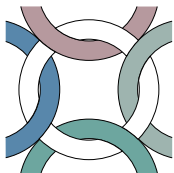


Monitoring Matrix on Enabling Environment for Civil Society Development

-TURKEY Country Report-

"The Civil Society Environment in Turkey 2017 Report"

Project partner



BALKAN
CIVIL
SOCIETY
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NETWORK

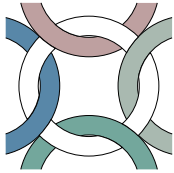


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Türkiye Üçüncü Sektör Vakfı
Third Sector Foundation of Turkey



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I. INTRODUCTION

ABOUT THE MONITORING REPORT

This Monitoring Matrix Report (MM 2017 Report) focuses on the current legislation concerning enabling environment and their practical implementation in Turkey throughout 2017. MM 2017 Report mainly focuses on the period between 1 December 2016 and 31 December 2017, but also includes information from previous reporting years when relevant.

THE MONITORING MATRIX ON ENABLING ENVIRONMENT FOR CIVIL SOCIETY DEVELOPMENT

MM 2017 Report is part of the efforts of the Balkan Civil Society Development Network (BCSDN) to strengthen monitoring and advocacy on issues related to enabling environment and sustainability of civil society at regional and country level. Implemented on a yearly basis since 2013, the monitoring is based on the Monitoring Matrix on Enabling Environment for Civil Society Development (CSDev). It is part of a series of country reports, first of its kind, covering 7 countries in the Western Balkans and Turkey¹.

A Regional Report is also available summarizing findings and recommendations for all countries, and a web platform (www.monitoringmatrix.net) providing details around the Monitoring Matrix tool and presenting monitoring results per country.

The Monitoring Matrix on Enabling Environment for CSDev was developed as part of a collective effort of CSO experts and practitioners from the BCSDN network of members and partners, and with expert and strategic support by ECNL.

The Monitoring Matrix presents the main principles and standards identified as crucial for the legal environment to be considered supportive and enabling for the operations of CSOs. The principles, standards and indicators have been formulated with consideration of the current state of development of and diversity in the countries of the Western Balkans and Turkey. They rely on the internationally guaranteed freedoms and rights and best regulatory practices at the European Union level and in European countries. The Matrix aims to define an optimum situation desired for civil society to function and develop effectively and, at the same time, it aims to set a realistic framework that can be followed and implemented by public authorities. Having in mind that the main challenges lay in implementation, the indicators are defined to monitor the situation on level of legal framework and its practical application.

The Matrix is organized around three areas, each divided by sub-areas:

Basic Legal Guarantees of Freedoms;

Framework for CSOs' Financial Viability and Sustainability;

Government - CSO Relationship.

METHODOLOGY

The primary data collection method is the desk research and analysis of legislation regulating foundations and associations in Turkey. To crosscheck the results the reports and publications published by relevant public bodies, country specific reports and other reports published by international organizations and CSOs were reviewed as part of the secondary literature.

MM 2017 Report provides an overview of the TUSEV's periodical and consistent national-level monitoring of the enabling environment for civil society development in Turkey. TUSEV has been publishing annual Civil

¹ Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro, Serbia and Turkey.

Society Monitoring reports and disseminating findings to improve enabling environment for civil society since 2011. Civil Society Monitoring Report 2013-2014 was published and presented to wider audiences in December 2015. Throughout 2016 and 2017, TUSEV continued to publish “Monitoring Case Studies” as part of Civil Society Monitoring Project.² The findings of this monitoring studies play an important role in defining the framework and major areas to be highlighted in the MM 2017 Report.

CIVIL SOCIETY AND CIVIL SOCIETY DEVELOPMENT (CSDEV) IN TURKEY

CIVIL SOCIETY BACKGROUND

Civil society organizations (CSOs) are at the heart of Turkey’s democratization process. Over the past years, the not-for-profit sector in Turkey has grown both in size and in level of participation and played a significant role in providing services and contributing to the democratization of the country. As of December 2017, there are around 112,000 associations and 5,100 new foundations (established after the Republic) operating along with many informal organizations such as platforms, initiatives, and groups.

Since officially becoming a European Union (EU) candidate country in 2003, Turkey has implemented a series of reforms that promote democratization, including reforms to its basic framework laws affecting civil society. Turkey still operates, however, under the 1982 Constitution, which was written immediately following a military coup. Until 2004, when a new Law on Associations (No. 5253) was enacted in Turkey, the autonomy of Turkish CSOs was restricted. The new Associations Law was viewed positively by both civil society and the EU. It lifted some of the limitations on civil society. Subsequently, in 2008, Turkey adopted a Law on Foundations (No. 5737), which further improved the legal environment. Nonetheless, today, Turkish CSOs are more aware of the deficiencies in the laws that restrict their activities. Although Constitutional regulations comply with the European Convention on Human Rights (ECHR), the legal framework still contains numerous

incompatibilities with international standards. Since 2008, there have been only slight improvements in the legal framework, mostly in secondary legislation. Therefore, future reforms are both necessary and inevitable. In terms of the strategies and policies for Government and CSOs relations, the situation has not been improved in Turkey. The coup attempt in Turkey was an unforeseen incident and caused a severe interruption in policy making and the state of relations between CSOs and the government worsened throughout 2016-2017. Under these circumstances, the reform agenda of the government was suspended and there are no available pending initiatives to amend the legal framework for civil society in the foreseeable future.

By 2017, the legal-political environment is not conducive for civil society development in Turkey, severe restrictions remain limiting freedom of association, assembly and expression. There is still no concrete definition of civil society and CSOs in the related legislation and policy documents and a singular, overarching and binding legislative framework to govern the relationship between CSOs and public institutions is not available. On top of these, freedom of expression has been steadily eroding in Turkey, through arbitrary and restrictive interpretation of the legislation, pressure, dismissals and frequent court cases against activists, journalists, academics and social media users since 2013. CSOs can be inspected on the grounds of their political affiliations, right-based issues, proximity to the government and complaints of individuals. Therefore, CSOs remain to be more prone to face arbitrary implementations or interpretations of the law and legislations.

Civil society has also been affected by many destabilizing pressures during 2016-2017, including renewed tensions over the Kurdish conflict, instability spilling over from neighboring Syria, a series of terrorist attacks by ISIL, the increasing flow of refugees, political deadlocks, an economic decline and a failed coup attempt. The most negative development for civil society was the outcome of the coup attempt by a fraction of Turkey’s military allegedly loyal to Fethullah Gulen, which deployed tanks and fighter jets to overthrow the government on July 15, 2016. Gun battles broke out in Ankara and Istanbul that left 312 dead, including 145 civilians, 60 police, 3 soldiers and 104 plotters. More than 2,000 citizens were injured.

² Please see TUSEV monitoring reports and case studies from: <http://www.tusev.org.tr/tr/araştırma-ve-yayınlar/sivil-toplum-izleme-raporu-1>

The coup attempt in Turkey was an unforeseen incident and caused a severe interruption in the policy making and hampered any ongoing reform initiatives to restore democratic decision-making process in general. The context of political instability has paved way for a state of constant readiness to curb basic freedoms, including the freedoms of association, assembly and expression, for the sake of the preserving “national security” or “public order”. State of emergency was approved by the National Parliament on 21th of July for three months following the failed army coup to enable authorities to react in efficient ways to investigate and punish those responsible. Following the coup attempt, on 21 July 2016, the Turkish authorities informed the Secretary General of the Council of Europe that Turkey would notify derogation from the European Convention on Human Rights under Article 15 of the Convention.

State of Emergency regulated under Articles 119, 120 and 121 of the Constitution and State of Emergency Law no. 2935 and allowing the Council of Ministers, chaired by the President, to issue statutory decrees that carry the force of law. Furthermore, according to Law no. 2935, the Council of Ministers can issue regulations suspending or restricting use of fundamental rights and freedoms including freedom of association and assembly. State of emergency brings a risk of undermining democratic standards due to bypassing the parliament and further consultative mechanisms in the law-making process. The mechanisms of checks and balances were not put in place to ensure safeguards against measures and to preserve separation of powers and the rule of law.

Under state of emergency, the statutory decrees cannot be appealed. The government extended state of emergency another three months for the seventh time on 18th of January 2018 since the July 2016 failed coup attempt. During this period, the government carried out mass arrests and firings of civil servants, academics, journalists, opposition figures related to the coup attempt. The state of relations between civil society and the government deteriorated throughout 2016-2017. The statutory decrees passed under state of emergency introduced included restricting measures affecting civil society sector in general. As of 26 March 2018, the Government has issued thirty emergency degrees, out of which five have direct effect on operation of CSOs.

In recent years and especially since July 2016³, the relationship between Turkey and the EU has been challenging with the ongoing management of the migration crisis and the EU-Turkey agreement, the attempted military coup in Turkey, and the conditions of state of emergency that followed, which the EU criticized for being disproportionately severe.⁴ The European Parliament proposed on October 25, 2017 to reduce European Union funds to Turkey that are linked to its stalled bid to join the bloc. Some EU governments proposed that financial aid should be only given to the civil society sector in Turkey, rather than the Turkish government.⁵

On the other hand, even before the coup attempt and the later consequences of state of emergency, shrinking civic space has been a concern since 2013. Despite improved legislation concerning associations and foundations in 2004 and 2008 which took place during the accession process to the EU, challenges and constraints continue, especially regarding secondary legislation and its implementation. In fact, no extensive reforms have been made since the major reform packages accepted in 2004 and 2008 that (in those years) improved the enabling environment of civil society. Turkey’s National Action Plan for the EU Accession (Phase-I November 2014 - June 2015) which addressed the government’s undertakings to reform Law on Associations (No: 5253), Law on Collection of Aid (No: 2860), Civil Code (No: 4721), and Law on Foundations (No: 5737) did not come into force.

Turkey’s reform process is observed to have slowed down. Besides, the changes made in the relevant legislation since 2015 curtailed basic freedoms. A controversial security bill, “The Law Amending the Law on Powers and Duties of the Police, Other Laws and Decrees” that is widely referred as the “Internal Security Reform Package” and fiercely opposed by opposition parties, was passed in Parliament on 27 March 2015 and widened power

³ *Turkey since the failed July 2016 coup*. European Parliament. Access date: April 13 2018. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589776/EPRS_BRI\(2016\)589776_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/589776/EPRS_BRI(2016)589776_EN.pdf)

⁴ *Mapping EU-Turkey relations: State of play and options for the future*. European Parliament. Access date: April 13 2018. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599388/EPRS_BRI\(2017\)599388_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/599388/EPRS_BRI(2017)599388_EN.pdf)

⁵ *Turkey: MEPs raise the alarm on EU accession talks*. European Parliament. Plenary session. Access date: January 12 2018. <http://www.europarl.europa.eu/news/en/press-room/20170629IPR78637/turkey-meps-raise-the-alarm-on-eu-accession-talks>

of police powers to conduct searches, use weapons, wiretap, detain individuals without a warrant, and remove demonstrators from scenes of protest.

In addition, Turkey was made inactive in the Open Government Partnership in September 2016 on the grounds that the government failed to deliver its National Action Plan including commitments to publicize all draft legislations on a web platform to enable a wide scale consultation through regulation.gov.tr.⁶

Furthermore, in April 2017, through a referendum, the people of Turkey narrowly voted in favor of constitutional amendments that removes many of the checks on executive power and strengthening the power of the president.⁷ The Venice Commission, the Council of Europe's advisory body on constitutional law, adopted an opinion on the constitutional amendments and concluded they would "lead to an excessive concentration of executive power in the hands of the president and the weakening of parliamentary control of that power".⁸ A snap parliamentary election is scheduled to be held on 24 June 2018 with a presidential election instead of late 2019. The presidential election will be the highlight, since president will be elected, and the presidential government system will be enacted.

On the other hand, Turkey's current National Action Plan for the EU Accession (June 2015 to June 2019) continues to indicate several undertakings to improve enabling environment for the civil society. The name of the legislation to be amended or enacted in the National Action Plan to comply with the *acquis* for the EU accession are as follows: Law on Associations (No: 5253), Law Turkish Civil Code (No: 4721), Law on Organization and Duties of the Ministry of Interior (No: 6581), Law on Collection of Aid (No. 2860), Law on Meetings and Demonstrations (No: 2911). Government Program (65th Government) also includes the adoption

of a comprehensive "Civil Society Law" to regulate legal statutes, institutional structures, activities, and financial resources of CSOs as well as civil society-public sector relation. Civil society and the public have not been informed on this reform agenda.

Department of Associations announced on their website that they completed their legal review during 2017 that would result in amendments in the relevant legislation listed above.⁹ Ministry of Interior's 2017 Annual Report confirmed that Department of Associations have prepared three draft law proposals during 2017 to contribute to the development of civil society by making the necessary legal and administrative arrangements for the associations.¹⁰ CSOs do not have access to contents of three draft law proposals.

CIVIL SOCIETY STRUCTURE¹¹

Over the last ten years, there has been a dramatic increase in the civil society membership. According to data provided by Department of Associations (DoA), in 2017 the number of association members is 11.045.916. Total number of associations and foundations is 116.945 in 2017. 13,6 percent of the overall population are members of CSOs. In 2004, there were only 5,2 million members and participation rate was 7,5 percent of the overall population. Despite an above 100 percent increase in civil society membership within the last ten years, comparing to figures of 2015 (14,2%) there is a decrease in the participation rate. Number of citizens per CSO may be an illustration of civic activism. There is one CSO for every 690 citizens in Turkey. There is no improvement in that respect considering the data of 2015 (one CSO for every 697 citizens).

Despite the increase in their numbers, roles and visibility, rights-based organizations constitute a very small segment of civil society organizations in Turkey. Based on official data from DoA, as of December 2017, only 1.420 associations are registered as rights-based organization

⁶ *Civil Society Monitoring Report 2016-2017 Case Studies*. Open Government Partnership Process of Turkey. Third Sector Foundation. [in Turkish] Access date: 13 April 2018. <http://www.tusev.org.tr/usrfiles/images/AcikYonetimOrtakligiveTurkiyeSureciVakaAnalizi.pdf>

⁷ *Questions and Answers: Turkey's Constitutional Referendum*. Human Rights Watch. Access date: 17 April 2018. <https://www.hrw.org/news/2017/04/04/questions-and-answers-turkeys-constitutional-referendum>

⁸ *Opinion on the amendments to the Constitution adopted by the Grand National Assembly On 21 January 2017 and to be submitted to a national referendum on 16 April 2017*. Council of Europe. European Commission for Democracy through Law (Venice Commission). Access date: 17 April 2018. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)005-e)

⁹ *Annual Plan 2017*. Department of Associations. Access date: January 10 2018. <https://www.demekler.gov.tr/tr/haberler/2017-Faaliyet-plani.aspx>

¹⁰ *2017 Annual Plan*. Ministry of Interior. Access date: March 30 2018. https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/Bakanlik_faaliyet/2017_yili_fly.pdf

¹¹ Please refer to "Official Databases on Civil Society Data" section for the sources of the official data quoted here.

with over 26.140 members. General Directorate of Foundations (GDoF) does not categorize foundations as such. However, GDoF reported, as of 2016, foundations reported only 264 activities in the fields of “law, human rights and advocacy”, which constitutes 1,8 percent of their total activities.¹²

Although CSOs are active in all of Turkey’s provinces, available data continues to depict an uneven geographical distribution, with an urban concentration. Based on official data, more than half of associations (53 percent) and foundations (65 percent) located in Marmara (mostly in Istanbul) and Central Anatolian (mostly in Ankara) regions of Turkey. Gender inequality in civic engagement is also evident. Only 20 percent of association members are women that constitute 5,6 percent of total women population. As of November 2017 (data reported is from 2016), only 19 percent of members of the executive organs are women (1.851.763) and 81 percent are men (7.971.24).¹³

STATE OF CIVIL SOCIETY DATA

DoA and GDoF are the two public authorities responsible for collecting and consolidating CSOs’ data and keeping the statistics. Associations and foundations are obliged by law to provide up-to-date data in their annual notifications. DoA and GDoF discloses the data reported by the associations and foundations. However, the quantity and quality of the information and statistics publicly shared by these public authorities on their website is not sufficient. Besides, the format of information provided by the public institutions is not standardized. Data provided by public institutions are mostly in a pdf format that is not easily translatable into research. Data should be provided in a format that is easily accessible and readable. Public institutions should prepare manuals to guide CSOs in the reporting process, to obtain high quality data from CSOs.

CSOs must report their organizational and financial statements to different state bodies in the annual inspection periods, which may put an extra burden on CSOs. For example, associations with public benefit status

and tax-exempt foundations must provide documentation to the tax authority regarding data on the structure of income and expenditures, in addition to data being collected by DoA and GDoF. Similarly, data on number of employees are collected yearly by DoA and GDoF, as well as the Ministry for Labor and Social Security, which has all records on employment.

Within the scope of Ministry of Interior’s 2017 Annual Plan reported that there have been ongoing initiatives to advance data sharing and data integration among relevant public institutions. As of 2017, DoAs’ information system (DERBIS) integrated with Ministry of Interior’s several other platforms as well as with the Ministry of Finance Financial Crimes Investigation Board (MASAK) and the General Directorate of Security and the Ministry of Youth and Sports. The data integration of DERBIS with e-government platform, Disaster and Emergency Management Presidency (AFAD), The Gendarmerie General Command is in the test process. The next steps will be taken to integrate database systems of the Turkish Statistical Institute and the Prime Ministry.¹⁴

¹² Ibid.

¹³ Ibid.

¹⁴ 2017 Annual Plan, Ministry of Interior. Access date: March 30 2018. https://www.icisleri.gov.tr/kurumlar/icisleri.gov.tr/Bakanlik_faaliyet/2017_yili_fly.pdf

II. KEY DEVELOPMENTS IN 2017

AREA 1: BASIC LEGAL GUARANTEES OF FREEDOMS

SUB-AREA 1.1: FREEDOM OF ASSOCIATION

1.1.1 ESTABLISHMENT OF AND PARTICIPATION IN CSOS

There is no explicit definition of “civil society organization” under the Turkish legislation. The legal framework only recognizes associations and foundations as CSO legal entities. Platforms are also recognized by law but not accepted as legal entities. Thereby, no collective group other than registered associations and foundations can pursue any legal purpose (e.g. having a bank account, applying to funds, take legal action). The registration process and the timeline for registration of associations and foundations are regulated differently by Law on Associations and Law on Foundations. The definitions (e.g. general morality, public order) in the Civil Code are vague and that result in the exercise of excessive governmental discretion into the activities of CSOs, particularly at the time of registration. According to Article 56 of the Turkish Civil Code, “No association may be formed for an object contrary to the laws and morality.” Article 101 of the Civil Code states that the “formation of a foundation contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community, is restricted.” CSOs are required to declare the type of work/activities they intend to carry out in writing in official documents, such as the governing statutes of associations or the articles of foundations.

Foreign organizations and representative offices are subject to permission, to operate or open a branch office in Turkey. The Ministry of Interior concludes the application processes of foreign CSOs upon obtaining the opinion of the Ministry of Foreign Affairs. However, there

are no explanations in the legislation regarding the criteria based on which the Ministry of Interior issues the approval and the Ministry of Foreign Affairs provides its opinion. There are no provisions in the legislation regarding the possible period of time of evaluating the application or the time required for concluding the application by the authorities. There have been cases when Ministry of Interior has limited the activities of foreign CSOs operating in Turkey on the grounds of “national security”. There is no timeframe prescribed in the legislation regarding the conclusion of applications made by Foreign CSOs to the Ministry of Interior for authorization to operate in Turkey. DoA reports, as of December 2017, in total 130 foreign associations have been given this permission. There is a slight decrease in the number of foreign associations granted this permission, comparing to 2016 when there were 140 foreign associations operating in Turkey. According to data provided by the GDoF, only 22 foreign foundations were given permission to operate in Turkey during 2017. The process of registration of foreign CSOs is highly political, the criteria for permission are not clearly defined and the process can take very long time with no proper feedback.

1.1.2 STATE INTERFERENCE

The legal framework does not provide guarantees against state interference in internal matters of associations, foundations and other types of non-profit entities. Legislation does not openly bring limitations for purpose of CSOs however it states, “they cannot adopt a purpose or aim that is contradictory with law or morality” and provides room for interference from authorities based on interpretation. Same situation applies to CSO activities. Even if the CSOs are not obliged to seek permission in decision making processes, they can face fines for not following the decision-making process set forth in secondary legislation (bylaw and others); thus, it is possible to say legislation creates room for state

interference to internal affairs of CSOs. In addition to Article 62 of the Civil Code requires the general assembly to be held within the first six months after the establishment, the newly founded associations are expected to reach at least 16 members and form their mandatory organs (executive board and internal auditing committee) within six months. The legal framework explicitly defines the ways in which the decision-making system (i.e. governance) should work: e.g. the decisions that can only be made by the general assembly and the decision authority of the executive and internal auditing committee are all clearly framed. Thereby, there is little room for CSOs to choose the way they like their internal decision-making system should work.

Although the Penal Code already covers penal sanctions, the Law on Foundations and Law on Associations brings further punitive provisions. The legal framework lays down a long list of bureaucratic requirements, which pose obstacles, since CSOs must spend considerable time and resources to comply with them. The inspection process does not involve a guidance mechanism to prevent associations and foundations from being fined by DoA and GDoF. Furthermore, the fees for breaching these requirements are disproportionately high, for CSOs in Turkey that operate under a rather disabling financial environment. For instance, failing to record an administrative change (such as a change in the board leadership or official address) in due time (15 days) in the official records may result with a fine of TRY 835 (approximately €170). Law on Foundations and Law on Associations allows authorities to inspect CSOs' activities and assess if they are in line with the organization's statute. Associations and foundations are not prohibited from directly engaging in political activities, but oppositional and/or rights-based CSOs are reportedly facing more government interference in practice than others. CSOs can be inspected on the grounds of their political affiliations, right-based issues, proximity to the government and complaints of individuals. Therefore, they are more prone to face arbitrary implementations and interpretations of the law and legislations. With respect to inspections of rights-based CSOs, it has been reported that unequal treatment (e.g. frequency, duration, and scope of inspections being different between rights-based CSOs and others) continues.

The Turkish government's decision to shut down and seize the assets of organizations that are allegedly linked to Fethullah Gulen Terrorist Organization (FETÖ) and other terrorist organizations has come into force since the July 15 failed coup of 2016. Under state of emergency, with executive decrees, in the period between 21 July 2016 and 24 December 2017, the number of associations dissolved by the Decrees reached to 1.607, of which 188 were later re-opened. As of March 2018, the number of dissolved associations is 1.419. During this time, 145 foundations were dissolved. The individualized reasoning for suspension and closures are not yet known. As an example, Article 3 of the executive decree no. 677 that closed 375 registered associations on 22 November 2016 states that: "Associations listed linked to terrorist organizations or that the National Security Council has established they belong to, cohere with or are linked to structures, formations or groups that are acting against national security, are closed." This decree permanently closed associations including but not limited to human rights organizations, women's right organizations, local cultural associations, student and business associations, service provider associations and sports clubs. All assets of the associations are considered to have been transferred to the Treasury free of charge, including the deeds for any premises, without any restrictions. There is no possibility to appeal or judicial remedy.

Conference of the INGOs of the Council of Europe drafted a report entitled "Opinion on the impact of the State of Emergency on Freedom of Association in Turkey."¹⁵ The expert of the opinion report indicated that: *"There are serious substantial and procedural concerns with respect to the Emergency Decree No. 667 ('Decree') as well as the other emergency decrees affecting NGOs... that the language of Article 2, par. 1 of the Decree suggests that any kind of direct or indirect link, connection or contact with the FETÖ may cause dissolution of an NGO. Article 2, par. 1 thus gives rise to the issue of an unfettered discretionary power of the state authorities to decide on this matter. In the absence of specific guidance and limits set out in the law, any linkage with the FETÖ, however remote it might seem—and regardless of the fact that*

¹⁵ *Opinion on the impact of the State of Emergency on Freedom of Association in Turkey*, Conference of INGOs, Expert Council on NGO Law, Council of Europe, Access date: January 9 2018, <https://rm.coe.int/expert-council-conf-exp-2017-2-opinion-impact-state-of-emergency-on-fr/168076c14>

there had not been any final judgement declaring FETÖ a terrorist organization before state of emergency came into effect—could trigger dissolution of an NGO.” In the recommendations section, the expert states the same effect could have been accomplished by temporary freeze of activities and assets of NGOs – rather than measures resulted in dissolution and confiscation of the asset of NGOs.

1.1.3 SECURING FINANCIAL RESOURCES

Economic activities of CSOs are permitted, only if they set up a separate economic enterprise under their legal entity. The commercial enterprises of associations and foundations are treated as business corporations and the Corporate Tax is levied upon profits of CSOs. This brings heavy burden on CSOs that undertake economic activities to create additional income for social benefit. The limited number of CSOs that set up such separate commercial entities is an indication. DoA reported as of 2013 (recent data is not available), only 3.290 associations (2 percent) have formed economic enterprises. GDoF reported as of 2016, 1.404 foundations (27 percent) have formed economic enterprises.

CSOs face serious problems in their fundraising activities mainly due to the highly restrictive, bureaucratic and limiting Law on Collection of Aid (No 2860, 23/6/1983). The Law requires receipt of permission for each fundraising activity by a CSO, via an application procedure in which the CSO is requested to provide a set of comprehensive information (e.g. amount of money to be raised, how it will be used, the timeframe of the activity, and where it will be conducted). The decision to evaluate the application and approval or disapproval lies with the local public authority. CSOs widely reported, public authorities finalize the application procedures with delays under the state of emergency during 2017.

CSOs may accept donations and assistance from corporations, individuals and other sources to realize the purposes set out in their bylaws/charters. CSOs can receive in-kind and cash donations from abroad with no extra costs and these donations are tax-free. The only condition is that the related public institution should be notified as soon as the CSO receives any amount of cash from abroad, prior to any expenditure. However, since foreign aid is not clearly defined in the legislation, even membership fees or individual donations transferred from

other countries are subject to notification requirement. This is very burdensome for CSOs, since they must notify the administration each time they receive a membership fee or donation (even very small amounts) from their members or donors.

SUB-AREA 1.2: RELATED-FREEDOMS

1.2.1 FREEDOM OF PEACEFUL ASSEMBLY

The Article 34 of the Constitution recognizes the right of citizens to organize an assembly and demonstration without having to obtain any prior authorization. In accordance with that clause, the rights to assembly and demonstrations may be restricted with a wide range of reasons such as “preservation of national security”, “public order” and “prevention of crime”, protection of “public moral” and “public health”. Although these restrictive measures are in line with the 11th Clause of the European Convention on Human Rights, since the legal framework does not define these concepts, they are continued to be interpreted narrowly, restrictively and in an arbitrary fashion. Furthermore, the Law on Meetings and Demonstrations further restricts the freedom of assembly by leaving spontaneous, unplanned and counter-assemblies subject to authorization. Besides, “The Law Amending the Law on Powers and Duties of the Police, Other Laws and Decrees” that is widely referred as the “Internal Security Reform Package” of 2015, widened power of police to conduct searches, use of weapons, wiretap, detain individuals without a warrant, and remove demonstrators from scenes of protest.

Following the failed coup attempt and under state of emergency, freedom of peaceful assembly has become severely restricted in Turkey, particularly when exercised by the groups that are critical of the government. During state of emergency, the administration has the right to restrict the use of right to assembly. According to Articles 9 and 11 of State of Emergency Law no. 2935, measures can be taken during state of emergency “to prohibit, postpone or impose permission obligation for assemblies and demonstrations in closed and open areas, as well as to determine, publicize, supervise and disperse areas of assemblies and demonstrations.” Various cases of restrictions and limitations are reported under the state of emergency, both country-wide and in specific provinces based on decisions taken by Governor offices.

The cases such as LGBTI Pride Parade, Feminist March, press statements by CSOs are examples. Such restrictions are not limited to marches and demonstrations, but rather affecting activities of rights based CSOs. As a recent example, starting from November 18, 2017, the governor's office of the Turkish capital Ankara has banned the public showing of all films, exhibitions and events related to LGBTI issues, citing "public sensitivities."

1.2.2 FREEDOM OF EXPRESSION

Freedom of expression has been steadily eroding in Turkey, through arbitrary and restrictive interpretation of the legislation, pressure, dismissals and frequent court cases against journalists, writers and social media users since 2013. CSOs, human rights defenders, journalists and citizens that publicly oppose government policies and are critical of the President, often faced legal and financial obstacles in exercising their freedom of expression and activities during 2017. Situation on freedom of expression reported as widely restricted, court cases are launched towards expressions on social media and website bans continue to be issued with administrative and civil court orders.¹⁶

De facto restrictions and limitations that were brought during the state of emergency has become concerning and widely highlighted in monitoring reports and statements of the European Union and the Council of Europe as well as in other reports published by international organizations and CSOs. PEN America, a watchdog group for journalists, along with Human Rights Watch, Amnesty International, and the Committee to Protect Journalists have issued monitoring reports and press releases voicing their concerns on the threats to freedom of expression in the aftermath of the shutdown of news outlets and detention of journalists and academics based on their alleged links to the FETÖ. According to Fragile States Index 2017, Turkey is among the most worsened countries because of its continued slide into instability and authoritarianism. CIVICUS stated that "civil society is still under siege over a year from the coup."

The most attention-grabbing incident was detention of eight human rights activists along with two international consultants on 5th of July 2017. Police raided a workshop on digital security and wellbeing of human rights defenders and detained human rights defenders from major CSOs, including Amnesty International Turkey's Director, on the island of Büyükada, based on an anonymous complaint. In the indictment, the prosecutor charged the suspects from seven and a half to fifteen years in prison on the charge of "being a member of the armed FETÖ", and other rights advocates are facing from five to ten years in prison on charge of "aiding an armed terrorist organization". Istanbul court conditionally released all the human rights defenders on November 22nd, 2017, while their trial continues. Taner Kılıç, who is the chairman of Amnesty International Turkey was arrested earlier on a separate charge of "being a member of FETÖ terrorist organizations". The court ordered the release of Taner Kılıç on January 31, 2018 but a local court later stopped his release.

Detention of human rights activists and the prosecution had severe consequences upon silencing the advocacy and monitoring work of rights-based CSOs operating in Turkey, in general. An Istanbul court has ruled for the arrest of a Turkish business person, philanthropist and human rights advocate Osman Kavala on 18th of October 2017 over alleged links to the July 15, 2016 coup attempt and the December 2013 corruption probes targeting government officials as well as being sponsor of Gezi Protests as part of a secret investigation. There has been no official statement from the authorities, and details have yet to be revealed.

1.2.3 ACCESS TO INFORMATION

The Constitution guarantees freedom and privacy of communication for all, but likewise contains restrictive clauses. For instance, "publications endangering the integrity or security of the state, violation of the general morality and the principle of family protection, revelation of state secrets or publications with the intention to encourage rebellion or other offenses" are prohibited. The use of such terms in the law needs further clarifications to overcome arbitrary applications of the law.

The government intensified its crackdown on the media throughout 2017. Especially, in the post- failed coup period, authorities detained critical journalists, closed

¹⁶ *Freedom on the Net 2017 Turkey Report*. Freedom House. Access date: January 2 2018. <https://freedomhouse.org/report/freedom-net/2017/turkey>
Freedom of the Press 2017 Turkey Report. Freedom House. Access date: January 2 2018. <https://freedomhouse.org/report/freedom-press/2017/turkey>

media outlets, censored online outlets, detained and deported foreign correspondents on the grounds on terrorism-related laws and alleged their connection with the Kurdish conflict, the ongoing conflict in Syria and the FETÖ movement. In the wake of the failed coup attempt, executive decrees brought closure of 162 media organizations (news agencies, TV stations, newspapers, radio stations, magazines, publishing organizations) and detains more than 100 journalists and media workers over the space of a month. As of December 2017, the Committee to Protect Journalists (CPJ) confirmed that at least 81 journalists were behind bars in Turkey. Freedom of Press 2017 reported Turkey remained among the countries that suffered the largest declines in terms of press freedom during this period and indicated “media is not free”.

Internet censorship and blocking or slowing access to social media networks by the authorities has increased in the last couple of years, posing challenges to exercise of freedom of expression. Turkey was downgraded in its internet freedom status. According to Freedom House ratings as of 2017, internet freedom in Turkey ranked as “not free”. On 29 April 2017, Turkish authorities blocked access to all versions of Wikipedia, due to articles indicating Turkey is among countries sponsoring terrorism. These restrictions imposed by Law “No. 5651 on Regulation of Publications on the Internet and Combating Crimes Committed by Means of Such Publications” that authorizes public agencies to ban websites and remove web contents without a prior court order if there is a violation of privacy, or if deemed necessary for matters of “national security, “restoration of public order” and “prevention of crimes”. As of December 2017, Wikipedia currently remains blocked in Turkey.

AREA 2: FRAMEWORK FOR CSO FINANCIAL VIABILITY AND SUSTAINABILITY

SUB-AREA 2.1: TAX/FISCAL TREATMENT FOR CSOS AND THEIR DONORS

2.1.1 TAX BENEFITS

Fiscal regulations remain problematic and there are only limited tax benefits available to support financial sustainability of CSOs. Despite existence of the distinct

public benefit status, the available fiscal benefits for public benefit CSOs are limited. Foundations and associations in Turkey are exempt from the Corporate (Profit) Tax unless they deal with economic activities. Grants and donations received by CSOs are also tax exempt. Tax deduction is only applicable if legal persons or corporations donate to CSOs that have a tax-exempt status (for foundations) or public benefit status (for associations). Individuals on pay-roll cannot deduct their donations. Donations are deductible up to 5% (10% for the development priority regions) of taxable income only when real persons or legal entities donate to tax-exempt foundations or associations with public benefit status. ‘Public benefit’ (for associations) and ‘tax exemption’ (for foundations) statuses are vaguely defined and the decision-making process is highly political, and the privileges provided with the statuses are very limited. The status is granted by the Council of Ministers to a very limited number of CSOs. According to data compiled in December 2017, there are 266 tax-exempt foundations out of 5.100 foundations in Turkey. The ratio of the number of tax-exempt foundations to the total number remained similar (5%) in compare to previous years. As of December 2017, the 322 associations with public benefit status constituted only 0.35% of the total number of 111.845 active associations. The number of associations with public benefit status was slightly higher (395) in 2015.¹⁷

2.1.2 INCENTIVES FOR INDIVIDUAL/CORPORATE GIVING

Real persons or legal entities can deduct up to 5% of their annual taxable income if they donate to a tax-exempt foundation or a public benefit association. This is only applicable for self-employed persons and no tax deduction is available for donations made by individuals who are on payroll.¹⁸

In addition, for donations made by real persons or entities to foundations or associations for projects related to arts and cultural heritage, there is no deduction limitation. Same rule applies to donations made to foundations or

¹⁷ Please refer to “Official Databases on Civil Society Data” section for the sources of the official data quoted here.

¹⁸ *Comparative Highlights of Foundation Laws: The Operating Environment for Foundations in Europe 2015*. European Foundations Centre. http://efc.issuelab.org/resource/comparative_highlights_of_foundationlaws_the_operating_environment_for_foundations_in_europe_2015 Access date: March 28 2018

associations with food banking permit. For donations that fall into these two categories, donors can have 100 percent tax deductions from their taxable income. According to “Turkish Taxation System” report of Revenue Administration published in 2016, there are no percentage limits on the deductions if donations are made to the public administrations under government budget or with special budget, to special provincial administrative bodies, to the municipalities and villages, to Turkish Red Crescent and the Turkish Green Crescent Associations (except for their economic enterprises).

SUB-AREA 2.2: STATE SUPPORT

2.2.1 PUBLIC FUNDING AVAILABILITY

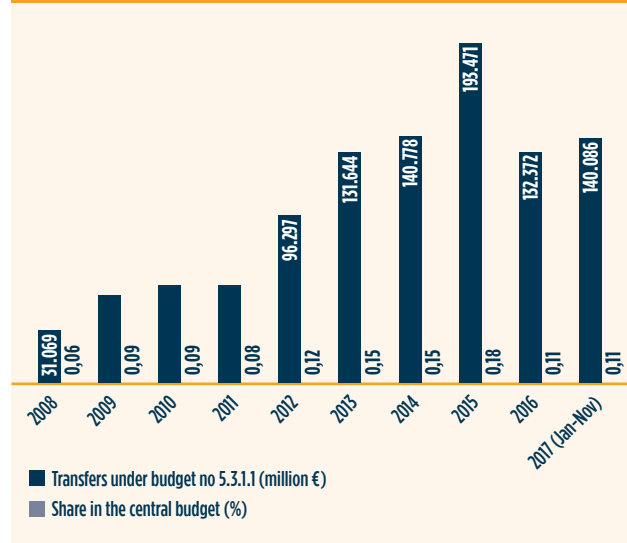
There is no holistic approach or legislation with respect to regulation of the public funds granted to CSOs, with the exception of EU funds distributed by the Central Finance and Contracts Unit (CFCU). The public funds allocated to CSOs are not systematically planned in the state budget, and Ministries or Municipalities may set aside a budget for allocation to CSOs.

According to data of 2015-2016 (recent data is not available), public funding constitutes 4,10 percent of total income of associations and 16,63 percent of foundations.¹⁹ There is no accurate information on the percentage of the total budget allocated to CSOs from the central budget. There is a budget line in the central budget (Budget no. 5.3.1.1: Transfers to organizations such as associations, unions, trust funds, etc.) However, there are no available sub-budget lines indicating total amount of funding provided to associations or foundations. Graph 1 presents the amounts reported by both central level and local level public institutions under this budget line between 2008 and 2016.²⁰

NGO Research and Training Unit of Istanbul Bilgi University reported, in 2015, 873.674.000 TRY (193 million €) distributed to non-profit organizations under budget no 5.3.1.1 (transfers to organizations such as associations, unions, trust funds, etc.) and this amount constituted

0,17% of the central budget. The amount of funding for these entities were declined in 2016 and 2017. This budget line includes pension funds so it is not possible to identify the concrete amount of funding provided to CSOs. Yet it is widely accepted that the budget remains insufficient and not proportional to the size and needs of civil society in Turkey.

Graph 1: Public funding allocation to non-profit organizations (2008-2017)



2.2.2 PUBLIC FUNDING DISTRIBUTION

There is no holistic approach or legislation with respect to regulate the state support granted to CSOs, with exception of distribution of EU funds by The Central Finance and Contracts Unit (CFCU). The funds that will be allocated to CSOs are not planned in the central budget; the Ministries may set aside a budget if authorized by the Law. The budget for such funding schemes is determined at the discretion of Ministries and may vary from year to year. The DoA of Ministry of Interior's PRODES (Proje Destek-Project Support), Ministry of Development Programme's SODES (Social Support Programme), Ministry of Culture, Ministry of Youth and Sports and Regional Development Agencies launch regular call for proposals however the implementation is not coordinated and not consistent. Furthermore, even though there is a regulation (No. 26231), which holds public institutions

¹⁹ *Monitoring Matrix 2016 Report*. Third Sector Foundation of Turkey. Access date: April 16 2018. <http://www.tusev.org.tr/usrfiles/images/MM2016TurkeyReport.pdf>

²⁰ *Türkiye'de Kamu Kaynaklarından Kar Amacı Gütmeyen Kuruluşlara Yapılan Transferler [Transfer to Non-profit entities from the public budget in Turkey]*. Istanbul Bilgi University. NGO Research and Training Unit. Access date: January 22 2018. <http://stk.bilgi.edu.tr/media/uploads/2018/01/21/bilginotudernek.pdf>

accountable to annually publicize the list of organizations, amount and aim of financial support, other than a few Ministries, most of public institutions do not comply with this regulation.

According to Article 75 paragraph (c) of the Municipal Law, municipalities may implement joint service projects that fall into the scope of their duties and responsibilities with associations operating for public interest and tax-exempt foundations based on the contracts to be concluded pursuant to the decision of the Municipal Council. For joint service projects with other associations and foundations it is necessary to obtain permission from the highest local administrative authority.

The funds of Ministries are distributed to CSOs mostly in the form of project partnerships rather than through systematic grant allocations. Ministry of Interior launched a "Project support programme for CSOs" in 2010. Within the scope of this program, the Department of Associations (The DoA) aims to increase the capacities of CSOs and enhance their active participation in decision-making process. The DoA published project application guidebook for 2017 with a manual for using PRODES which allows online application and reporting. However, contrary to previous years, the total amount allocated is not stated in the application guidelines of 2017. The DoA adopted a new regulation in March 2017 indicating the procedures and principles for providing aid to associations from the Ministry of the Interior's budget, allocating, monitoring, supervising and publicly disclosing these funding. Article 11 of the Regulation states that: *"the Ministry publishes the name list of the associations, the information about the associations, the purpose of the aid, the amount of the help and the amount of the aid made public in the Ministry's website until the end of February of the following year."* The figures of 2017 have not been published during the reporting period. According to the application manual published for the 2016 project cycle, the foreseen budget to be allocated was TRY 22,515,000 (€4,9 million). The minimum amount of the individual project budgets could be TRY 5,000 (€1,096) and could not exceed TRY 150,000 (€32,895). Application manual of the DoA's PRODES does not disclose the total budget to be allocated for associations as well as minimum/maximum amounts to be granted per projects.

SODES of Ministry of Development published full list of CSOs and other organizations that were entitled to

receive funding from 2008 to 2015 funding cycle. This data has been released for all cities allowing tracking down information of CSOs supported with SODES. According to data available online, only 28 percent of the total budget allocated to CSOs, whereby 57 percent of total budget used for supporting public institutions.

Ministry of Youth and Sports provides grants to youth CSOs in East and Southeast regions and youth projects. Throughout 2016, two calls for proposals were published, however, the budget allocation for the programmes were not stated in application guidelines. Ministry of Youth and Sports did not publish call for proposals in 2017.

Ministry of Culture and Tourism has published the list of grantees of 2016 and the amounts of the funding on its website. In total 859 "cultural activities" were supported by the Ministry with a total budget of TRY 18,006,470 (€3,9 million). The amount of budget was of TRY 20,464,548 (€4,5 million) in 2014 and TRY 10,071,619 (€2.2 million) in 2015.

2.2.3 ACCOUNTABILITY, MONITORING AND EVALUATION OF PUBLIC FUNDING

A structure to monitor and report the planning and implementation of the public funding for CSOs do not exist. There are no defined rules setting out CSO involvement. General principles regarding distribution of public funds, financial accountability, monitoring and evaluation are regulated under the Law on Public Finance Management and Control (No: 5018). There were instances where Line Ministries have issued directives and regulations based on the decision of Council of Ministers on the regulation of funding of associations and foundations from public administrations' budgets. These ministries have also published application guidelines, manuals, application criteria and publicized the amount of support provided in the last years and the names of the supported projects.

2.2.4 NON-FINANCIAL SUPPORT

The Law no. 5072 on the Relations of Associations and Foundations with Public Institutions prohibits state authorities granting in-kind support to CSOs. However, some exceptions are specified in the secondary legislation. There are examples of cooperation between CSOs and public institutions based on protocols, especially at the local level. Municipalities are more eager

to offer in-kind support to CSOs, often in the form of providing travel support, meeting rooms, and assisting publicity of CSO activities to larger audiences. However, the relevant article of the Municipality Law (No: 5393, 3.07.2005), which give responsibility to municipalities to assist and support CSOs, limit the organizations to be supported with the ones having a public benefit or tax exemption statuses. The Municipality Law (Article 75), which is the basis for allocation of non-financial supports, does not specify the forms of these supports or the criteria for obtaining this type of support for associations and foundations. In addition, in 2012, an amendment was made on article 75 of the Municipality Law, which has the possibility to further hamper cooperation between CSOs and municipalities. The new article contains neither a clarification regarding the types and nature of service activities to be supported nor the criteria for permission.

SUB-AREA 2.3: HUMAN RESOURCES

2.3.1 EMPLOYMENT IN CSOS

CSOs are subject to the same legal requirements and obligations with regards to employment as the for-profit entities. There are no special policies to stimulate employment in CSOs. For example, if a company operating in a sector that is determined as a priority sector to be supported in development plans of the government, they can benefit from tax and employment incentives. However, similar incentives are not available for CSOs.

In total, 71.770 employees work for 116.945 CSOs (total number of associations and foundations reported in 2017). The average number of employees per CSO is 0.61. Comparing to 2013, there is no substantial increase in the employment level in civil society (0,57 employee per CSO reported in 2013). The number of project-based staff (12.982) and part time employees (4.120) engaged with associations constitute almost half of the total number of association employees (37.575). More than three-fourth (76%) of employees work in associations and one fourth (24%) in foundations. Only one third of (36%) foundations (1861 foundations) employ 17.093 employees. The average number of employees in a foundation is 9,1. This data also shows that two third of foundations are operating without any employees. The average number of employees in an association is 0,48 while the average number of

employees was 0,34 in 2013. Based on the data provided by the DoA, associations spent 14.5 percent of their total amount of expenditures for the personnel costs in 2015 (recent data is not available). This rate was approximately 12 percent in previous years.²¹

2.3.2 VOLUNTEERING IN CSOS

In Turkey there is no specific legislation for regulating volunteerism. The legal basis defining the contractual relationships between volunteers and CSOs are not established. The Labor Law does not clearly define volunteerism and include provisions necessary to protect volunteers and their organizations (definitions, rights and obligations, contractual provisions, liability rules e.g.). There is no specific legislation containing provisions tax or other types of benefits to stimulate volunteerism. There is no practice of tax-free reimbursement of travel expenses and per diems to volunteers.

According to data provided by GDoF, there are 612 foundations working with volunteers with a total number of 1.025.538 volunteers in 2016. The reliability of this data is questionable since there is no legal definition for volunteers. There is a high level of discretion in reporting number of volunteers by foundations.²² Many CSOs working with volunteers reported that, during 2017, too many volunteers quit volunteering. This negative trend is associated with the conditions of state of emergency that is detrimental to participation to civil society and getting organized.

2.3.3 NON-FORMAL EDUCATION

Education system in Turkey is highly centralized and there are limited numbers of examples where CSOs carry out non-formal education. Subjects related to civil society are not covered systematically in the official curriculum at different levels of the educational system. At the university level, students can attend courses related to philanthropy, civic engagement, civil society and other similar topics.

²¹ Please see "Official Databases on Civil Society Data" section for the sources of the official data quoted here.

²² Ibid.

Ministry of Education published a circular entitled “Education and Training Activities of CSOs” on January 2017²³ which suspended educational services of CSOs and international organizations targeting refugees under temporary protection which takes place out of public premises without permission and notification.²⁴ This circular noted that, any activities of CSOs in education field should go through review and protocol agreement process of the Ministry of Education. Some of those CSOs offering language courses or any other educational classes to refugees reported that their activities were suspended for a while and after a review process they were authorized with necessary permissions.

AREA 3: GOVERNMENT - CSO RELATIONSHIP

SUB-AREA 3.1: FRAMEWORK AND PRACTICES FOR COOPERATION

3.1.1 STATE POLICIES AND STRATEGIES FOR DEVELOPMENT OF AND COOPERATION WITH CIVIL SOCIETY

In 2017, the state of CSO-Government relations has not been improved in terms of adopting new strategies and policies. As of 2017 an overarching national strategic document maintaining mechanisms for CSO-Government cooperation and standards for consultation of CSOs is still missing. There is neither a binding legislative framework nor a national level institution or mechanism to govern the relationship between CSOs and public institutions.

3.1.2 INSTITUTIONS AND MECHANISMS FOR DEVELOPMENT OF AND COOPERATION WITH CIVIL SOCIETY

There is no designated body, institution or contact point for maintaining, developing and coordinating dialogue between CSOs and the public institutions. Except for a few Ministries such as the Ministry of EU Affairs and Ministry for Youth and Sports, most of the Ministries do

not have contact points for CSOs to maintain, sustain and foster relations with CSOs. Thus, approaches of public institutions may differ since formalized mechanisms of action to govern civil society-public sector cooperation are not convened. In the absence of standards, guidelines and frameworks, dialogue between CSOs and public institutions are maintained and sustained via individual relations between civil servants and CSO representatives.

At the municipal level, there are defined mechanisms to support civil society participation in the policy making processes. The Municipality Law enacted in 2005, has enabled formation of the “City Councils” with the aim of having the CSOs and the other stakeholders in the city to take part in the decisions and practices. In accordance with this Law, The City Councils Regulation was adopted in 2006. According to the Law on Municipalities and the City Councils Regulation, City Councils must have representatives from CSOs. Therefore, at local level, maintaining CSOs participation in these Councils is held mandatory for municipalities. In addition, the municipalities are held responsible to support (also financially) the activities of the City Councils. Last, but not least, the Law makes it mandatory for Municipalities to place opinions adopted by Councils on the agenda of the elected Municipal Council. However, problems in implementation are observed. The number of municipalities that established these councils is still limited and CSOs complain that participation is not maintained and sustained in a transparent and accountable manner.

SUB-AREA 3.2: INVOLVEMENT IN POLICY- AND DECISION-MAKING PROCESS

3.2.1 THE STATE RECOGNIZES, THROUGH THE OPERATION OF ITS INSTITUTIONS, THE IMPORTANCE OF THE DEVELOPMENT OF AND COOPERATION WITH THE SECTOR

There is no holistic approach to improve enabling environment for civil society development and to enhance involvement of CSOs in policy development and decision-making processes. A binding overarching policy or legal framework in Turkey governing civil society and government relations is not available. A strategic approach laying down clear goals, measures, responsibilities, action plans and accordingly total amount of funding available for CSOs is also lacking.

²³ Notice on Temporary training centers supported by CSOs [in Turkish], Ministry of Education, General Directorate of Lifelong Learning, Access date: April 17 2018, http://ergani.meb.gov.tr/meb_iys_dosyalar/2017_03/27110021_stk_larYn_desteklediYi_geYici_eYitim_merkezleri.pdf

²⁴ “Ministry of Education: Some CSOs have conducted activities that are not in line with their general purpose and basic principles” [in Turkish], Hurriyet, <http://www.hurriyet.com.tr/milli-egitim-bazi-stklar-genel-amac-ve-temel-ilkelerine-uygun-olmayan-calismalar-yapti-37298065>

Prime Minister Circular Decision No 2017/16 on the Preparations of the 11th Development Plan was published in July 2017 and indicated the details of the special committees and working groups to be established for the consultation process. The Ministry of Development launched the consultation process for the preparation of the 11th Development Plan at the end of December 2017. A special committee formed entitled “Civil society organizations in the process of development” that brought together representatives from the relevant public authorities and CSOs. The report of this committee will be finalized until April 2018. However, it is not known to what extent the final 11th Development Plan will refer to the findings and recommendations of this report.

3.2.2 STANDARDS FOR CSO INVOLVEMENT

There are several pieces of legislation, which lay down different aspects of civil society-public sector relations. At the central level the most important piece of legislation on the issue is the *Regulation on the Procedures and Principles of Drafting Legislation*. The regulation foresees that legislation drafts shall be sent to related ministries and public institutions and organizations to solicit their opinions. However, the Regulation does not make it obligatory to submit the legislation drafts to CSOs. Regulation Article 6 paragraph 2 states “Relevant (...) non-governmental organizations shall be consulted about drafts”. As consulting CSOs is not mandatory under the Regulation, CSO participation takes place through invitation and is usually limited to objection or approval of the decisions. However, no clear indication regarding the selection process, criteria, or methods and means of integrating the received contributions is regulated in the regulation.

Despite the lack of a general strategy document, there is a reference to communication and cooperation with respect to shared goals between the public sector and civil society organizations in the Strategy Plans prepared by the ministries and various public institutions in accordance with the *Law No 5018 on Public Finance Management and Control*. All public institutions including Ministries and municipalities at the local level are required to draft strategic plans. According to *the Regulation on Procedures and Principles of Strategic Planning in Public Administration*, Clause 5, any public institution is responsible to ensure participation of CSOs and to receive their contributions. According Article 7 paragraph 2 of the

same regulation, “(...) non-governmental organizations shall submit their opinions regarding the drafts within 30 days.” Where no response is received during this time, it will be treated as an affirmative opinion. Considering their limited institutional capacity, expecting CSOs to respond within 30 days is most often not realistic. Last but not least, following the consultation stage, the drafts are sent to the Prime Minister’s office, and are prone to be amended at that stage with no further steps available for CSOs’ to provide further comments. CSOs, cannot review the drafts until they come to the agenda of the General Assembly of Turkey. The by-law of the Grand National Assembly of Turkey (TGNA) does not lay down a participation or consultation procedure. Parliamentary committees are not obliged to consult CSOs in law or policy-making processes.

3.2.3 PUBLIC ACCESS TO DRAFT POLICIES AND LAWS

The Right to Information Law (No. 4982, 9/10/2003) lays down some limitations in access to information. The most important problems in the existing legislation is that it gives the public institutions the right not to disclose information if the information or documents pertaining, (1) state secrets (2) the State Intelligence, (3) administrative investigation (4) judicial investigation or prosecution (5) privacy of the individuals (6) the privacy of communication (7) trade secrets (8) intellectual property and works of art (9) institutions’ internal regulations (10) institutions’ internal opinions, information notes and recommendations (11) formerly classified information or documents and (12) requests for recommendations and opinions.²⁵ Concepts such as “state secret”, “national security” or “economic benefits of the country” are not defined clearly in the legal framework and hence public institutions are given interpretation authority and discretionary power. Problems with the implementation of the Right to Information Law continued in 2017. According to Article 7 of Law No. 4982 “the institutions and agencies may turn down the applications for any information or document that require a separate or special work, research, examination or analysis”. Common problems that are reported include

²⁵ *Legislation on The Right to Information*. The Review Board of Access to Information. Access date: 13 April 2018. http://www.bedk.gov.tr/Yayinlar/LEGISLATION_ON_THE_RIGHT_TO_INFORMATION/LEGISLATION_ON_THE_RIGHT_TO_INFORMATION.pdf

differences in application procedures, instances where no response is provided within the time prescribed under the law and questions left unanswered or insufficiently answered claiming additional research is required to respond based on Article 7 of the Law No. 4982.²⁶

The right to access to information is restricted under state of emergency. Persons who are dismissed from the public service and institutions and organizations suspended with State of Emergency Decree Laws cannot practice their rights to access information. This restriction was brought in accordance with the 16th, 19th and 20th articles of the Right to Information Law No. 4982 that limits access to information or documents concerning judicial investigations and prosecutions and the information classified as “the state secret”.

Publication of the draft laws remains at the discretion of the Ministries. The *Regulation on the Procedures and Principles of Legislation Preparation* includes provisions setting forth that, if it concerns the public, drafts may be brought to the public attention by the relevant ministry through the internet, press or broadcasting to inform or take the feedback into account during the opinion evaluation process.

In addition to other developments, Turkey also was made inactive in the Open Government Partnership in September 2016 since the government failed to deliver its National Action Plan included commitments to publicize all draft legislations on a web platform to enable a wide scale consultation through regulation.gov.tr; enhance transparency and accountability by setting up different web platforms including spending.gov.tr and electronic public procurement platform.

3.2.4 CSOS' REPRESENTATION IN CROSS-SECTOR BODIES

The decision-making processes of central governments may at times also involve the participation of CSOs. There are different regulations regarding this issue in different laws. The legislation includes phrases such as, “civil society organizations invited regarding to the issues on the agenda”, “concerned civil society organizations”,

“related civil society organizations depending on the meeting agenda”, etc. In some laws the names of CSOs are openly stated, and in some the administration is granted unlimited power of discretion regarding which CSOs may partake in the advisory bodies. The relevant law and regulations do not define objective mechanisms, procedures and criteria with respect to the selection processes of CSOs that are to be involved in policy processes (e.g. consultation, dialogue). The knowledge level of the civil servants about civil society, means, ways, and methods of involvement of CSOs in policy processes becomes crucially important in the absence of standards, guidelines and frameworks.

²⁶ *Civil Society Monitoring Report 2015-2016 Case Studies. Right to Access to Information for CSOs*. Third Sector Foundation of Turkey [in Turkish] Access date: 13 April 2018. [http://www.tusev.org.tr/urfiles/images/BilgiEdinmeVakaAnalizi.21.03.18\(1\).pdf](http://www.tusev.org.tr/urfiles/images/BilgiEdinmeVakaAnalizi.21.03.18(1).pdf)

III. KEY FINDINGS AND RECOMMENDATIONS

KEY FINDINGS

No	Top 6 findings from the Report	Reference to the Monitoring Matrix ²⁷		Reference to the EU CS Guidelines ²⁸	
0	The coup attempt of July 15, 2016, and the latter conditions of state of emergency posed imminent threat to use of basic rights and freedoms, threatened civic space and led to an uncertain environment for the civil society – public sector relations.				
1	The definitions of civil society and civil society organizations are absent in the related legislation. The legal framework only recognizes associations and foundations as CSO legal entities.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1.a
2	The legal framework regulating state inspection of CSOs is complicated, restrictive, and bureaucratic and is focused on limitations rather than freedoms, defining penalties and sanctions that do not meet the principle of proportionality.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1.a
3	Locations and duration allowed for meetings and demonstrations are restrictive while the Law provides the administration and security forces with wide discretionary powers.	Area	1	Objective	1
		Sub-Area	1.2	Result	1.1.a
4	Tax exemption and public benefit statuses are granted to very limited number of CSOs by the Council of Ministers. These procedures are highly bureaucratic, political and non-transparent while the privileges brought by these statuses are very limited.	Area	2	Objective	2
		Sub-Area	2.1	Result	2.1.a
5	A standardized approach or legislation with respect public funding mechanisms to support the capacities and activities of CSOs is missing in Turkey.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.4.b
6	There is neither a government strategy nor relevant legal or operational framework laying out Public Sector-CSO relations.	Area	3	Objective	3
		Sub-Area	3.1	Result	3.1.a

²⁷ *Monitoring Matrix on Enabling Environment for Civil Society Development. The Tool-kit.* Balkan Civil Society Development Network (BCSDN). Access date: 8 June 2018. http://www.balkancsdn.net/novo/wp-content/uploads/2015/08/BCSDN_Monitoring_Matrix.pdf

²⁸ *DG Enlargement Guidelines for EU support to civil society in enlargement countries, 2014-2020.* EU Commission Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR). https://ec.europa.eu/neighbourhoodenlargement/sites/near/files/pdf/civil_society/doc_guidelines_cs_support.pdf Access date: December 28, 2017.

KEY POLICY RECOMMENDATIONS

No	Top 6 recommendations for Reform	Reference to the Monitoring Matrix		Reference to the EU CS Guidelines	
0	State of emergency should be repealed immediately.				
1	The legal framework should be revised to include the definitions of civil society and civil society organization, which acknowledge a variety of legal entities including foundations, associations as well as initiatives, social enterprises and grant-making foundations. Un-registered civil society activities should also be acknowledged in the legal framework.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1.a
2	Explicit provisions prohibiting public administration from interfering with the internal matters of associations and foundations should be introduced to the legislation. The legal framework regulating inspection of CSOs should be revised and limitations of state interference in internal affairs of CSOs should be clearly laid down. The rules for inspection and the limits of authority of the state inspectors should be clearly defined in the legislation. Since the Penal Code already covers penal sanctioning, the punitive provisions in the Laws on Foundations and Associations should be removed.	Area	1	Objective	1
		Sub-Area	1.1	Result	1.1.a
3	The Law and Regulations for Demonstrations and Meetings should be annulled completely, and a new law should be drafted that would allow peaceful assemblies and demonstrations to be held in line with the European Convention on Human Rights and the European Court of Human Rights rulings.	Area	1	Objective	1
		Sub-Area	1.2	Result	1.1.a
4	There should be a comprehensive re-examination of tax laws regarding civil society organizations. Tax exemption/Public Benefit statues should be granted by an autonomous and transparent authority which bases its decisions on criteria that are objective.	Area	2	Objective	2
		Sub-Area	2.1	Result	2.1.a
5	A national strategy with respect to public funding and fund distribution should be developed and the applicable legislation should be revised accordingly. A clear procedure should be in place for a uniform, standardized, transparent and binding state support.	Area	2	Objective	2
		Sub-Area	2.2	Result	2.4.b
6	The framework of the civil society-public sector cooperation, including provisions ensuring civil society participation in the legislation and formation of public institutions that would directly manage the relationship with civil society should be prepared in a participatory manner.	Area	3	Objective	3
		Sub-Area	3.1	Result	3.1.a

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Article 19. Turkey Country Profile <https://www.article19.org/resources/xpa-2017-country-profile-turkey/>

CIVICUS Monitor <https://monitor.civicus.org/>

Civil Society Development Centre (STGM) <http://www.stgm.org.tr/>

Civil Society Index Project in Turkey <http://www.step.org.tr/>

Civil Society Public Sector Cooperation Project <http://www.siviltoplum-kamu.org/en>

European Center of Non-for-Profit Law <http://ecnl.org/>

European Foundation Centre (EFC) <http://www.efc.be/>

Human Rights Joint Platform (IHOP) <http://www.ihop.org.tr/enihop/>

Istanbul Bilgi University. NGO Training and Research Center <http://stk.bilgi.edu.tr/>

Monitoring Matrix Turkey Country Reports 2013 -2016 <http://monitoringmatrix.net/>

Open Government Partnership (OGP) <https://www.opengovpartnership.org/>

Technical Assistance to Civil Society Organizations Project (TACSO) <http://www.tacso.org/>

The International Center for Non-Profit Law (ICNL) Civic Freedom Monitor Project <http://www.icnl.org/research/monitor/turkey.html>

Third Sector Foundation of Turkey <http://www.tusev.org.tr/en>

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Turkey and Facts <https://turkeyandfacts.com/>

Turkey Blocks [Mapping internet freedom project] <https://turkeyblocks.org>

V. TURKEY: KEY INDICATORS & INTERNATIONAL RANKINGS

KEY INDICATORS

Population	80.845.215 (July 2017 est.)
Capital	Ankara
Type of Government	Parliamentary Republic
Life Expectancy at Birth	Male: 72, 7 years Female: 77, 5 years (2017 est.)
GDP per capita	\$10.787 (2016 est. the World Bank data)
Poverty headcount ratio at national poverty line (% of population)	

Source: *The World Factbook*.

INTERNATIONAL RANKINGS

Ranking Body	Rank	Ranking Scale (best – worst possible)
UN Human Development Index	71 (2017)	1 – 188
World Bank Rule of Law Index	49 (2017)	100 – 0
World Bank Voice & Accountability Index	30 (2017)	100 – 0
Transparency International	41 (2017)	1 – 176
Freedom House: Freedom in the World	38 (2017) Political Rights: 4 Civil Liberties: 5 (2017)	100-0 1 – 7 1 – 7
Freedom House: Freedom on the Net	66 (2017)	0-100
Freedom House: Freedom of the Press	76 (2017)	0-100
Foreign Policy: Fragile States Index	Rank: 64 (2017)	178 – 1

TÜSEV was established by Turkey's leading civil society organizations, and has now grown to a supporting network of over 100 associations and foundations that share a vision of strengthening the legal, fiscal and operational infrastructure of the third (non-profit) sector in Turkey. TÜSEV has been contributing to improving civil society laws, generating research about the sector, and encouraging dialogue and cooperation among private, public and non-profit actors since 1993.



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