection with "Peace Declaration"⁴⁷. Members of Turkish Medical Association (TMA) Central Council were taken into custody due to a press statement protesting the military operation conducted in Afrin in January 2018⁴⁸; they were released after six days in custody. A lawsuit was filed against 11 executives in December 2018⁴⁹. All these incidents point out the grave problems in the legal framework and implementation of freedom of expression in Turkey.

2.2 Employment and volunteering in civil society organizations

Objective	Result	Indicator
An enabling legal and policy environment, for the exercise of the rights of freedom, expression, assembly and association	The policies and legal environment stimulate and facilitate volunteering and employment in CSOs;	Number of employees in CSO (full-time and part-time)
		Ratio of employees to CSOs' annual budgets
		Number and type of incentives and state supported programs for the development and promotion of volunteering
		Number of volunteers in CSOs per type of CSO / sector
		Number of volunteer projects offered to citizens
		Quality of legislative framework

Associations can access the data on their employees from the web site of the Directorate General for Relations with Civil Society. These data are based on yearly statements made by associations.

Data on association employees are kept in three categories of full-time, part-time and project-based employees. According to the data disclosed by the Directorate General for Relations with Civil Society the number of people who worked in associations in 2018 was 64.079, out of which 41.107 were full-time employees, 613 were part time and 18.359 were project-based employees⁵⁰. On the other hand, 36.177 employees were reportedly on a payroll, whereas 27.902 volunteered to work. However, it is not possible to know how many of full-time, part-time and project-based employees were volunteering or on a payroll. Therefore, it is difficult to figure out whether associations have the capacity or means to pay salary to their full-time, part-time and project-based employees. Labour force statistics for 2018 released by Turkish Statistical Institute reveal that the number of people employed in Turkey is 28 million 738 thousand; 23 million 441 thousand out of which constitute non-farm payrolls⁵¹. Accordingly, in 2018 the ratio of association employees to the total of non-farm payrolls stood at approximately 0,15 percent.

46. <https://bianet.org/bianet/insan-haklari/182381-insan-haklari-orgutlerine-301-sorusturmasi> (Date of access: 19.06.2019)

47. HRFT statement on this matter is available at <https://tihv.org.tr/baskanimiz-prof-dr-sebnem-korur-fincanci-hakkinda-derhal-beraat-kararinin-verilmelidir/> (Date of access: 19.06.2019)

48. http://www.ttb.org.tr/haber_goster.php?Guid=a6b65dac-05ef-11e8-8aa4-0cab391de218 (Date of access: 19.06.2019)

49. The lawsuit was finalised on 3 May 2019 and 11 executives were given imprisonment sentences on counts of "inciting public to hatred and animosity" and "propaganda of a terrorist organisation". http://www.ttb.org.tr/haber_goster.php?Guid=g74228a4-6db0-11e9-be62-c74a1db01f86 (Date of access: 19.06.2019)

50. Dynamic data released by Directorate General for Relations with Civil Society may vary daily. The figures in question were obtained on 31.07.2019. <https://www.siviltoplum.gov.tr/illere-gore-derneklerdeki-calisan-sayilari>

51. <http://www.tuik.gov.tr/PreHaberBultenleri.do?id=30677> (Date of access: 20.06.2019)

The web page for "Foundation Statistics" available on the website of the Directorate General of Foundations does not have data on the number of employees or the types of employment. Therefore, it is not possible to make an assessment on employees working at foundations.

2.2.1. Quality of legislation on volunteering and volunteers in CSOs

Labour legislation in Turkey does not distinguish between non-profit organizations and for-profit organizations; consequently, it does not promote employment in non-profit organisations like civil society organisations. Besides, there is not an official definition of volunteering, nor is there any specific regulation encouraging volunteer work or regulating the work relation between civil society organisations and volunteers. Institutions develop tailor-made volunteering programs for themselves in the absence of a framework regulation on volunteering, but the fact that volunteer work is not recognised may incur penalty on grounds of informal employment. The legislation does not provide for a tax relief or tax exemption for expenses of volunteers.

Number of volunteers working at associations is available in the statistics released by the Directorate General for Relations with Civil Society. However, it is hard to claim that these data are reliable and accurate due to a lack of clear definition of volunteering in Turkey. Besides, there are not any data on the number of work hours put in by volunteers. Number of volunteers working at associations in 2018 was revealed to be 27,902⁵². Information was not available on how many volunteers worked at foundations or the work period of such volunteers.

2.3. Financial rules that apply to civil society organizations and their reporting obligations

Objective	Result	Indicator
An enabling financial environment which supports sustainability of CSOs	Easy-to-meet financial rules for CSO, which are proportionate to their turn-over and non-commercial activities	CSOs' perception of the ease and effectiveness of financial rules and reporting requirements
		Quality assessment of financial rules
		Proportion/ratio of taxes and financial duties to the overall CSO budget

Financial rules (including tax) are identified in proportion to the financial volume of CSOs. In particular, the registration system called "simple entry", significantly, facilitates accounting transactions for associations. There are standard forms available for CSOs for both accounting systems. However, the framework for revenue generating activities of associations and foundations is quite narrow in practice and activity revenues are mostly considered as "economic enterprise" revenue by public administration. Economy enterprises affiliated to or belonging to Associations and Foundations pay taxes even though they do not have the same legal entity and the rules that apply to economic enterprises are generally the same as those of for-profit companies. Right to raise and use funds which is an important aspect of freedom of association, is significantly limited in this respect.

Associations and foundations must send their declarations every year to the Directorate General for Relations with Civil Society and the Directorate General of Foundations. In addition, they are

obligated to give notification since they obtain and use foreign funds. In other words, when CSOs receive funds, donations or assistance from abroad, they are obliged to notify these two institutions before they start using them. Bureaucratic obligations curtail freedom of association since they require significant amount of time and resource. Breach of rules results in disproportionately severe punishment, considering that CSOs in Turkey continue their activities in a relatively non-conducive environment. CSOs are frequently fined on grounds that they do not keep regular records. For instance, article 32 of the Law on Associations lays down penal provisions stating that in case books and records of associations are not kept in line with established procedures, those responsible for book-keeping and executives of association will be fined 1046 TL⁵³.

Directorate General for Relations with Civil Society of the Ministry of Interior received an application to obtain information about the amount of administrative fines imposed on associations in 2018 and their justifications; however it was left unanswered on grounds that such information "would require a separate and specific study, research, review or analysis".

The second stage of Turkey's National Action Plan for EU Accession, which includes institutional structuring and primary and secondary legislation that are expected to be harmonized with the EU during the negotiating period. The Plan, covering the period between June 2015-June 2019, proposes that financial reports of enterprises that fall outside the purview of the Public Oversight, Accounting and Auditing Standards Authority and Accounting Standards of Turkey should be compliant with EU legislation. As part of this proposal, there was a plan to develop a new "Communication on Accounting Standards for Various Business Sizes, Sectors and Non-Profit Organisations"; but there has not been any progress so far to this end⁵⁴.

2.4. Fundraising tools of civil society organizations

2.4.1. Economic activities and the quality of tax system

Objective	Result	Indicator
An enabling financial environment which supports sustainability of CSOs	Financial (e.g. tax or in-kind) benefits are available	Percentage of CSOs benefiting from tax incentives
		Quality of the system of tax benefits for the CSOs' operational and economic activities

First and foremost, associations and foundations in Turkey are free to carry out economic activities with an aim to seek funding resources in addition to dues income and donations so that they can fulfil their mission. However, to that end, they are required to establish an economic enterprise subject to general tax procedures. While the opportunity of establishing an economic enterprise potentially provides an important revenue stream for associations and foundations, it also poses the risk that a wider range of revenue sources may be considered as economic enterprise revenue and thus taxable.

Anyhow, in terms of taxation, all economic enterprises of CSOs are considered as commercial enterprise and revenues generated from such economic enterprises are not exempt from tax. Paragraph six of article two of Corporate Tax Law no. 5520⁵⁵ states that "the fact that economic enterprises belonging to associations and foundations do not pursue profit-making has no bearing on tax liability, neither does the fact their operations are defined by law, nor that they do not have legal personality, independent accounting, capital of their own or a work place."

53. For the list of Administrative Fines and their Monetary Limits in 2018, please see: https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov-tr/Mevzuat/Genelgeler-Ekler/idari_para_cezalari_2018_2EK.JPG (Date of access: 20.06.2019)

54. For the second stage of National Action Plan, please see: <https://www.ab.gov.tr/files/uepii13012015.pdf> <https://abdigm.meb.gov.tr/projeler/ois/007.pdf> (alternative) (Date of access: 19.06.2019)

55. <https://www.mevzuat.gov.tr/MevzuatMetin/155520.pdf> (Date of access: 20.06.2019)

According to the same paragraph, the economic quality of these economic enterprises does not change due to the fact that price of goods and services only covers the cost without any profit or in case profit is made, it is allocated to be used for the purposes of establishment. Therefore, economic enterprises belonging to associations and foundations pay corporate tax, value added tax, provisional tax and stamp duty.

On the other hand, another major problem concerning the revenue of economic enterprises of associations and foundations is that when the revenue of economic enterprises is transferred to associations and foundations, the transfer source is treated as profit-share distribution and income withholding is applied. Associations and Foundations are not taxpayers themselves, but their economic enterprises are taxpayers and pay corporate tax imposed on their earnings. In addition, economic enterprises, which do not have legal personality and share the same assets and legal liability with Associations and Foundations, are liable to a withholding tax because of the profit transfer they make to Associations and Foundations as per Articles 75/1,2,3 and 94/6-b-i of Income Tax Law no. 193. Economic enterprises of Associations and Foundations end up paying a significant amount in taxes due to this practice which should be amended.

Number of associations which have economic enterprises is not published.

Below shows the number of foundations which have non-profit facilities/establishments between 2014-2018 according to data by the Directorate General of Foundations (DGF):



Yet, the data released by DGF on the revenue of economic enterprises do not reveal a significant increase in 2018 in the amount of income from economic enterprises. The total amount of revenue brought in by economic enterprises in 2014 stood at 179 million TL, going up to 269 million TL in 2018.

Legislation provides for CSOs to enjoy some tax exemptions, albeit quite limited. Tax exemptions and public-benefit status apply only to a few number of foundations and associations. As mentioned in the previous chapter, the process to obtain such status, with limited privileges, is bureaucratic, political and far from being transparent.

For instance, foundations enjoying tax exemption is only exempt from corporate tax. Another tax exemption available to organisations is the Probate and Inheritance Tax⁵⁷. Associations and foundations have to pay withholding tax on income from rent, dividends, stocks, bond yields or TL and foreign exchange investments.

56. https://cdn.vgm.gov.tr/genelicerik/genelicerik_945_290519/11-kar-amaci-olmayan-tesi.pdf (Date of access: 21.12.2019)

57. According to Article 3 of Law no. 7338 on Probate and Inheritance Tax:

"Below individuals are exempt from Probate and Inheritance Tax:

a) Public Administrations, retired and social support endowments, social insurance institutions, associations with public utility status, political parties and establishments belonging to them or set up among them, which are not subject to Corporate Tax.

b) Establishments founded for research, culture, art, health, education, religion, charity, reconstruction, sports etc. which belong to legal persons not listed in the above paragraph. c)..."

For more information. <http://www.mevzuat.gov.tr/MevzuatMetin/1.37338.pdf> (Date of access: 20.06.2019)

Foundations and associations in Turkey are pressured into acting as tax responsables when it is a matter of withholding tax on office rent. If the tenant is a real person, the proprietor is obligated to pay tax on rent income. However, if the tenant is a taxpayer (all types of commercial enterprises), then the tenant is responsible for ensuring that the rent income tax, which should be paid by the proprietor, is submitted to the tax office. This rule for commercial enterprises also applies to associations and foundations.

As the law stands, associations and foundations may prepare their own consolidated tax declarations statements, however, in practice, all organisations work with professional accountants to keep records and submit declarations. This practice takes a financial toll on small sized organisations, particularly grassroots organisations.

2.4.2. Donations

Objective	Result	Indicator
An enabling financial environment which supports sustainability of CSOs	Donations are stimulated with adequate legislation and regulations	Number and kind of donations to CSOs from individual and corporate donors
		Quality and applicability of deductibles for individual and corporate giving stipulated by legislations and regulations

Article 99 of the Civil Code includes donations and contributions to the revenue streams of associations such as membership dues, income generating activities and assets. Donations are made in cash or in-kind by member or non-member real or legal persons to provide financial support civil society organisations, without expecting anything in return. Associations and foundations in Turkey also have the right to accept assistance from public institutions within or outside the country. Nevertheless, the administration procedures strictly limit the type of donations and contributions that associations and foundations may accept. Ministry of Interior Circulars limit donations to residential areas where headquarters and offices of association and foundations are situated, and provided that the contribution is made by choice.

As per this Law, associations and foundations, except for those that work for public benefit by special permission, cannot collect aid without permission from the authorities (Governors and District Governors).

In practice, it is quite difficult to distinguish whether revenue of associations and foundations are generated by donations or aids received in line with their own regulations or in accordance with the Law on Aid Collection. Guidance by the administration becomes decisive on this matter. Nevertheless, the Law on Aid Collection, in effect since 23 June 1983 without any major updates, makes it quite difficult to collect aid because of its severe restrictions, bureaucratic rules and processes. This has a crippling effect on the financial capacity of civil society organisations, thereby curtailing freedom of association.

Detailed data on the number and purpose of associations and foundations collecting aid are not available⁵⁸. Information on only associations and foundations that collect aid without permission is posted on the website of the Directorate General for Relations with Civil Society (DGRCS). Some associations, institutions and foundations that work for public benefit are granted the right to collect aid without permission by a Presidential decision, upon a recommendation by the Ministry of Interior.

58. An enquiry was made to the Directorate General for Relations with Civil Society to find out information about applications to collect aid, decision-making processes and organisations whose applications have been accepted or rejected, however, the enquiry was left unanswered.

. Previously, this right used to be granted by the Council of Ministers upon a recommendation by the Ministry of Interior; this authorization now lies with the President by Article 77 of the Decree with the Force of Law no. 700 on 2 July 2018⁵⁹. According to data released by DGRCS, 2 foundations⁶⁰ and 1 association were granted the right to collect aid without permission in 2018. The total number of associations and foundations that collect aid without permission in the same year was 23.

Turkey lacks regulations which offer tax advantages to corporations that would encourage them to make more donations. Companies enjoy a tax deduction of around 5 % on their taxable income. This exception, albeit very limited, applies only to civil society organisations with public-benefit status. Public-benefit status is a special status granted by a Presidential decision, and regrettably there are not clear criteria for the selection process. Until July 2018, public-benefit status used to be granted by a Council of Ministers decision upon a proposal by the Ministry of Interior and an opinion of the Ministry of Finance. Decree with the Force of Law no. 703⁶¹ made an amendment to the Law on Associations, giving this power to the President. Number of associations with public benefit status is 385 according to a list⁶² published by the Directorate General for Relations with Civil Society.

The list shows that associations with public-benefit status are found mostly in Istanbul (138) and Ankara (127)⁶³. Compared to the total number of associations, the number of associations with public-benefit status is quite few. The number of applications made by associations to obtain this status is not disclosed, so it is not possible to know the ratio of accepted applications. Directorate General for Relations with Civil Society of the Ministry of Interior received an enquiry about the amount of administrative fines imposed on associations in 2018 as well as the justifications for fines; however the enquiry was left unanswered on grounds that such information "would require a separate and specific study, research, review or analysis".

Some foundations enjoy tax exemption. Donations made to tax-exempt foundations by real and legal persons are tax deductible by 5 %, similarly to donations made to associations with public benefit⁶⁴. This tax deduction goes up to 10 % in places that have priority for development. Turkish Revenue Administration (TRA) processes tax exemption applications. TRA carries out a preliminary assessment, followed by a recommendation by the Ministry of Treasury and Finance to the Council of Ministers for its final decision. Tax exemption applications of 11 foundations were accepted in 2018 according to a list published by Turkish Revenue Administration⁶⁵. The total number of foundations with tax-exempt status for the same year is 280. Since the number of foundations which applied for tax exemption is not disclosed, the rate of acceptance of applications is not known. On the other hand, the rate of tax-exempt foundations seems low (5.43 %) given the total number of foundations.

Just like corporate donations, individual donations do not benefit from tax deduction and there is no deduction on payroll. Only donations made to tax-exempt foundations or associations with public benefit status are tax-deductible by 5 % on annual income (10 % in areas with priority for development).

Neither the number of donors that associations have nor the amount of income they receive from donations is disclosed. The total amount of income of associations is published only⁶⁶. An enquiry has been made to the Directorate General for Relations with Civil Society seeking information on this matter, however the enquiry has gone unanswered.

The table titled "Selected Data on Foundations" by Directorate General of Foundations displays below the revenue foundations obtained from aids and donations in 2018⁶⁷:

59. For Decree no. 700 please see. <http://www.resmigazete.gov.tr/eskiler/2018/07/20180707M2-1.pdf> (Date of access: 20.06.2019)

60. It should be noted that family members of the President are among the founders, executives and/or members of these two foundations (Turkey Youth Foundation and Turkey Youth and Education).

61. For Decree no. 703 please see. <http://www.resmigazete.gov.tr/eskiler/2018/07/20180709M3-1.pdf> (Date of access: 20.06.2019)

62. <https://www.siviltoplum.gov.tr/kamu-yararına-calisan-dernekler> (Date of access: 20.06.2019)

63. <https://www.siviltoplum.gov.tr/illere-gore-kamu-yararına-calisan-dernekler> (Date of access: 20.06.2019)

64. Tax Legislation Related to Foundations and Associations in Turkey and Public Benefit Status: Current Situation and Recommendations, TUSEV

65. <https://www.gib.gov.tr/yardim-ve-kaynaklar/yararli-bilgiler/vergi-muafiyeti-taninan-vakiflarin-listesi> (Date of access: 20.06.2019)

66. <https://www.siviltoplum.gov.tr/derneklere-ait-gelir-toplamlari> (Date of access: 20.06.2019)

67. https://cdn.vgm.gov.tr/genelicerik/genelicerik_945_290519/14-yeni-vakiflarla-ilgili.pdf (Date of access: 21.12.2019)

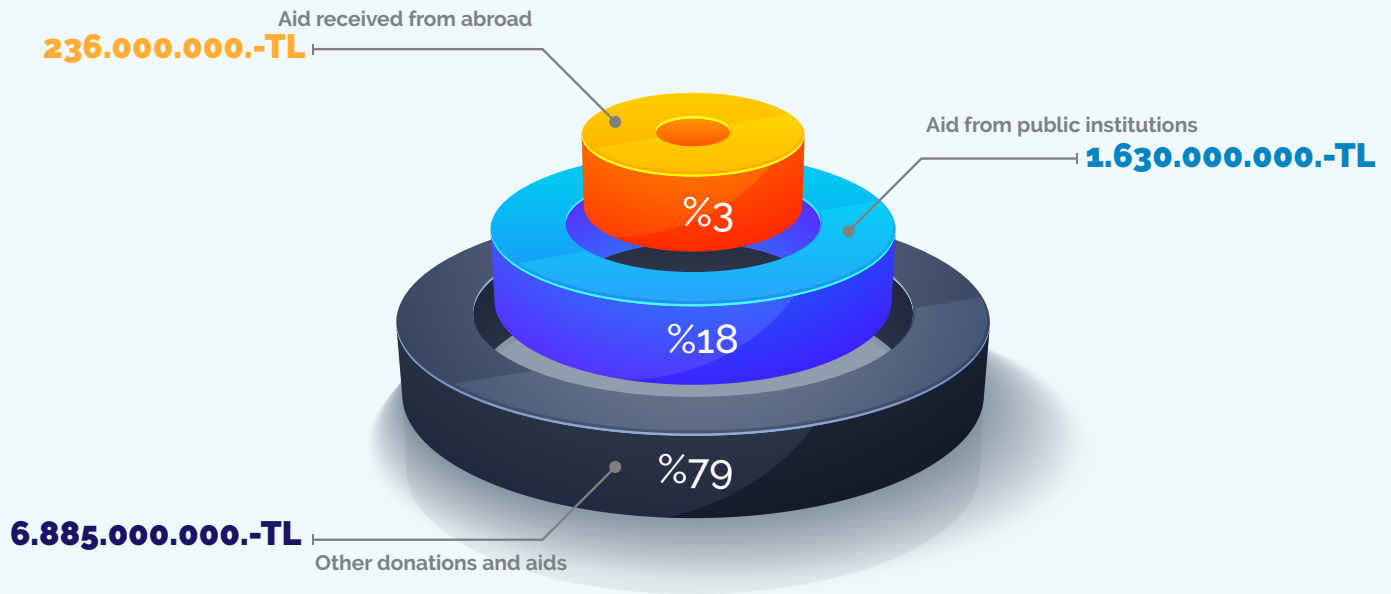


Image-3: Aid and donation revenue of new foundations in 2018



As is the case with associations, data are not available on the number of donors of foundations. According to the same table, foundations received 3,825,000,000 TL worth of contributions from public institutions in 2017, while this figure dropped to 1,630,000,000 TL in 2018. The fact that foundations were closed after 15 July 2016 could explain the reason for this 57 % decline.

Ultimately, there is a serious lack of data on individual and corporate donations. The number of individual and corporate taxpayers that make donations to CSOs is not known, neither is the amount of donations sent to civil society organisations. This situation renders it impossible to evaluate the tendency for donations, or the share and importance of donations in CSOs income in Turkey.

2.4.3. State funding for civil society organizations

Objective	Result	Indicator
An enabling financial environment which supports sustainability of CSOs.	Government support to CSOs is available and provided in a transparent, accountable, fair and non-discriminatory manner	CSO's perception of the provision of funds in terms of transparency, fairness and non-discrimination
		Ratio of amount sought vs. amount disbursed annually through state funding to CSOs.
		Quality of state funding frameworks for civil society organisations

Public institutions may provide support to civil society organisations according to the Regulation no. 26231 on Providing Aid from Public Institutions' Budgets to Associations, Foundations, Unions, Organizations, Institutions, Endowments and Similar Entities"⁶⁸. However, there are not systematic and integrated data available on this type of aid. There is not precise information about in-kind aid or aid-in-cash provided by public institutions to civil society organisations.

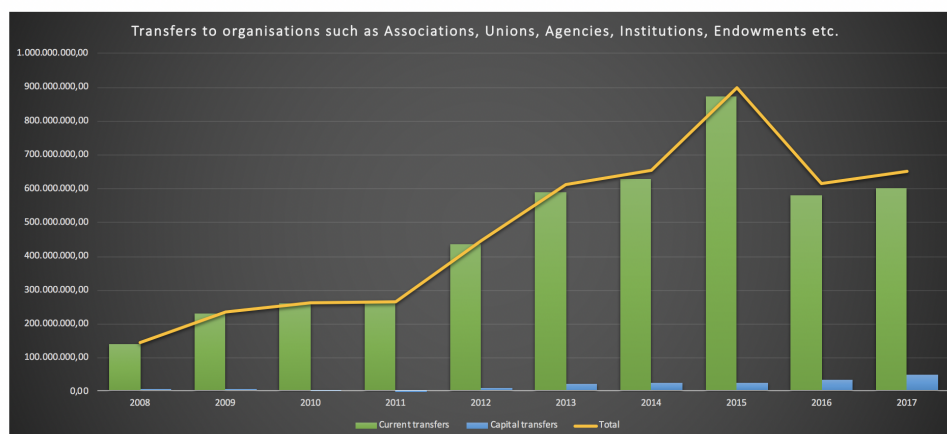
Turkey lacks an integrated regulation which focuses on the scope of public funds, beneficiaries, rules of implementation, code of conduct, reporting etc. Each public institution develops its own implementation framework. Some public institutions announce their support to CSOs by open call method whereby selection criteria are identified, while most opt out of this method and reach a decision based on institutional policy or the discretion of administrators. As a result of the lack of coordination in implementation, there is not reliable information on the amount, basis and distribution processes of state-funding for civil society organisations.

Article 1 of the Budget Law refers to Expenditure Budget which cover transfers made from central management boards to non-profit organisations. Public expenditures are classified into three main groups, first of which is current expenditures covering current expenditures and spending which involve items such as domestic debt, external debt and personnel expenditures. Current transfers are used for unrequited payments made from the budget to finance current expenditures of institutions that are not covered by the Budget Law. Budget item no. 05.3.1. is titled Transfers Made to Non-Profit Organisations. Listed under this expenditure budget item are also item 05.3.1.01 concerning budget transfers to organisations such as Associations, Unions, Agencies, Institutions, Endowments etc. and item 05.3.1.02 concerning budget transfers to Foundation Universities.

In addition to current transfers, central administration also makes capital transfers to civil society organisations. Capital transfers constitute the second item of above-mentioned public expenditures and involve unrequited payments to finance capital expenditure in goods and services. This type of spending is listed in sub-item no. 7.1.9.1 on "transfers to organisations such as Associations, Unions, Endowments, Agencies, Institutions etc."

There seems to be a confusion in practice between capital transfers and current transfers. Court of Accounts Audit Report 2016 on the Ministry of Youth and Sports prepared by Turkish Court of Accounts established that some current transfers had been made from capital transfer budget codes.

An informative note on "Transfers from State Funds to Non-Profit Organisations in Turkey"⁶⁹ published by Center for Civil Society Studies of Bilgi University in 2018 displays the current and capital transfers made to organisations such as associations, unions, agencies, institutions, endowments etc. between 2008 and 2017:



	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Current transfers	139,839,000.00	230,446,000.00	262,281,000.00	265,180,000.00	435,952,000.00	590,326,000.00	628,275,000.00	873,674,000.00	580,720,000.00	601,902,000.00
Capital transfers	4,780,000.00	6,016,000.00	2,093,000.00	441,000.00	12,084,000.00	22,227,000.00	26,906,000.00	26,625,000.00	35,207,000.00	49,934,000.00
Total	144,619,000.00	236,462,000.00	264,374,000.00	265,621,000.00	448,036,000.00	612,553,000.00	655,181,000.00	900,299,000.00	615,927,000.00	651,836,000.00

68. <http://www.resmigazete.gov.tr/eskiler/2006/07/20060717-3.htm> (Date of access: 24.06.2019)

69. <https://stk.bilgi.edu.tr/media/uploads/2018/01/21/bilginotudernek.pdf> (Date of access: 24.06.2019)

The graph shows a rise in transfers made to organisations such as associations, unions, agencies, institutions, endowments etc. from 2008 till 2015, followed by a decline after 2015. This decline in the amount of almost three hundred million TL could be attributed to the fact that associations and foundations have been closed by decrees with the force of law issued after 15 July 2016. Data released by Directorate General of Accounting of the Ministry of Treasury and Finance allows access to sources for these transfers, still it is not possible to get disaggregated data. Therefore, it is not possible either to determine how much funding was transferred specifically to associations and foundations from the central administration budget.

Most institutions fail to act in accord with Regulation no. 26231 which stipulates that public institutions are obligated to disclose organisations that receive aid as well as the amount and purpose of such aid. On the other hand, some ministries, albeit few in number, publish circulars or regulations on the financial support they offer and provide application guidelines that identify the criteria and the amount of contribution. Information given in this chapter is obtained from websites and activity reports of public institutions for the year 2018.

The Ministry of Interior annually provides project aid to associations as well as to federations and confederations founded by associations, in accordance with the "Directive on Providing Aid to Associations from the Ministry of Interior Budget"⁷⁰. Project application guidelines do not specify the amount of projected aid, stating that aid is limited to estimated budget allocations⁷¹. Besides, the Ministry of Interior holds the right to change the estimated budget source. Ministry of Interior 2018 Activity Report states that support was provided to projects of 350 associations in 2018. The amount of aid given to associations by the Ministry in 2018 was reportedly 68.187.227,43 TL⁷². Article 11 of the Directive on Providing Aid to Associations stipulates that the Ministry of Interior should publicize on its website the list of associations that have received aid as well as the purpose and amount of such aid until February of the following year. However, Directorate General for Relations with Civil Society of the Ministry of Interior has not posted any such announcements on its website.

The Ministry of Youth and Sports provides project support to civil society organisations in accordance with the "Ministry of Youth and Sports Regulation on Projects"⁷³. Two project calls for proposals were announced in 2018. The targeted audience for the first project call for proposal was student societies, secondary education institutions and youth groups, whereas the second call targeted civil society organisations⁷⁴. The program guidelines do not specify any budget allocation for the call for proposal⁷⁵. 2018 Activity Report of the Ministry⁷⁶ provides the following information about the second period for calls for proposals:

"2.187 project proposals were received between 27 April - 13 May 2018 amounting to a total budget of 267.473.451 TL. After consideration, 444 projects received 34.617.250 TL worth of aid."

Financial tables in 2018 Activity Report of the Ministry of Agriculture and Forestry demonstrate that a budget of 80.000 TL was allocated to organisations such as associations, unions, agencies, endowments etc. under "Transfers to Non-Profit Organisations", but there has not been any spending from this budget⁷⁷.

2018 Activity Report of Small and Medium Enterprises Development Organization (KOSGEB) notes that 158.350 TL were transferred to non-profit organisations but does not offer any details⁷⁸.

70. https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov.tr/Projeler/Prodes/icisleri_Bakanligi_Butcesinden_Derneklere_Yardim_Yapilmasi_Hakkinda_Yonerge_03_03_2017.pdf (Date of access: 24.06.2019)

71. After the Department of Associations was transformed into Directorate General for Relations with Civil Society, most of the documents of the defunct department were removed from the website. Therefore, we share the link for project application guidelines for 2019 instead of 2018. https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov.tr/Projeler/Prodes/BasvuruRehberi_2019.pdf (Date of access: 24.06.2019)

72. <https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/IcSite/strateji/OYA/oooyya/FAALİYET%20RAPORU.pdf> (Date of access: 24.06.2019)

73. <http://www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=7516014&MevzuatIlski=0&sourceXmlSearch=> (Date of access: 24.06.2019)

74. <https://www.gsb.gov.tr/Sayfalar/3066/3065/program-hakkinda.aspx> (Date of access: 24.06.2019)

75. http://gsb.gov.tr/Public/Edit/images/GSB/GPDP/2018-02/GPDP_2018_II_KILAVUZ_r1.pdf (Date of access: 24.06.2019)

76. <http://www.gsb.gov.tr/public/edit/files/strateji/faaliyet-raporu-2018-090819.pdf> (Date of access: 24.06.2019)

77. https://www.tarimorman.gov.tr/SGB/Belgeler/Bakanlik_Faaliyet_Raporlari/2018%20FAALİYET%20RAPORU.pdf (Date of access: 24.06.2019)

78. https://www.kosgeb.gov.tr/Content/Upload/Dosya/Mali%20Tablolar/KOSGEB_2018_Yili_Faaliyet_Raporu.pdf (Date of access: 24.06.2019)

Presidency for Turks Abroad and Related Communities may provide support to civil society organisations founded abroad or in Turkey by citizens living abroad, related communities and international students. As reported by 2018 Financial Situation and Expectations Report, the initial allocation budget of 26.072.000 TL for non-profit organisations was exceeded, resulting in a spending of 44.631.877 TL⁷⁹ for the first half of the year (January-June period). Detailed information on this expense item has not been accessible as the links to 2018 activity report of this Presidency are not working⁸⁰.

Directorate for EU Affairs, as beneficiary to grant programs, provides support to projects of associations, foundations, and federations and confederations founded by associations and foundations, and cooperatives as part of such grant programs. As reported by 2018 activity report of the Directorate, the call for proposals for "Grant Programme for Local NGOs" and "Grant Scheme for Partnerships and Networks" were published in 2017 under "Civil Society Support Programme-I", and after consideration of the proposals, a total of 6,4 million euro grant was provided to civil society organisations⁸¹. 4.3 million of the total amount was dispensed under "Grant Scheme for Partnerships and Networks"⁸², and 2.1. million euros were awarded under "Grant Programme for Local NGOs"⁸³. In addition, a new call for proposal was announced in 2018 under "Civil Society Support Programme-II", a continuation of the programme. This call for proposal aims to award 3 million euro grant support to civil society organisations for programs that will be implemented in 2019⁸⁴.

Above-mentioned public agencies and institutions constitute a section of the public administration which provide or have the power to provide funding to civil society organisations. Regrettably, it is not possible to find out the total amount of state-funding provided to CSOs since these data are not collected or published. Currently available information is not a product of a coordinated data collection but derived from what is available in activity reports or websites. Therefore, it is not possible to determine any rise or decline in state funding based on a comparison with previous years.

Lack of a systematic disclosure of public funds occasionally leads to controversial news reports. For instance, 2017 General Evaluation Report of the Court of Accounts notes that 151 public institutions failed to give a detailed account of transfers made to non-profit organisations in 2017. According to the report, state institutions, except for local governments and provincial special administrations, provided 3.7 billion TL in aid to non-profit organisations in 2017 but recipients or purpose of such aid were not disclosed⁸⁵.

In-kind contributions of local governments constitute an important source required by civil society organisations to carry out their activities. Unfortunately, there is not a systematic and regular flow of information on aid provided by municipalities to organisations. Limited information may be obtained from news scans or activity reports of municipalities. For instance, Istanbul Metropolitan Municipality lists the cost of services provided to civil society organisations, dormitories and schools for 2018 and for previous years in its "Activity Report on CSOs-Schools-Dormitories"⁸⁶. It is notable that services with total cost of 313.873.282,27 TL were provided in this period to 24 associations and foundations closely connected to the ruling government. For instance, the report reveals that a 4.4. million TL aid-in-cash was given to Okcular Foundation. It is contrary to the principle of equality to offer big amounts of funds to a certain number of civil society organisations without a clear application and a screening process which is made public and based on objective criteria. Besides, the fact that the report is not submitted to the municipal council or publicized is in contradiction with principles of transparency and accountability.

79. https://ytbweb1.blob.core.windows.net/files/documents/2018_YILI_KURUMSAL_MAL___DURUM_VE_BEKLENTI_LER_RAPORU.pdf (Date of access: 24.06.2019)

80. <https://www.ytb.gov.tr/kurumsal/faaliyet-raporlari> (Date of access: 24.06.2019)

81. With the advent of Presidential government system, the Ministry of EU Affairs was abolished and turned into a directorate under the Ministry of Foreign Affairs. For 2018 Administration Activity Report for the Ministry of EU Affairs, please see: [https://www.ab.gov.tr/siteimages/birimler/sgb/AB%20BAKANLIK%20\(mulga\)%202018%20yili%20idare%20%20faaliyet%20raporu.pdf](https://www.ab.gov.tr/siteimages/birimler/sgb/AB%20BAKANLIK%20(mulga)%202018%20yili%20idare%20%20faaliyet%20raporu.pdf) (25.06.2019)

82. For projects supported under the Programme, please see: <http://siviltoplumsektoru.org/sivil-toplum-destek-programi-i/ortakliklar-ve-aglar-hp/> (25.06.2019)

83. For projects supported under the Programme, please see: <http://siviltoplumsektoru.org/sivil-toplum-destek-programi-i/yeret-stklar-hibe-programi/> (25.06.2019)

84. https://www.ab.gov.tr/sivil-toplum-destek-programi-ikinci-donem-hibe-programi-cssp-ii-teklif-cagrisi_51190.html (25.06.2019)

85. For the news report and the statement by the Courts of Accounts, please see: http://www.cumhuriyet.com.tr/haber/ekonomi/1102793/3.7_milyarlik_buyuk_gizem.html (25.06.2019)

86. The report which was not made public but accessed by journalists is available at: <https://www.dw.com/downloads/48397760/ibbfaaliyet-raporu.pdf>, for the news report, please see: <https://www.sozcu.com.tr/2019/yazarlar/cigdem-toker/ibbden-vakiflara-hizmet-raporu-3288303/> (25.06.2019)

As previously mentioned, public institutions' support to civil society organisations is for the most part not based on any planned and objective criteria. It is not clear whether public institutions carry out a consultation process while planning their support to CSOs and there do not seem to be any specific rules for civil society involvement⁸⁷. Since there is not a systematic consultation process, it is difficult to know whether such support serves a certain need. Not only is there not a planned and standard approach for the implementation of funds, there is not any information on whether a coordinated and systematic assessment is made of results and outputs of projects and programmes achieved as a result of these funds. Therefore, there is not information available about the impact these supports to CSOs have on the development of civil society in Turkey.



In conclusion, to ensure equality among civil society organisations that seek to benefit from state funding, common criteria on funding should be developed and detailed data should be released. Reliability and impact of aid provided to CSOs become questionable due to a lack of standards in state funding.

2.5. Participation of civil society organizations to political decision-making process

Objective	Result	Indicator
Civil society and public institutions work in partnership through dialogue and cooperation, based on willingness, trust and mutual acknowledgment around common interest.	Public institutions recognise the importance of CSOs in improving good governance through CSOs' inclusion in decision making processes.	<p>Percentage of laws/regulations, strategies and policy reforms effectively* consulted with CSOs* in terms of:</p> <ul style="list-style-type: none"> - adequate access to information - sufficient time to comment - selection and representativeness /diversity of working groups - acknowledgement of input - degree to which input is taken into account - feedback / publication of consultation results
		<p>Quality of structures and mechanisms in place for dialogue and cooperation between CSOs and public institutions* in terms of:</p> <ul style="list-style-type: none"> - CSO representation in general - representation of smaller/weaker CSOs - its visibility and availability - government perception of quality of structures and mechanisms - CSOs perception of structures and mechanisms

87. Sector planning meetings held by the Directorate for EU Affairs, which plays a role in the distribution of European Union funds, is a good example of this category.

2.5.1. Quality of structures and mechanisms that ensure dialogue and cooperation between CSOs and public institutions

Article 1 of Regulation on the Organisation and Duties of the Directorate General for Relations with Civil Society (DGRCS) states that the purpose of its establishment, inter alia, is to ensure coordination and cooperation between public institutions and civil society. Civil Society Consultation Council in particular has an important mission in this respect. However, public administration has a lot of leeway on the composition and convening of the Council. Moreover, since the Council is not functional yet, it is not possible to observe its power or its impact on strengthening cooperation between civil society and the public. DGRCS has been conducting the Technical Assistance Project for Strengthening the Public Sector for Cooperation with CSOs, which is scheduled to last 2 years. Adequate information is not available about tangible achievements (new opportunities for cooperation between public institutions and CSOs, experiences gained etc.) obtained under the project whose purpose was to strengthen the institutional capacity in terms of communications and cooperation with civil society at central and local levels⁸⁸.

There is not a specific unit tasked to facilitate communication and cooperation between civil society and the Parliament (GNAT- Grand National Assembly of Turkey) or between civil society and the Government⁸⁹. Besides, GNAT internal regulations do not require CSO involvement at parliamentary committee meetings where draft laws are discussed. The Regulation on Procedures and Principles of Drafting Legislation foresees that draft legislation developed by public institutions are sent to civil society organisations, but it does not make it an obligation for public institutions to do so.

CSO involvement in public institutions' work is generally not known since there are not data on cooperation between public institutions and civil society organisations. At the local level, the Law on Special Provincial Administration, the Law on Metropolitan Municipalities and the Municipality Law foresee that CSOs are invited to specialized committees and strategic planning processes but do not introduce an obligation or a detailed framework in this regard. Number of municipalities which have a unit or centre ensuring communication and cooperation with CSOs is not known as this information is not made public.

Information at hand points to a lack of dialogue mechanism to ensure CSO involvement to policy planning and implementation stages. There are signs of deterioration observed occasionally in current dialogue and participation mechanisms. For instance, the National Education Council, which has been convening regularly under the Ministry of Education since the advent of the Republic, is, despite its obvious shortcomings in the election of council members, an important platform where all stakeholders in education field can come together and express opinion on a common issue. All the same, there have not been any Council meetings since the 19th National Education Council was held in 2017 and there has not been any explanation as to whether the Council will convene again in the future. Indeed, Presidential Decree no., 1⁹⁰ issued in line with the new government system, does not refer to the Council in section ten, where the duties of the National Education Ministry is listed.

Guidelines for Civil Participation in Political Decision Making⁹¹ lists provision of information as a type of civil participation. At all stages of decision making, all appropriate information should be presented to the public, free of charge. Law on the Right to Information provides for real and legal persons to request information from public institutions. However, article 7 of the Law states that “application for access to information should relate to information or documentation that relevant agencies and institutions possess or should have possessed due to their duties”, giving a wide discretionary power to agencies and institutions and allowing them to circumvent the obligation to make information, which they already have or can access, suitable for public disclosure. In fact, as mentioned in above chapters, our applications to some institutions to access information that they have due to their duties have been left unanswered based on this article.

88. <https://www.avrupa.info.tr/sivil-toplum-kuruluslari-ile-isbirligi-icin-kamu-sektorunun-guclendirilmesi-teknik-destek-projesi> (Date of access: 28.06.2019)

89. <https://www.tbmm.gov.tr/docs/ictuzuk.pdf> (Date of access: 28.06.2019)

90. <http://www.mevzuat.gov.tr/MevzuatMetin/19.5.1.pdf> (Date of access: 28.06.2019)

91. For English version of the Guidelines, please see: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900016807509dd. For An unofficial translation by TUSEV is available at: https://tusev.org.tr/urfiles/images/Avrupa_Konseyi_Politik_Karar_Alma_Sureclerine_Sivil_Katilim_Rehberi_Cevirisi.pdf (Date of access: 28.06.2019)

2.5.2. Laws, regulations, strategies and policy reforms developed in effective consultation with CSOs

Public institutions do not disclose data on draft legislation papers and policy documents that have been developed in consultation with CSOs. The 92 pieces of laws were discussed and adopted at TGNA⁹² between 01.01.2018 and 31.12.2018; however, it is not known how many of these laws were developed in consideration of CSOs' opinions.

Main problems regarding CSOs inclusion in policy processes are as follows:

a. Access to information is not adequate. Turkish public institutions are not required to post draft bills on their websites during legislation drafting. Therefore, draft bills become accessible only once they have been sent to GNAT for the next stage of law drafting.

Information level of public officials is of great importance in the absence of a framework and standards for citizen involvement in decision-making processes. Dismissal of a high number of public officials during the state of emergency between 2016-2018 had an adverse impact on information about civil society prevalent at public institutions.

b. Time to offer contribution is not enough. The lack of specific policies on consultation with civil society organisations also results in a lack of a definite timetable. Since there is not a policy framework by which authorities abide to consult with civil society, it is up to the responsible public institution to set a time period for contribution by civil society when a policy document is disclosed for public opinion. The Regulation on Procedures and Principles of Drafting Legislation sets a 30-day period to offer opinion on documents drafted by public agencies and institutions⁹³. Unless civil society organisations send in their opinions during this time, they will be considered to have a positive opinion.

c. Selection process of representatives to consultation boards is not transparent and inclusive. Legislation and regulations do not define objective mechanisms, processes and criteria regarding selection of CSOs for involvement in policy processes. There are not any clear selection criteria for civil society organisations to participate in working groups and boards set up under Ministries. For instance, the Regulation on the Organisation and Duties of the Directorate General for Relations with Civil Society contains only the following regulation on the composition of the Civil Society Consultation Council:

"Article 6- (1)...


(2) Civil Society Consultation Council, chaired by the Minister, consists of Deputy Minister, Director General for Relations with Civil Society, representatives from universities, public agencies and institutions and civil society organisations. When required, representatives from other relevant agencies and institutions relevant to the meeting agenda could be invited to meetings. Minister convenes the Council at his/her discretion and sets the agenda.⁹⁴ "

Therefore, once the council becomes operational, the process to invite external participants to council meetings will be unclear.

92. <https://bit.ly/2XXuOpo> (Date of access: 22.07.2019)

93. <https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov.tr/Mevzuat/SivilToplumLaiskilerGenelMudurluguTeskilatVeGorevleriHakkindaYonetmelik.pdf> (Date of access: 22.07.2019)

94. <https://www.siviltoplum.gov.tr/kurumlar/siviltoplum.gov.tr/Mevzuat/SivilToplumLaiskilerGenelMudurluguTeskilatVeGorevleriHakkindaYonetmelik.pdf> (Date of access: 22.07.2019)



d. There is not an objective mechanism regulating methods of feedback, negotiation and cooperation during consultation processes. Contribution by participants are rarely appreciated and to what extent their contribution is taken into account remains unknown. Civil society organisations contacted prior to and during legislation preparation are not regularly informed of the ongoing process and left out of the final stages of the process. CSOs rarely participate in legislation processes and even when they get involved in the law-making process, it seems to be a limited and unilateral involvement.

CHAPTER-3

Conclusion and Recommendations



3.0 Conclusion and Recommendations

We have tried to analyse, under 5 main headings, the impact of legislation and implementation on freedom of association exercised by associations and foundations in Turkey.

Regulations and implementations regarding freedom of association and other related freedoms, employment opportunities of civil society organisations, volunteering, financial rules that apply to organisations, fund raising tools and involvement in decision making process demonstrate that there is a need for a series of transformation in the environment where CSOs operate. Transformation of legislation and implementation would promote the rights and freedoms of civil society organisations, enabling them to fulfil their roles in developing an inclusive and democratic society.

Our recommendations for solving the problems defined under the above headings are as follows:

- Primary and secondary legislation should align with international standards so as to protect the rights of civil society organisations, and ambiguous statements such as “public morals”, “public order” should be removed from laws.
- Steps should be taken to pave the way for founding civil initiatives in addition to associations and foundations and for recognition of diverse types of organisations by law and institutions.
- Legislation provisions should be strengthened against administrative disposals of state institutions which constitute as interference into internal affairs of associations and foundations.
- The Law on Meetings and Demonstrations Marches, which is restrictive and grants arbitrary powers to the administration, should be abolished and replaced with a new law ensuring freedom of peaceful assembly and demonstrations.
- Grassroot organisations and citizen initiatives which do not have legal personality should be recognized by legislation and allowed access to funds and aids thorough the representation of real and legal persons.
- Policies should be established to support non-profit organisations, similar to tax deductions available for companies that operate in places with priority in development, and a specific regulation should be developed to encourage employment in civil society organisations.
- To measure the CSOs' contribution to economic and social indicators, databases of Turkish Statistical Institute should be updated so as to include civil society. Moreover, data collected and released by the Directorate General of Relations with Civil Society and the Directorate General of Foundations should be diversified and included in the national statistics system in order to improve quality and quantity of data on civil society.
- A framework law should be adopted which recognizes volunteering, regulates the rights and responsibilities of CSOs and volunteers and provides guarantees for all parties involved in volunteer work.
- Financial rules, especially rules on the income of “economic enterprises”, should be updated in consideration of the fact that civil society organisations do not pursue profit-making.
- Rues of financial reporting should be streamlined by enhancing the exchange of information among public institutions that work with civil society organisations and by reducing the number of notifications (for instance, yearly statements notifying aids received from abroad)

- Tax legislation should be clear and comprehensible, and the ratio of tax deductions should be raised. Donations made to civil society organisations by working people should be tax deductible.
- Disaggregated data on donations should be collected and published yearly.
- The Law on Aid Collection should be amended and hindrances to associations and foundations in collecting donation and aid should be eliminated. Besides, policies and programmes should be implemented to encourage corporate and individual donations.
- CSOs' economic activities should be encouraged and economic activities that are in line with the purposes of organisations should not be regarded within the scope of economic enterprises.
- Civil society organisations should not be subject to rules that apply to commercial enterprises such as withholding tax on office rent. Income tax on office rent should be directly paid by the proprietor, as is the case when the tenant is a real person.
- The concept of public benefit should be tangibly defined by legislation. Public benefit status should be common and easy-to access for organisations. Eligibility criteria for public benefit status should be clearly defined and the process should be open to CSOs involvement.
- State funding for civil society organisations should be increased and there should be a standard and transparent process for each institution.
- A standard and independent evaluation system should be established for the selection of beneficiaries. All public institutions should fulfil their obligations arising from the Regulation no. 26231 on Providing Aid from Public Institutions' Budgets to Associations, Foundations, Unions, Organizations, Institutions, Endowments and Similar Entities". Selection of CSOs for project-based support, as well as decisions, objections and project management processes should be open to independent monitoring and supervision. These requirements should be clearly defined by legislation.
- Data on state funding provided by local governments and central administration for civil society organisations should be regularly collected and the list of CSOs that receive support should be made public.
- Given the inadequacy of regulations in different laws regarding civil society involvement in decision making process, it is important that a single framework regulation be developed which lays out CSO involvement procedures and imposes clear obligations for public institutions regarding cooperation with CSOs.
- Draft laws and policy papers prepared by public institutions should be accessible by everyone. A standard mechanism should be set up to obtain the opinions of civil society organisations.
- GNAT, the Presidency of the Republic, Ministries and municipalities should have CSO communication units to ensure cooperation with CSOs at all levels.
- Civil Society Consultation Council should be democratised and, equal participation by civil society representatives to the council should be guaranteed.
- Law on the Right to Information should be amended so as to impose obligations to public agencies and institutions to research and analyse information or retain information available for analysis as well as to present information to the public.



Lastly, we would like to remind that it is essential to ensure communication and cooperation with civil society organisations while the above listed recommendations are put into practice. As long as the process were inclusive and carried out with civil society, problems would be fully addressed, and a comprehensive result would be achieved.

Civil Society Consultation Council plans to expand the scope of its monitoring study in the coming years. In fact, following the report on 2019 findings, monitoring indicators will not be limited to those listed in the EU Guidelines, and freedom of association will be addressed as a whole.

ANNEX

An assesment of amendments on law of associations, which imposes a membership notification requirement for associations in Turkey, based on the national and international legislation.



This project is financed by the European Union

"The Amendments to Law on Association Regarding Notifications of Members to The Administration"

Evaluation of the amendments that obliges associations to notify their members according to the national and international legislation

STGM: Fact Sheet on the Freedom of Association and the Right to Participation



An assesment of amendments on law of associations, which imposes a membership notification requirement for associations in Turkey, based on the national and international legislation. *

The Law No. 7226 on the Amendment of Certain Laws (an omnibus law) which stipulates amendments to Articles 23 and 32 of the Law on Association No.5253 dated November 4, 2004 and the addition of a provisional article, entered into force after being published in the Official Gazette dated March 26, 2020.

An obligation to report their current members, new members and the termination of membership to the associations unit where association headquarters are located within 45 days has been imposed on associations with this amendment. This obligation, which was put into effect with a similar amendment to the Regulation on Association in 2018, gained a legal basis with Law no:7226.

This fact sheet had been prepared in order to inform the Civil Society Organizations about the amendment made in the Law of Associations and to evaluate amendment in line with national and international legislations.



Background Information

In October 2018, the Ministry of Interior of the Republic of Turkey amended the Regulation on Associations and brought obligations to CSOs which were similar to the ones stated above.

Regulation on the Amendment to the Regulation on Associations was published in Official Gazette No. 30552 dated October 1, 2018. Ministry of Interior inserted a paragraph to the Article 83 of Regulation on Associations on October 1, 2018 and amended ANNEX-21 of the regulation¹. In the amendment, the inserted paragraph obliged associations to inform authorities about any admission, dismissal or resignation of members within 30 days.

However, the amendment in the Regulation on Association caused discussions in the civil society. While it was argued that the obligation to report would restrict freedom of association, uncertainties regarding the implementation of this change have continued.

Meanwhile, The Law No. 7226 on the Amendment of Certain Laws (an omnibus law) including amendments on the Law on Associations (Law no. 5253) was submitted to the Presidency of the Grand National Assembly of Turkey on February 17, 2020². After being discussed in the relevant commissions, the amendment was accepted in the General Assembly of the Turkish Grand National Assembly on 25 March 2020. After the President's approval, it was published in the Official Gazette and entered into force.

*Translated by STGM Team.

1. Regulation on Associations Article 83 - The presidents of the board of the Association are obliged to submit the Association Declarations (ANNEX-21) of the previous year to the head of the local authority in the first four months of each calendar year.

2. Please see legislative proposal: TBMM, "Bazı Kanunlarda Değişiklik Yapılmasına Dair Kanun Teklifi", <https://www2.tbmm.gov.tr/dz7/2/2-2633.pdf> web sitesinde mevcuttur.



Amendments in the Law on Associations

With these amendments, associations have to notify their membership details including admission and termination to the authorities. These amendments are within the scope of Article 23 and 32(s) of Law on Associations (Law no: 5253, Official Gazette no:25649 dated 23/11/2014) on "duty to notify membership information" and "penal provision". Article 32(s) of the same law entitled "Penal Provisions" imposes administrative fines on the executives of the associations and the representatives mentioned in Article 23 who do not fulfill the obligation to notify membership information.

Pursuant to Article 32(s) of the Law on Associations, executives or representatives of associations, who do not report new or terminated membership through uploading their declarations to authorities within 45 days, are subject to an administrative fine of 500 TL (approx. EUR 74,00)³.

The table showing the amendments made in the relevant articles of the Law on Associations is as follows:

Old Version	New Version
<p>General assembly meeting and notifying the administration of those elected to the organs Article 23- Associations, are obliged to notify the local administrative authority of original and substitute members elected to the administrative boards and boards of auditors and other organs of the association, within thirty days following the date of general assembly. The changes made in association organs and association premises shall be subject to the same procedure. The form and content of the general assembly result notification and the required documents shall be regulated through a by-law.</p>	<p>General assembly meeting and notifications of elected organs and members to the administration* Madde 23- Associations have the obligation to notify the local administrative authority where their registered offices are located within thirty days of the members and substitute members who are elected to the executive board, the supervisory board and to the other organs of the association, and of the names and surnames, the dates of birth and the identity numbers of those whose membership is admitted and terminated within forty-five days following the date of the admission or termination. The same procedure shall apply to the changes made in organs of the association and its place of residence. The form and substance of the notifications of the conclusion report of the general assembly and the notifications regarding membership, and necessary documents relating to the notifications shall be regulated by the by-law.</p>
<p>Penalty Clauses Article 32- (Amended: 23/1/2008-art. 5728/558) 1) Representatives inscribed in Article 24 and executives of the associations who fail to fulfill the obligation to notify stated in Articles 22, 23 and 24 hereof, and the obligation to submit declaration stated in Article 19 shall be imposed an administrative fine of five hundred Turkish Liras.</p>	<p>Penalty Clauses Article 32- (Amended: 23/1/2008-art. 5728/558) 1) Representatives inscribed in Article 24 and executives of the associations who fail to fulfill the obligation to notify stated in Articles 22 and 24 hereof, and the obligation to submit declaration stated in Article 19 shall be imposed an administrative fine of five hundred Turkish Liras. 2) Penalty in the amount of five hundred TRY shall be levied on the executives of an association who do not fulfil the notification obligation set forth in Article 23.</p>

³ Info-Euro exchange rate in March 2020.

*Amendments by the Law no 7226 to the Article 23 of the Law on Associations are presented in the bold.

Old Version	New Version
	<p>The following provisional article has been inserted to the Law on Association (Law No. 5253) .</p> <p>Notification of those whose membership continue</p> <p>Provisional Article 1 Associations shall notify the local administrative authority where their registered offices are located the names, surnames, dates of birth and identity numbers of current members within six months from the date this article enters into effect. The subparagraph (s) of the first paragraph of the Article 32 shall be applied against the executives of an association who do not fulfil the obligation herein.</p>

General Evaluation in terms of Domestic Laws in Turkey

Article 11 of the Constitution of Republic of Turkey regulates bindingness and supremacy of the Constitution. Accordingly, the provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial bodies, administrative authorities and other institutions and individuals. As laws cannot be contrary to the Constitution, it is clear that all legal regulations should be in accordance with it.

According to Article 5 of the Constitution, to safeguard Republic and democracy, to ensure welfare, peace and happiness of the individuals and society, to strive for the removal of political, economic and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and social state governed by rule of law and to provide the conditions required for the development of individual's material and spiritual existence are listed among fundamental aims and duties of the State.

Article 10 states that everyone is equal before the law without distinction as to language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such grounds. Same article obliges State organs and administrative authorities to act in compliance with the principle of equality before the law in all their proceedings.

According to Article 13, fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution **“without infringing upon their essence”**. These restrictions cannot be contrary to the requirements of the **“democratic order of the society”** and the principle of proportionality.

Article 15 states that even in state of emergency, the individual's right to life, the integrity of his/her corporeal and spiritual existence shall be inviolable; no one shall be compelled to reveal his/her religion, conscience, thought or opinion, nor be accused on account of them.

Article 24 of the Constitution regulates **“freedom of religion and conscience”**. Accordingly, everyone has the freedom of conscience, religious belief and conviction. Further, no one shall be compelled to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

Article 25 of the Constitution regulates **“freedom of thought and opinion”**. Accordingly, everyone has the freedom of thought and opinion. No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.

Constitution of Turkey guarantees right to privacy (Article 20) and freedom of association (Article 33) as well. Article 20 states that personal data can be processed only in cases envisaged by law

or by the person's explicit consent. According to Article 5 of Law on the Protection of Personal Data (Law no: 6698), personal data may only be processed with explicit consent of the data subject.

With the amendments made in the Law on Associations, individuals are required to notify their memberships in associations, which may disclose their thoughts and opinions. As mentioned above, the fact that individuals cannot be compelled to reveal is guaranteed by the Constitution. It can be argued that providing information to public authorities means disclosure. In addition, this amendment in the Regulation on Associations stipulates a high amount of administrative fine if membership details are not reported. Constitutionality of administrative fine in question is disputable. Constitutional Court states that legislator is bound by "proportionality", which is the fundamental principle of rule of law:

"11. In a state governed by rule of law, the rules on penalties and other security measures are determined in accordance with criminal policy, which takes the social and cultural structure, moral values and requirements of economic life of the country into account and they cannot contradict with the Constitution. The legislator, as a result of the criminal policy it follows, may remove certain acts from the area of penal code and subject some criminal acts to different sanctions based on the legal benefits they protect and consequences they cause. The examination of appropriateness of the legislator's preference and discretion on this issue is outside the boundaries of the constitutional review. Nevertheless, pursuant to the rule of law and proportionality, the sanction prescribed in such regulations should not be contrary to human dignity and should not cause a disproportion between criminal act and sanction.

12. The legislator, while regulating, is bound by proportionality that is a requirement of the rule of law. This principle consists of three sub-principles, namely, "suitability", "necessity" and "proportionality". "Suitability" means that the applied measure is suitable for the intended purpose while "necessity" means it is necessary for that purpose. As well, "proportionality" indicates the balance between the measure and the purpose. According to the principle of proportionality, there must be a reasonable balance between the provision envisaged in a rule and the goal to be achieved⁴.

An Evaluation in terms of International Law

In the field of international law, there is no regulation or court decision that directly determines the limits of membership notification and reporting obligations of CSOs. For example, neither the ECHR nor the International Covenant on Civil and Political Rights refer to the reporting and notification obligations of CSOs. Therefore, the reports on the subject refer directly to the general principles behind these regulations rather than to an international regulation or court decision.

Expert Council on NGO Law within the Conference of International NGOs of the Council of Europe, which Turkey is a member, have put this issue on its agenda after increasing reports of similar practices from member States and issued a report⁵ on November 27, 2018.

Expert Council underlines the fact that these obligations should be considered as part of general initiatives aimed at restricting the area of civil society, as the Secretary General of the Council of Europe and the former UN Special Rapporteur emphasize. Therefore, the issue does not only concern one country but all member states, especially Hungary, Bulgaria, Romania and Ukraine. For this reason, the Parliamentary Assembly of the Council of Europe has adopted a resolution and recommendation to avoid excessive restrictions on CSO activities in Europe. In addition, in 2018, Resolution

4. Decision of the General Assembly of the Constitutional Court, E: 2017/14, K:2017/83, Decision date: 29.03.2017, Date of publication in the Official Gazette: 18.04.2017 - 30042
5. International Standards Relating to Reporting and Disclosure Requirements for Non-Governmental Organizations, Review Prepared By Dragan Golubović on Behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, 27 November 2018, CONF/EXP (2018)3.

2226 urged member states to follow the Joint Opinion on Freedom of Association, prepared by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR).

According to the Expert Council, even if there is no clear provision in international regulations, any obligation affecting fundamental rights, such as the notification of association members, should be regulated by law and proportionate to the objectives. Furthermore, measures should be taken to prevent arbitrary and discriminatory application of these rules. The Joint Opinion of the Venice Commission and the OSCE therefore draws attention to the risk that excessively burdensome or costly reporting obligations could create an environment of excessive state monitoring which would hardly be conducive to the effective enjoyment of freedom of association⁶.

The Expert Council, on the other hand, underlines that Articles 8 and 9 of the Joint Guidelines recommend that laws imposing such obligations should be made in a democratic, participatory and transparent manner. According to these principles, it is very difficult to say that the amendments in the Regulation on Associations are made in a participatory and transparent manner.

The Expert Council underlined that the obligations of associations to report members should be addressed in two respects: freedom of association and the right to privacy. The right to privacy includes members of CSOs as well as natural persons affiliated with them. For example, if an individual donating to an association wants his name to be kept anonymous, it should be respected.

“The right to privacy provides guarantees to CSOs and their members. This means that oversight and supervision should be proportionate to the legitimate aims of CSOs and should not be or more stringent than those applicable to private enterprises. Supervision should always be based on assumptions regarding the legality of the CSO and its activities.”⁷

The Expert Council also draws attention to the Recommendation 2007 (14) of the Committee of Ministers of the Council of Europe. Accordingly, any notification obligation should be assessed in relation to the rights and safety of the beneficiaries and the obligations related to the protection of privacy... ..the need for respect for privacy is not absolute and should not interfere with the investigation of criminal offenses. In any case, any interference with private life and privacy should respect the principles of necessity and proportionality.⁸”

Furthermore, Expert Council, on the basis of a decision of the European Court of Human Rights (ECHR)⁹, stated that associations should not be under a general obligation to disclose the names and addresses of their members since this would be incompatible with the latter's right to freedom of association and the right to respect for private life¹⁰. In the relevant decision, it has been accepted that disclosure of the names of members in some special cases may mean unjustified interference with the right to freedom of association protected by Article 11.

On the other hand, in its Association ACCEPT and Others v. Romania decision¹¹, the Court did not consider the publication of certain information about the members in the association register as a violation of the Convention on the ground that this information was limited to the name and did not contain personal data.

In line with these judgments of the ECHR, the Venice Commission also stated that the obligation to notify the names of the members of the CSOs should be subject to the principle of proportionality¹². In addition, in its opinion on the CSO Law of the Republic of Azerbaijan, the Expert Council determined that the disclosure of membership information to public authorities under “unrestricted” conditions was not compatible with freedom of association:

6. OSCE/ODIHR, Venice Commission Joint Opinion on the Ukraine Draft Laws No. 6674 and 6675, is transferred CONF/EXP (2018)3; 7. Expert Council, Opinion on the Hungarian draft NGO Transparency Law is transferred CONF/EXP (2018).

8. From The Explanatory Memorandum to the Recommendation (2007)14 is transferred CONF/EXP (2018).

9. National Association of Teachers in Further and Higher Education v. United Kingdom (dec), no. 28910/95, 16 April 1998)

10. CONF/EXP (2018)

11. Association “Accept” and Others v. Romania (dec.), no. 48301/08, 24 May 2016.

12. Expert Council on NGO Law CONF/EXP (2018)

The existence of unrestricted obligations to inform the public authorities of the list of members of CSOs has proven to be a function that prevents individuals from joining CSOs. Therefore, unresolved obligations constitute an unacceptable barrier to freedom of association.¹³

Consequently, by considering the ever-tightening regulations on the protection of personal data the Expert Council stressed that to obligate CSOs to provide their own information would be contrary to the international standards on freedom of association by means of transcription of the laws on access to information for public institutions to CSOs. The principles of transparency and accountability alone cannot provide grounds for restricting freedom of association.

Although individual notification and reporting obligations seem to be unproblematic at first glance, the issue becomes more complex as the level of detail required increases and the obligations of associations increase cumulatively.

Since all notification and reporting obligations of CSOs will restrict freedom of association, it is State's duty to demonstrate that this is necessary and proportionate and to appropriately regulate the content and frequency of information requested. It is therefore difficult to justify such regulations if the reporting obligation is not based on a preliminary impact assessment, if there is clear evidence that existing legal framework does not meet the need, if there is no evidence of crime and misdemeanor by CSOs, and if the statements of public authorities point to another purpose.

The opinion of the OSCE on disclosure of the members of CSOs, which the Parliamentary Assembly of the Council of Europe invites the member states to consider by the aforementioned Decision, explains that there should not be a general reporting obligation. Moreover, the OSCE/ODIHR believes that obligation of CSOs to disclose names and addresses of their members is incompatible with freedom of association and the right to privacy. However, individuals may have to disclose their CSO membership in situations where there is a conflict with their responsibilities as workers or civil servants¹⁴. In other words, NGOs have no obligation to disclose names of their members. However, depending on the nature of their work, individuals may have to report their associations to relevant authority.

It is clear from the standpoint of international human rights instruments that freedom of association, like right to privacy, is not an absolute right. However, it is clear that any restriction on this issue should be evaluated according to the principles of necessity in a "democratic society"¹⁵ and proportionality in terms of international monitoring mechanisms in the field of human rights.

Similar practices in selected countries

In addition to international standards, STGM conducted a research of 21 selected countries including USA and members and candidates of EU. It also revealed that obligation of CSOs to report names and addresses of their members to public administration is not a generally accepted practice, although there are some specific exemptions.

Within in the limited scope of the survey, the earliest ruling identified on the subject matter is the US Supreme Court's decision on the case of National Association for the Advancement of Colored People (NAACP) v. Alabama in 1958. The Supreme Court ruled that the State of Alabama's regulation that brings obligation for the association to submit the names and addresses of their members was unconstitutional against freedom of association¹⁶.

The research also includes a potential candidate (Bosnia-Herzegovina) and three candidate countries (Serbia, Albania and Montenegro) as well as sixteen EU member states. Since a full-fledged research of the related legislations of all selected counties would be very complex and burdensome effort considering wide differences at the national contexts, a practical research method was applied. Although it has own limitation in itself, it can be still regarded as a first introduction to the subject.

14. AssociatiOnline, Membership, <<http://www.associationline.org/guidebook/action/read/chapter/4>> web sitesinde mevcuttur. Son erişim 26.2.2019. AssociatiOnline, AGİT-DKİHB (OSCE-ODIHR) tarafından hükümet yetkilileri ve sivil toplum için hazırlanmış interaktif bir web sitesidir. AGİT'in katılımcı devletlerin kabul ettikleri yasaları uluslararası insan hakları standartlarına uygun hale getirmeleri amacıyla hazırlanan bir yasama veri tabanı olarak Legislation.online'nin bir parçası olarak çalışmaktadır.

15. The exceptions to Articles 8 to 11 of the European Convention on Human Rights, the Council of Europe, Human rights files No. 15, p.14-17

16. NAACP v. Alabama, 357 U.S. 449 (1958)

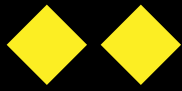
The research method was based on a simple questionnaire examining if there is a same or similar obligation in the respective countries. The questions were delivered to one or two prominent CSOs who have a background at the field of freedom of association. The following table summarizes the answers from the indicated organizations on the legal environment at their counties:

The membership notification of CSOs in the EU Member States and Candidates

Country	EU Membership	CSOs Obligation to Report Members' Names, Identification Numbers, Profession and Education	Information source
USA	NA	No	US Supreme Court website
Hungary	Member	Yes	Amnesty International Hungary Branch / Hungary Helsinki Committee
Romania	Member	Yes	Funky Citizens
Bosnia and Herzegovina	Potential Candidate Country	Reporting of names of members is obligatory, but of ID number, job and education are not.	Transparency International / Youth Resource Centre (ORC) Tuzla / Helsinki Citizens' Assembly Tuzla
Bulgaria	Member	Not for associations, but yes for trade-unions.	The Center for Legal Aid - Voice in Bulgaria (CLA) / Journalist at Capital
Serbia	Candidate Country	No	Civic Initiatives (Citizens' Association for Democracy and Civic Education
Albania	Candidate Country	No	The Alliance Against LGBT Discrimination
Montenegro	Candidate Country	No (The Associations decides in its own statute how to make arrangements regarding the members)	ADP - Zid
Sweden	Member	No	The Kvinna till Kvinna Foundation
Greece	Member	There is no general obligation, but the Greek government decided in January 2016 that all CSOs and volunteers who assist immigrants should be asked to fill out a form containing personal information.	Greek Council for Refugees / Citizens in Action

The membership notification of CSOs in the EU Member States and Candidates

Country	EU Membership	CSOs Obligation to Report Members' Names, Identification Numbers, Profession and Education	Information source
Spain	Member	No	Associació SUUDS
Italy	Member	No	Lunaria / Sbilanciamoci
Austria	Member	No	Grenzenlos
Netherlands	Member	No	Pax for Peace; Jochem Beunderman (human rights activist)
Belgium	Member	No (Non-profit organizations have to store all information at the headquarters of the association. However, if the public authority or a court requests it for a specific reason, it must grant access to the information.)	Euro-Med Rights Belgium
Ireland	Member	No	Front Line Defenders.
France	Member	No	Euro-Med Rights France
Germany	Member	No	Torsten Weil - Attorney at Law
Portugal	Member	No	DECO - Portuguese Association for Consumers Protection
Finland	Member	No	Ville Forsman - Lawyer, Human Rights Law Specialist
United Kingdom	Brexit Process	No general obligation	Theodora A Christou (Queen Mary, University of London, School of Law, Amnesty International UK)



Overall assessment

The amendments to the Law on Associations can be regarded as controversial in terms of both national law and related international standards. As far as the information we reached, a number of cancellation proceedings are still pending before the Council of State based on the following claims:

- the amendment is contrary to the fundamental rights and freedoms protected by the Constitution,
- the amendment is inconvenient to protection personal data,
- the amendment is inconvenient to the ECHR and International Civil and Political Rights Principles.

It is of great public benefit to reconsider the amendments by taking the opinions of the CSOs in a way that does not lead to the loss of members of the associations and create difficulties in accepting new members. In addition, preferring interim measures such as sending a "warning notice before applying an administrative fine will ease associations and contribute to the proper use of freedom of association."



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“Capacity Building for CSOs and Civil Networks for Further Development of Freedom of Association and Right to Participation”

Since it was established in 2004, Civil Society Development Centre (STGM – www.stgm.org.tr) with 15 years' experience, has been carrying out various projects. The “Capacity Building for CSOs and Civil Networks for Further Development of Freedom of Association and Right to Participation”, whose short name is “the Right to Participation”, is one of the projects carried out by STGM.

The Right to Participation project aims to contribute to ensure meaningful civil participation in political decision-making and to exercise the right to freedom of association.

The project is financed by European Union. The Republic of Turkey Ministry of Foreign Affairs EU Directorate is the End/Lead Institution of the Action. The Republic of Turkey Ministry of Treasury and Finance Central Finance and Contracts Unit (CFCU) is the Contracting Authority of the project. Civil Society Development Centre (STGM), Capacity Development Association (KAGED) and Istanbul Bilgi University Center for Civil Society Studies (STÇM) are responsible for the implementation of the Action. In the project, KADEG is conducting capacity building activities for civil networks and STÇM is conducting Mentorship program.

The activities are carried out by STGM could be grouped under two headings: Freedom of Association and Rights to Participation.

1- Activities for the Freedom of Association by STGM: Freedom of Association Trainings; Help Desk Service; Institutional Coaching Program, Monitoring & Reporting Legal Environment in Relation to the Freedom of Association; Surveying the Capacities/Limitations of CSOs; info notes on the freedom of association. The publications of project are available at www.katilmhakki.org.

2- Activities for the Right to Participation by STGM: The Right to Participation Trainings Program; desktop research on the right to participation; 6 local sharing experience workshop, 4 study visits to EU Countries by Joint Teams (CSOs & Public) and two days national sharing experience workshop in Ankara.



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