

COUNTRY REPORT

ON

FREEDOM OF ASSOCIATION
TURKEY

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1. Political, democratic and Human Rights Specific contexts

At the Helsinki European Council of December 1999, Turkey was officially recognised as a candidate country. This marked the beginning of a reform process in Turkey in the context of human rights and democracy. A pre-accession strategy for Turkey designed to stimulate and support its political reform process through financial assistance and other forms of cooperation. In December 2004, the European Council concluded that Turkey sufficiently fulfils the Copenhagen political criteria to open accession negotiations. Negotiations started on 3 October 2005 when the Council adopted a Negotiating Framework.

Despite the process of democratisation initiated for purposes of harmonisation with the EU's Copenhagen political criteria, many problems in Turkey as regards human rights and democratisation remain unresolved during last seven years.

There is substantial difference between the period 1999 and 2004 and the period extending from the late 2004 or early 2005 up to present day.

In spite of some reluctance, impasse or backtrack, governments have had at least some partial political will for fulfillment of Copenhagen political criteria which became mandatory upon Turkey's candidature for full EU membership, during the period between 1999 and 2004. Consequently there were some constitutional and legislative amendments in line with this commitment. Most of these were significant amendments also welcomed and positive by the human rights movement in Turkey.

During this period, a total of 8 harmonisation package was introduced. These packages include amendments in Turkish Penal Code, Law on Ban and Pursue Smuggling, Law on Forests, Military Penal Code, Law on Fight Against Terrorism, Criminal Procedures Law, Administrative Trial Procedures Law, Law on the Establishment & Trial Procedures of State Security Courts, Press Law, Law on the Establishment and Broadcasting of Radio and Televisions, Association Law, Law on Demonstrations and Meetings, Law No:657 on Civil Servants, Law on Provincial Administration, Law on Duties and Rights of the Police, Political Parties Law, Law on Education and Teaching of Foreign Languages, Law on Directorate-General for Foundations and the Foundations Law.

Among amendments, abolition of the death penalty in peace times, expanding the freedom of association, teaching in private courses and broadcasting on languages spoken in Turkey other than Turkish, abolition of the phrases "legally banned languages" existed in some laws, restriction of custody periods to four days and enabling foundations to own property and providing the opportunity for renewal of the trial after the decision of the European Court of Human Rights can be counted as significant amendments.

In the framework of the reform process, Turkey has signed a series of international instruments that it had previously declined to sign in the area of human rights and it ratified as well a number of others. Provisions have been made to incorporate in national legislation those binding international instruments that have been signed pursuant to Article 90 of the Constitution as amended. However, in the matter of Turkey's fulfilling its obligations under the (*said international*) instruments thus signed; problems are being experienced in both legislative and implementation aspects. Especially the responsibilities pertaining to mechanisms for monitoring under International and Regional instruments for human rights are not being fully carried out.

It should be noted here that the main problem for human rights organisations was poor implementation of constitutional and legislative amendments rather than the absence of relevant legislation. Another important fact, which is deliberately or otherwise missed in evaluations, is that armed clashes in Kurdish areas had nearly come to an end in the period between 1999 and 2004. This fact facilitated the process of normalisation and boosted hopes of peace. Indeed, positive future prospects in the field of democracy and human rights accompanied by optimistic outlook dominated this period.

Constitutional and legislative amendments given effect and new legislation passed until the end of 2004 were significant arrangements having their positive effects on democracy and human rights. However, all these felt short of bringing about structural changes in the State.

As a matter of fact almost no step was taken and no serious change was introduced in such critical areas as civilising, rule of law, judicial independence, minority and cultural rights, autonomy and democratisation of universities, reduction of inter-regional disparities, reflecting the pluralistic nature of the society to legislative and executive power and seeking political solutions to the Kurdish problem.

Towards the end of 2004, positive conditions which had facilitated normalisation and laid a ground conducive to democratisation and improvements in human rights started to turn into negative in some respects marked. New arrangements were made in a rather business as usual mentality, limited only to the objective of giving at least some response to the requirements of the EU. When the cease fire declared by the PKK in 1999 ended in June 2004, armed clashes restarted. The re-emergence of armed clashes contributed to the re-strengthening of discourse on “fight against terrorism” and heightening the voice of nationalistic circles while facilitating the presentation of demands on cultural rights and peace as “support to separatism”.

Between 2005 and 2007, no significant progress made in democratisation and improvement in human rights situation. This period is rather marked as a retrogression from the reform process. Developments during this period can be summarised below.

Observance of international human rights law

- The Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) on the abolishment of the death penalty was ratified in March 2006.
- Protocol No 13 of the ECHR, on the abolishment of the death penalty at all times was ratified in February 2006.
- Protocol No 14 of the ECHR, amending the control system of the Convention entered into force in May 2006.
- The UN Convention against corruption entered into force in June 2006.
- Turkey ratified the revised European Social Charter on 27 September 2006. The European Social Charter was accepted with reservations on Article 5 (right to organise) and Article 6 (right to bargain collectively) as well as on paragraph 3 of Article 2 (minimum annual holidays) and paragraph 1 of Article 4 (remuneration and decent standard of living).
- Turkey has lifted previous reservations on the European Social Charter's provisions, namely the right of children and young persons to protection and the right of disabled persons.
- Protocol No 12 on the general prohibition of discrimination by public authorities, signed in 2001 but not ratified.
- The First Optional Protocol to the ICCPR, signed in 2004, but not ratified.
- The Optional Protocol to the UN Convention against Torture (OPCAT), signed in September 2005, but not ratified
- Turkey signed the new UN Convention on the Rights of People with Disability, but not ratified yet.

Anti-Terror legislation: Amendments to the anti-terror law were adopted in June 2006 as a response to the re-emergence of the armed clash in the southeastern part of Turkey. Under the new law, the list of what constitutes a terrorist offence was extended and a wide definition of terrorism maintained. The law introduces legal restrictions on freedom of expression, the press and the media. The new anti-terror law reduces procedural safeguards for suspects of terrorist offences. Access to a lawyer may be denied for a period of 24 hours, and under certain circumstances security officers may attend meetings between suspects and their lawyer. As regards the defence rights, officials and former officials are granted differentiated treatment. Furthermore they dispose of wider discretion with regard to the use of firearms. Although there has been several criticism from domestic and international human rights organisations and lawyer organisations, none of criticism was taken into consideration. There are several court cases launched against individuals who expressed their own thoughts.

In addition to the anti-terror legislation, amendments have been made on the Law on Duties and Authorities of the Police in 2007 just a few days before the early-elections. Through these amendments, the authorities of the police against individuals have been overwhelmingly expanded. Although the short time of the enforcement of the law, ill-treatment and torture allegations against police officers increased.

Freedom of expression

Freedom of expression is under severe restrictions in Turkey. There are several articles in the Turkish penal Code, in the new Anti-Terror Law and in the Law protecting Atatürk preventing the exercise of freedom of expression. One of the outstanding articles of the Turkish Penal Code is the Article 301.

Article 301, Turkish Penal Code

1. Public denigration of Turkishness, the Republic or the Grand National Assembly of Turkey shall be punishable by imprisonment of between six months and three years.
2. Public denigration of the Government of the Republic of Turkey, the judicial institutions of the State, the military or security structures shall be punishable by imprisonment of between six months and two years.
3. In cases where denigration of Turkishness is committed by a Turkish citizen in another country the punishment shall be increased by one third.
4. Expressions of thought intended to criticize shall not constitute a crime.

Another restrictive article of the Turkish Penal Code is the Article 220.

Article 220, Turkish Penal Code: The article describes the offense of “forming an organization with the purpose of committing a crime” and the penalties to be prescribed for it.

Paragraph 7. Persons who knowingly and willingly help an organization shall be punished as members of the organization even if they are not part of the hierarchical structure of the organization.

Paragraph 8. Persons who wage propaganda for the organization or its goals shall be punished with prisons terms of one to three years. In the event this offense is committed through the press or broadcast media the penalty shall be increased by half.

Since the enforcement of the new Turkish Penal Code in 2005, more than 100 individuals (artists, intellectuals, human rights defenders, journalists, novelists) had been gone under trials. The prosecutions and convictions for the expression of non-violent opinion under Article 301 of the new Penal Code are caused to the creation of a climate of self-censorship in the country. Although this article includes a provision that expression of thought intended to criticize should not constitute a crime, it has repeatedly been used to prosecute non violent opinions expressed by journalists, writers, publishers, academics and human rights activists.

Murdering of Hrant Dink, Victim of Article 301 of the Turkish Penal Code

Hrant Dink, citizen of Turkey with Armenian background, was gunned down outside his office in Istanbul on January 19. Dink’s killing was apparently politically and ethnically motivated; he was identified by his murderers as an Armenian who had been convicted in court for “insulting Turkishness”.

In the 18 months prior to his murder, Hrant Dink had been the subject of three prosecutions for speech-related offenses. For an article in which he discussed Armenian identity, Dink last July received a six-month suspended sentence under Article 301, a provision of the Turkish penal code that criminalizes “publicly insulting Turkishness.” Dink was prosecuted again in September under the same article for using the term “genocide” in a statement made to the Reuters news agency to describe the massacres of Armenians in Anatolia at the end of the Ottoman Empire.

Agos, the bilingual Turkish and Armenian-language newspaper that Dink edited until his death, continues to be targeted on charges of speech-related offenses. Arat Dink, Hrant Dink’s son and now editor of Agos, and Serkis Saropyan, owner of the newspaper, are still on trial for “insulting Turkishness” as the publishers of Hrant Dink’s remarks and for a petition organized by Agos entitled, “A signature against Article 301.” Two Agos journalists, Aydın Engin and Karin Karakaşlı, are also on trial under the same article. In the aftermath of Hrant Dink’s murder, prosecutions under Article 301 continue.

Civil-Military relations

During the period between 2005 and 2007, the influence of the Armed Forces on civilian politics and life has increased. Senior members of the armed forces have expressed their opinion on domestic and foreign policy issues including Cyprus, secularism, the Kurdish issue, and on the indictment concerning the Semdinli bombing. The revised National Security Policy Document (NSPD), adopted by the government in November 2005, is a classified document and was not discussed by Parliament.

This document repeated the internal and external threat areas like islamic fundamentalism and seperatism.

In 2007, during the discussion on forthcoming Presidential and Parliamentary elections, the Chief of General Staff issued a memorandum in 12 April 2007 stating its opinion on the qualifications of the president to be elected and inviting the civil society to protect the laicism on the web site of the Armed Forces. it meant temporal focus on the threat of religious fundamentalism since the target was the government and the party in power and position vis-à-vis laicism was seen as the soft belly of that power. Then came in what is called "Republican Meetings." The first of these meeting took place in Ankara early in April and it was followed by others in İstanbul, İzmir, Denizli and Samsun. These were important social events shaping the political atmosphere of 2007.

Upon the declaration of candidateship of Deputy Prime Minister Abdullah Gül and main opposition party's (CHP) initiative to take the case of first round voting in the Grand National Assembly to Constitutional Court, the General Staff launched its real memorandum on April 27th. This was nothing less than a "coup", not expected by anyone earlier during the course of events. Then came the ruling of the Constitutional Court, also unexpectedly, which called for the stay of proceedings. As the parliamentary process for the election of the new president was blocked upon the ruling of the Court, the Government decided to bring a package comprising legislative amendments to be effected before general elections. This package envisaged pre-scheduled elections, election of President by popular vote, reducing the period between two general elections from 5 to 4 years and giving space in combined ballot to independent candidates as well. The whole package was adopted by the Grand National Assembly including the arrangement related to independent candidates.

What is more appalling while the package was returned back by the President, arrangement relating to independent candidates was handled earlier and endorsed quickly. In other words, parliamentary cooperation which was absent in many issues was there this time, both the ruling party and opposition were ready to cooperate to the end just for blocking the way of some representatives of the people to the parliament.

The Chief of General Staff issued a press statement in its web site on 8 June 2007, after having reactions from the democratic milieu in Turkey, which was targeting human rights defenders.

Extract of the Press Statement made by Human Rights Organisations against the statement of the Chief of General Staff on 8 June 2007

"a) Peace, freedoms and democracy defenders are directly TARGETED through being defined as "individuals and organizations using these concepts AS A SCREEN FOR THE TERRORIST ORGANIZATION."

b) All the citizens who are critical of the current "national and unitary structure" are being reflected as a threat against the Republic of Turkey, and different thoughts are convicted.

c) The above mentioned individuals and organizations are announced as the RESPONSIBLES of the increase in terror activities which occurred lately and are TARGETED in actual and legal terms once again.

d) The people are agitated to be out on the streets in a very dangerous and an unpredictable way by saying "The expectation of the Turkish Armed Forces is that the great Turkish nation is going to demonstrate a MASS OPPOSITION REFLEX against these kinds of terror events" in the press release. It is not a far probability that this would cause big lynch and attacking cases."

Turkey entered into elections within this atmosphere. The elections took place on 22 July 2007 to which independent candidates participated in addition to political parties. Because of the 10% threshold imposed by the Law on Political Parties, pro-Kurdish party Democratic Society Party (DTP) participated in the elections with independent candidates. 20 independent candidates elected later joined back to their Party and established a group in the Parliament. The governing Party (AKP) won

the 47% of votes and obtained 341 seats, the main opposition Party (Republican Populist Party-CHP) obtained 98 seats, the Nationalistic Movement Party obtained 70 seats. This Parliament shall normally serve five years.

2. Civil society landscape

Historical description of formation of civil society and its development

With the establishment of the Turkish Republic in 1923, the development of Turkish civil society changed direction which was started during the Ottoman Empire. The state elites, leading the newly established regime, carried out reforms but in an authoritarian manner particularly after 1930. Hostile to liberalism and following the totalitarian politics of the Italian and German Fascist Parties, the state elite cast all traditional and modern social and political organizations out of public life. Along with the establishment of the Republic in 1923 a single party took control and the development of civil society in the public domain was blocked. After 1930, the huge gap between the state and society was created through the authoritarian regime. The state came to be the only “organized power” influencing social life.

The Turkish state elites composed of the military and civil bureaucrats has traditionally been against the widening and differentiating of the public sphere and the increased level of activity by the ethnic and traditional religious groups in Turkey. The military has intervened three times directly and one time indirectly to the civilian politics in 1960, 1971, 1980 and 1997. Given the military’s direct and indirect intrusion into the democratic process, Turkish politics has, indeed, been under the influence of the military, and this influence is still seen in all aspects of public life. Regrettably, the military’s influence over politics has led to abuses of power, the violation of human rights, and political corruption. The military based politics in Turkey since 1997 has also smothered the development of civil society and stifled the public sphere.

During the EU harmonisation process, the military’s role over civilian politics and civil life has been weakened through amendments in the formation and function of the National Security Council and in other state institutions like Radio and Television High Council and the Higher Education Council. In addition, most of the restrictions on the civil society organisations have been removed through a new legislation enforced in 2004. However, starting from the beginning of 2005, the high rank military officials started to be involved in domestic politics through public speeches and memorandums by high rank military officials and retired generals’ involvement in civil society organisations.

After 2005, Turkey has witnessed with the process of the militarization of NGOs. NGOs were manipulated and directed in two ways. Firstly they were supported financially by funds from big business in the form of covert allocations or grants. There were over 400 NGOs enjoying such support. Secondly, many retired military officers including generals and colonels became “NGO staff.” There are many examples of this. Radical-nationalistic organisations mushroomed throughout the country among which “Kuvayı Milliye” associations came to the fore. Another significant development of the period was the convergence of right and left wing nationalists, which pushed the country in a rapid process of division into camps. One of the visible marks of camping was the republican demonstrations led by “civil society organisations” provoked by the “memorandum” of the Chief of General Staff on 12 April 2007.

the number and types of NGOs

According to the data provided by the Department of Associations of the Ministry of Interior, there are 77110 associations and foundations acting in Turkey. 43% of these associations are located in five

main cities of Turkey (Istanbul with 20,68%, Ankara with 10,9%, Izmir with 5,19%, Bursa with 3,77% and Kocaeli with 2,87%).

The representation of minorities

Discrimination (ethnic, religious, sexual orientation, gender etc)

Discrimination is one of the main problematic issues in Turkey. Existing Turkish law does not possess a comprehensive anti discrimination law. There are provisions in the Constitution and in a number of codes prohibiting discrimination on a number of grounds. However, no general prohibition of discrimination on race or ethnic origin is independently enshrined in Turkish law. One of Turkey's basic problems concerning discrimination on the basis of ethnic origin or race is that, although there are provisions that enshrine the principle of equality, the existing provisions are inadequate to ensure and protect the principle of discrimination. Besides, there is a lack of awareness among those who are in a position to enforce the anti-race discrimination principle, such as state officials, judges, and lawyers. This lack of awareness is mainly caused by State policy, which does not recognise the existence of discrimination in practice and denies the inadequacy of the current legislation concerning discrimination.

"All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or other such considerations.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings." (***Turkish Constitution, Article 10***)

This provision is regarded by the courts as a general principle of law and is used in various contexts, ranging from labour law to administrative disputes. However, neither civil law nor administrative law contains an independent provision which prohibits discrimination on the grounds of ethnic origin or race. Consequently, no cases concerning ethnic or racial discrimination have been litigated by the victims of discrimination on the basis of ethnic origin or race. In the Constitutional Court, racial and ethnic discrimination only feature in relation to challenges to the banning of political parties. In civil law, racial or ethnic discrimination has been dealt with mainly in relation to the dissolution of associations. In criminal law, incitement to hatred or hostility on the basis of ethnic origin or race is penalised by the Criminal Code. However, the relevant article of the Criminal Code is unfortunately used to penalise expressions criticising state policies in relation to ethnic/ religious groups.

The situation of political parties, trade unions and professional syndicates

Trade Unions:

Legislation regulating trade unions dates back to the 1980s, lacks conformity to international standards and has not been revised. While the right to form and participate in collective action is legally recognized, the restrictive regime applied to trade unions in other aspects dilutes the efficiency of this right.

In April 2006, the Ministry of Labour and Social Security sued the Gıda-İş Trade Union on the grounds that some of the elected representatives of the union do not have 10 years seniority, as required by the Law on Trade Unions. The labour court decided to close down the union but the Court of Cassation overturned this ruling on procedural grounds.

Turkey falls short of ILO standards, particularly in relation to conventions No 87(freedom of associations and protection of the right to organise) and No 98 (right to organise and collective bargaining). Turkey ratified the revised European Social Charter in September 2006 but maintains reservations on Article 5 (right to organise) and Article 6 (right to bargain collectively).

Individuals wishing to join a union must register their membership with a notary at a high fee. Trade unions which continue to fall under the oversight of the security forces, must secure official

authorization to organize meetings or demonstrations and allow the police to attend and record their discussions.

The right to strike, while officially recognized, is limited in practice. General strikes and sympathy strikes and go-slows are forbidden and strikes are banned in numerous sectors especially in the public service (public transport, health services, and teachers). The right to collective bargaining is also limited, with only very few unions allowed to participate in collective bargaining negotiations.

Human rights organizations:

The number of associations and foundations dealing with directly human rights issues in general are rather limited in Turkey. These organisations are as follows:

1. *Human Rights Association (IHD)*

The Human Rights Association was established by 98 human rights defenders on 17 July 1986. The founder members expressed in the Association's statute its purpose as follows: " The explicit and sole purpose of the Association is to carry out efforts in the field of human rights and liberties."

To realise its objective, the Association was to investigate, identify and make known to individuals, to the public and to the relevant authorities human rights practices in this country; to conduct or commission scientific research studies and surveys in connection with human rights and make known to the public developments in this field; to organize public debates, conferences, seminars, panel discussions, symposia, all sorts of meetings and demonstrations, exhibitions and competitions; to publish information; to award prizes; to carry out investigations and make observations in order to ensure that convicted prisoners, persons under arrest and detainees, regardless of their race, colour, sex, language, religion, political opinion, are treated in a manner respectful of human dignity and to keep the public informed about these matters. The HRA has more than 10.000 members and 34 local branches around Turkey. (38%-women; 55%-between ages 25-40; 50%-university graduates).

2. *Organisation of Human Rights and Solidarity for Oppressed People (MAZLUMDER)*

MAZLUMDER was founded in Ankara in 1991 by 54 people comprising of lawyers, journalists, writers, publishers and businessmen. It is independent from the government, all political parties and factions, and is organized throughout Turkey by 22 branches. MAZLUMDER works to protect and promote human rights and freedoms, prevent human rights abuses, and acts with solidarity for oppressed individuals and groups. MAZLUMDER develops projects for public education and training on human rights standards. MAZLUMDER issues reports on regular basis to announce all kinds of human rights violations in the world.

3. *Human Rights Foundation of Turkey*

Human Rights Foundation of Turkey has been established by the Human Rights Association and 32 human rights defender in 1990. It is an independent and non- governmental organization. Studies at the HRFT have been carried out in the light of international conventions. Its head office is in Ankara in addition to five offices established also in Istanbul, İzmir, Adana and Diyarbakır. In principle, the HRFT does not accept contributions from the governments and the organizations and people whose implementations contradict with the main promises of human rights. The studies conducting by the HRFT can be summarized below; Documentation of human rights violations and publications on the rights and freedoms, Treatment and rehabilitation of the torture victims and the physical treatment provided to their relatives. Reporting activity on torture cases and assistance to victims who seeks remedy at the court, Conducting campaigns and trainings in order to illuminate public opinion on the human rights violations, Conducting scientific researches.

4. *Helsinki Citizens Assembly-Turkey*

Helsinki Citizens Association established in September, 1993 in İstanbul. It has been conducting activities in minority rights and multiculturalism, civic approaches to conflicts, human rights and civic participation. HCA-Turkey holds local or international conferences, meetings, seminars,

panels, symposia and exhibits; provides audiovisual and print publications, collaborates with non-governmental organizations and institutions working in related fields.

5. Amnesty International – Turkey

Amnesty International Turkey is the national section of Amnesty International in Turkey. It was registered as an Association in 2002. There are 4 established groups (Ankara, İzmir, İstanbul and Diyarbakır) and 4 initiative-groups, which are expected to become Amnesty groups soon (Nazilli, Batman, Bursa and Mersin). AI Turkey has a total membership of 600, of which about 200 are working in Amnesty groups.

6. Human Rights Agenda Association

The Human Rights Agenda Association (HRAA) was established in 2003 in İzmir with the participation of human rights defenders from different regions of Turkey in order to have activities in human rights field at national and international level.

Legal Aid

Although some associations and foundations are providing legal aid to victims of human rights violations, due to lack of financial and human resources, legal aid system by associations is not systematically provided.

Legal aid is a support provided for by the government to those who can not bear the costs of a trial because of his/her insufficient economical situation. The application can be made in written or orally to the court. There is no need to fill a form. Only a petition containing the summary of the facts and information about the evidences is enough to apply to the court, if anyone would like to submit a written application. Those who apply for legal aid should attach a certificate of insolvency given by either the local municipality or the board of alderman when he is to apply to the court. Also, he/she can apply to the bar association in order to ask them to assist in acquiring these documents.

The legal aid to victims of human rights violations are provided mainly by Bar Associations. The Turkish Civil Code of Procedure, legal aid is regulated by the Code of Attorneyship. According to Article 95/11 of the mentioned Code, establishment and management of a legal aid office is one of the obligations of the Board of Directors of Bar Association. According to Article 176 of the said Code, in every region where there a court of First Instance exists and the number of the lawyers is more than five, a legal aid office has to be established under the control of a lawyer appointed by the said board. The duty of this office is to appoint a lawyer to those who seek for legal aid as well as to supply the decision of the Court on providing legal aid. (Article 178)

There are total of 78 Bar association acting in Turkey.

Combating torture

Combating torture has been one of the main activity areas of human rights organisations. Torture remains common in Turkey today. In the twenty years following the 1980 military coup, successive governments maintained a system of detention and interrogation that encouraged torture and protected the perpetrators. As a result, more than four hundred Turkish citizens died in custody apparently as a result of torture, with 45 deaths in 1994 alone. In the past five years, changes to laws and procedures have significantly reduced (torture events has been decreasing in official records, but systematic torture is still going on in Turkey. You can find the figures-by TIHV and IHD-of torture and ill-treatment in Turkey during 2006 and first part of 2007) the frequency and severity of torture to the extent that it is now realistic to hope that such deaths in custody may be a thing of the past.

The most important changes were improvements to medical checks, shortening of pre-trial detention periods and, in 2003, recognition of the right of immediate access to legal counsel for all detainees. It is well-established that access to legal counsel is the single most effective safeguard against abuse in custody. This last step significantly raised the standard of formal procedural and legal protections against torture in Turkey. Its formal protections are now among the strongest in Europe.

Torture and other ill-treatment persist in Turkey because in some detention facilities police and gendarmerie (soldiers who police rural areas) ignore the new safeguards. Certain police units deny or delay detainees access to a lawyer, fail to inform families that their relatives have been detained, and attempt to suppress or influence medical reports which record ill-treatment. The special protections for child detainees are still not reliably applied by the police.

The following data produced by the Human Rights Foundation of Turkey gives a general idea about situation torture reality in Turkey. According to the data which does not reflect the whole situation of torture reality;

- In total 10.786 people have applied to Human Rights Foundation of Turkey (TIHV) because of torture and ill-treatment. All of them have been treated.
- During the 2006, 337 people have applied to TIHV. 222 people of them were subjected to torture. During first 5 months of the 2007, 238 people have applied to the Foundation and 152 of them were subjected to torture.
- According to Human Rights Association's (IHD) data;
- In the 2006, 708 people were subjected to torture.
- In the June of 2007, 2 people lost their life while they were under detention in Çanakkale (Province in Marmara Region), İzmir (Province in Aegean Region) and 1 person died in the prison just after two days in Istanbul.

There has been a clear increase in direct, spread and systematic violence, which is practiced without taking into custody by security forces in demonstrations, in recent years. Increase in this type of violence continued also during the 5 months of the 2005. Using disproportionate force and violence, in peaceful demonstrations, has reached its peak in the 1st May in Istanbul. Torture samples in "kidnappings", which seem well planned, are seen in 2007 as in the past years. Since authorities do not accept such events, it is impossible to investigate against torture allegations and punish torturers. Allegations related with torture and ill-treatments to arrested, sentenced people continue in the 2007. Especially, isolation implementations in F Type prisons still continue in a serious way. At the end the January 2007, still there was not any positive improvements about amendments, which had been promised, of F Type prisons.

One of the most important problems is that law-enforcement forces do not implement detention procedure in a manner, which complies with its rules. In Turkey, practice; officers do not inform, adequately, detained people about rights. Officers do not let people to use their rights or postpone until end of taking deposition. Rule about calling relatives immediately cannot be implemented in practice. By arguing that detained person does not want to meet without showing any other proof, meeting with lawyer is prevented or they meet in an inappropriate atmosphere.

Custom of conducting preparation investigation, by law-enforcement forces against torture allegations still continues. During investigation period, law-enforcement forces do not implement required process and collect proofs. Public prosecutors do not implement process, with considering torture allegations or proofs in file, but require a written application. When courts come across torture allegations or findings in trial process, they are insensible. Moreover, courts do not need to make complaint about torture to public prosecutors. All of these points cause to impunity of torture. Legal aid to law-enforcement forces members, who are judged because they practice torture, has an incentive role to impunity. Moreover, this legal aid has been expanded as accused security forces members can choose their lawyer.

Another reason for impunity of torture perpetrators is that trials, which takes too long time. Judicial institutions do not fulfil their responsibility to be fair in implementation and interpreting of the legislation. Moreover; public officers' punishments of administrative investigation and discipline punishment, which resulted from torture or ill-treatment, have been deleted completely in accordance with numbered 5525 Law about amnesty of register, which passed in the last year. Medical reports, to determine and document torture might still be incomplete or wrong, are another fact of impunity. In proving allegations of torture psychological findings have also equal importance as much as physical findings have. Unfortunately medical personnel, who give report, do not have adequate training and experience about forensic medicine techniques that provide ability of determining physical and psychological signs of torture. Also medical personnel, who are in charge of examining person during and after their detention period or while detained is being taken into prison work as officers of Interior

Affairs or Justice Ministry. Status of medical personnel is a serious obstacle, without subjecting any other pressures, to make objective and scientific evaluations. Not being autonomous and independent has a harmful role for reliability of the institution. Especially investigations against public officers, like torture allegations, documentation of the crime becomes difficult. Doctors, who are in charge of documentation of torture, might be subject to pressure even threatens by administration as well as law-enforcement forces. Such a situation causes problems in documenting finds in other words impunity of perpetrators.

Rights of specific groups (women, children, prisoners etc.)

Women Rights in Turkey

In Turkey, legal protection for women have been strengthened due to lobbying and campaigning by women's rights activists. Starting from the Constitution, the Civil Code and the Turkish Penal Code have been amended in favour of women rights.

Although Turkey is a party to the UN Convention on the Elimination of All Forms of Discrimination Against Women, it cannot be argued that Turkey complies with provisions of the Convention. One of the outstanding problems is the violence against women and honour killings. Despite the provisions in the new Penal Code that lists moral killings as an aggravated circumstance for murder crimes, the sentences issued by courts reflect a mixed picture. While in some cases courts imposed maximum sentences (life imprisonment), in others they opted for lighter sentences, especially if a minor had committed the murder. A circular by the Prime Minister's Office in July follows up on these, by giving priority to the fight against violence, listing the activities to be undertaken and naming the state bodies responsible. The Directorate General for the Status of Women is given the task of overall co-ordination of activities. In 2006, the report of the ad hoc Parliamentary Committee on "crimes in the name of honour, violence against women and children" has been finalised. The report puts forward practical recommendations. Although the legal framework is satisfactory, the implementation of the law especially by the judiciary and the security forces are rather far from preventive.

There is still a need to further increase the provision of shelters for women subjected to domestic violence. Opening up Shelter Houses was delegated to Municipalities of which revenues are limited. There are about 30 shelter houses in Turkey.

The participation of women in political life is still very limited although Turkey is one of the countries recognised the right to election and to be elected in 1920s.

According to the OECD figures, participation of women in workforce is very low.

Children's rights in Turkey

The right to education for children, particularly girls, remains a problem in some areas. The newly initiated 'conditional cash transfer' programme implemented by the Social Support and Solidarity Fund provides incentives and compensation to targeted families by offering cash transfers on the condition that they send their children to school if they are of school age.

Extensive use of child labour is one of the outburning issues in Turkey. The Turkish Labour Law prohibits the employment of children under the age of 15. However, there is no properly functioning inspection mechanism to prevent the child labour.

Rights of disabled people

A Law on People with Disabilities was entered into force in 2005. The Law prohibits discrimination against people with disabilities. However the Law does not provide any definition what the discrimination against disabled people is and the prohibition areas exclusively.

Prisoners Rights in Turkey

Monitoring violations in prisoners and protection of their rights are rather difficult in Turkey. Human Rights organisations systematically try to produce reports with limited information.

Methodology of organizations:

Apart from Human Rights organisations, no other NGO working in the field of human rights carry out monitoring activity of the human rights abuses.

Women and children organisations are mainly concerned with advocacy and awareness raising activities. Some of women and children organisations do also provide psychological services to the victims. Disabled organisations are mainly working for provision of services like vocational training, rehabilitation services and cultural activities. There is no systematic monitoring of violations and provision of legal assistance to disabled people.

Target groups of organizations:

Women's rights Organisations

According to a study carried out in 2003 by ProfDr. Yıldız Ecevit for Flying Broom (a women organisation) , there were a total of 300 women associations in Turkey. The study has not been updated, but according to women active in women rights movement claims that the number of women organisations does not exceed 500 throughout the country. The geographical distribution of women organisations is also uneven. The majority of women organisations is located at İstanbul and Ankara. The Black Sea region, Central Anatolia Region and Eastern Anatolia Regions are suffered from lack of women organisations defending women rights.

Children Organisations:

Just more than 100 children organisations in Turkey dealing with different aspects of children. In addition to NGOs there is a network of 20 Bar Associations dealing with children rights.

Prisoners Organisations

The number of organisations dealing with prisoners are quite rare. These organisations are established by family members of political prisoners. There is no NGO dealing with ordinary prisoners. Most of human rights organisations and some children organisations carry out activities for improvement of prison conditions.

Disabled Organisations

In terms of number, disabled organisations are the biggest organisations, established throughout the country. However, majority of these disabled organisations are far from adopting a right-based approach.

Specific minorities etc.

Minority religious groups together account for nearly two per cent of the Turkish population. Some, such as the Jewish, Greek Orthodox and Armenian Orthodox communities, fall within the scope of the Treaty of Lausanne. However, there are other communities in Turkey which, in the light of the relevant international and European standards, could qualify as minorities.

Turkey imposed reservations on articles in the main UN conventions in relation to minorities and cultural rights, like UN Covenant on Civil and Political Rights (ICCPR) regarding the rights of minorities and UN Covenant on Economic, Social and Cultural Rights (ICESCR), regarding the right to Education.

Reservation to ICCPR: "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendices."

Reservation to ICESCR: "The Republic of Turkey reserves the right to interpret and apply the provisions of the paragraph (3) and (4) of the Article Turkey has not signed the Council of Europe Framework Convention for the Protection of National Minorities or the European Charter for Regional or Minority Languages.

The 2005 recommendations of the European Commission against Racism and Intolerance (ECRI) on school curricula and textbooks as well as on the functioning of minority schools has not yet been applied.

Situation of Roma in Turkey

There is no official information about the actual situation of Roma in Turkey. According to a research carried out by Bilgi university, the Roma population in Turkey is about 2 million. According to the reports of European Roma Rights Center and Human Rights organisations in Turkey, the Roma communities in Turkey experience major difficulties due to social exclusion. They encounter discrimination in employment, housing and access to public places. They live in difficult conditions in camps from which they are often forcibly evicted without being offered alternative accommodation. There is inequality of opportunity in terms of access to health care, employment and also education, in that parents often cannot afford to send their children to school.

Some of discriminatory provisions in the Law on Settlement¹ eliminated 2006. However, discriminatory provisions remain in the Law on Movements and residence of aliens.

3. Legislation

Historical Background for legislative framework:

a) Freedom of Association in Constitutions

The freedom of association had first been recognised in 1909 with an amendment on the *Kanuni Esasi (Ottoman Constitution)*. The first Republican Constitution enforced in 1924, granted the freedom of association in one single article together with other individual and collective freedoms.

In 1961, after the military intervention, the new Constitution took the freedoms of association and assembly under guarantee in Articles 28 and 29.

In 1971, after the second military intervention, the 1961 Constitution was amended. The Article 29 concerning the freedom of association was changed by increasing the restrictions on the freedom of association. In addition, the public authorities were granted with the authority to suspend associations from activity.

Following the third military intervention in 1981, a new constitution was prepared by the National Security Council and enforced in 1982. The freedom of association and assembly was re-written in a detailed, restrictive and banning manner in this Constitution. The new arrangement brought bans on cooperation between different categories of organisations. This last Constitution has first been amended in 1995, more than ten years later after its enforcement, which brought some improvements in the freedom of association by lifting the ban on cooperation between associations and other organisations in Article 33. The comprehensive amendment on 1982 Constitution was made on 2001 in the context of the EU harmonisation process. The freedom of association and the assembly has been amended again.

The existing provision on freedom of association in the Constitution with amended version is as follows:

Freedom of Association in Implementing Laws:

a) Association Law

The first law regulating association was enforced on 6 October 1983 after the last military intervention. This Law was repealed after 20 years by a new law which was entered into force in 2004 in the context of the EU harmonisation process.

During this 20 years of time until 2004, the freedom of association was heavily restricted with authorities granted to the public authorities and security forces to have control over associations in

¹ The Settlement Act No. 2510 of 1934 deals with the right of foreign nationals to settle in Turkey. Article 4 forbids settlement in Turkey to persons who have no ties with Turkish culture, anarchists, spies, Roma ("itinerant gypsies") and persons deported from Turkey. The law also stipulates that nomads and Roma are to be settled in sites designated by the Ministry of Health and Social Assistance.

contradiction with the European Convention of Human Rights provisions related to the freedom of association (Article 11).

Freedom of association is subject to certain limitations. Associations may not, for example, invite foreign associations to Turkey, issue public statements or organise any activities outside their premises without obtaining the prior permission of the authorities. (...)

Freedom of assembly is also subject to limitations.

(European Commission, Regular Report (First Report), 1998; pp:16)

Although, the Law No 2908 has been subject to several amendments during the period between 2001 and 2003 in the context of the EU harmonisation process, it continued to keep restrictions on associations. Finally, the legislative framework for associations has been changed totally and a new law was put into force in July 2004, which was regarded by the European Commission as "*generally in line with international standards*" (Regular Report, 2006,pp:15).

The new Law on Associations, marks an important milestone for the strengthening of the legal framework for NGOs and for the general advancement of civil society in Turkey. The objective of this law; including the associations, branches and agencies of the associations, federations, confederations and foreign associations and associations and foundations of which the head office is domiciled in abroad, is to set out provisions relating to the activities, liabilities, auditing of the branches and agencies of the non profit organizations in Turkey subject to restriction or permission, as well as the applicable penalties and other matter relating to the associations.

The reform made for associations has not applied to foundations. The current legal framework for foundations is still in need of reform. The first Foundation Law of the Republic of Turkey was developed in 1935, and revised in 1970. Since then, the legislation has been modified with regulations, decree law, statutes and several communiqués by the General Directorate of Foundations (GDF), which is a division of the Prime Ministry supervising all foundations in Turkey. The provisions affecting foundations are largely restrictive and in some cases do not comply with European standards.

As for **foundations**, a new draft law (re-written completely for the first time since 1935) is pending in Parliament as this report is being prepared. While the current law retains significant restrictions, the draft law, if enacted, would bring about an entirely new and more enabling regulatory approach.

Present Situation

The legal framework regulating the freedom of association covers following laws:

- Law No 5253 on Associations (Law on Associations),
- Regulation of Associations Law (2005),
- Law on Foundations 2762,
- Foundations Regulations,
- the current draft law on foundations (pending approval in Parliament),
- provisions of the Civil Code pertaining to associations and foundations (Nos 56-117),
- the General Communiqué of Corporation Tax (#83), which details the criteria and conditions of obtaining the status of public benefit for foundations.

Part 1: Formation and Incorporation

Does the system allow for non-declared or unincorporated associations?

The legal framework does not recognise for non-declared or unincorporated associations. There are *initiatives* established by groups of people like *Intellectual Initiative*, *anti-militarist feminists*, *Peace initiative*, *Say Stop to Racism and Discrimination* acting in Turkey. However, they have no right to establish a bank account or any office on the name of the initiative and receive fund from any donor organisations. These initiatives are not eligible to benefit from the legal rights prescribed in laws as initiatives. According to the definition of the association prescribed in the Article 2 of the Association Law No. 5235, associations should have a statute and should declare itself.

a) *Association* : The societies founded in the status of legal entity by at least seven real persons or legal entities by pooling continuously their knowledge and efforts in order to realize a given and common objective not prohibited by the laws excluding those at profit sharing purposes.

Is the registration system based on Licensing or simple information/notification?

The registration system is based on both notification and the licencing. According to the Implementation Regulation on Association, Associations obtains their legal status when they submitted the foundation notification form together with necessary annexes to the relevant officials of the public administration. (article 5 of the Regulation)

The foundation notification form includes names, ID numbers, birth place, professions and home addresses of founders. Following documents should be annexed to the notification form to obtain the legal status:

- Two copies of notification form undersigned by founders of the association
- Two copies of the statute of which each page is undersigned by founders of association
- Photocopies of birth certificates of founders,
- Title, address, establishment document and the name of the real person authorised by the organs of the legal entity, and the copy of the decision on this issue by the legal entity, in the case of existence of a legal entity among founders,
- In case of existence of a foreign association or non-profit organisation (not being an association or foundation) among the founders, permission document provided by the Ministry of Interior notifying that these organisations can be founders of an association,
- In case the existence of foreign nationals among founders, copies of documents notifying that these nationals do have the right to reside in Turkey,
- A list containing full name(s), address(es) and signature(s) of person(s) who are authorised to communicate and to get written notices.

Above mentioned documents should be submitted in Districts excluding the ones under the Greater Municipalities in three copies.

Within 60 days of duration after the the issue of *bill of delivery*, the chief of the public administration or the association desks authorised by the chief of the public administration examine both the accuracy of the documents submitted and the *Statute* of the association. As a result of this examination, associations either are informed in written about the approval of their Statute if no contradiction or deficiency vis a vis laws is found, or are asked in written to make amendments on contradicting issues or making up for the deficiencies.

In case the Statute of the association is approved then the association is registered in the Register.

What are the basis upon which registration can be rejected? (e.g. race, security, religion, politics)

If the public authority which examines the Statute and other documents against existing Laws finds lawlessness in the documents submitted, the association should rectify these within 30 days. In the failure of rectification by the association, then the public authority has the right to inform the Public Prosecutor to apply to the authorised Court of First Instance for the suit for annulment of association.

The Constitution defines the basis for dissolving or suspension of associations and foundations as follows in the Article 33 regulating the freedom of association:

Associations may be dissolved or suspended from activity by decision of judge in cases prescribed by law. In cases where delay endangers national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to effect apprehension, an authority designated by law may be vested with power to suspend the association from activity. The decision of this authority shall be submitted for approval to the judge in charge within twenty-four hours. Unless the judge declares a decision within forty-eight hours, this

administrative decision shall be annulled automatically. **1982 Constitution, Article 33, para:4**

The Turkish Civil Code prescribes that

**“ no association may be formed for an object contrary to the laws and ethics.”
(Second paragraph of the Article 56)**

Examples:

Diyarbakır First Instance Court No. 2 made a decision for annulment of Diyarbakır Kürt-Der (Diyarbakır Kurdish Association) on 20 April 2006 on the grounds that the association indicated in the Statute that their activity language is Kurdish and activities are identified as establishment of Kurdish archive, museum and library”. As the association did not rectify these issues as they have been stated within 30 days. **(2006 Human Rights Report, Human Rights Foundation of Turkey)**

Ankara Governor asked 23 amendments on the Statute of the Kurdish Democracy Forum Association (Kürt Demokrasi Forumu Derneği) claiming that the Statute contradicts to the Article 10² and Article 14³ of the Constitution **(2006 Human Rights Report, Human Rights Foundation of Turkey)**

Bursa Governors Office applied to the Public Prosecutor for the annulment of Rainbow Travesties, Transsexuals, Gays and Lesbians Protection, Solidarity and Cultural Association (Gökkuşluğu Travestileri, Transseksüelleri, Geyleri ve Lezbiyenleri Koruma Yardımlaşma ve Kültürel Etkinliklerini Geliştirme Derneği) on the grounds that aims and activities contradicts to the Constitution (Articles 33 and 41⁴) and the Civil Code (Article 56) . **(Bianet, 23.05.2006)**

How easy or difficult is the registration: (e.g. time, cost, number of incorporators)

The Turkish Law on Associations requires a minimum of “seven real persons or legal entities” to establish an association. According to the practices in European countries – requires general between 2 and 5 incorporators, this requirement “arguably poses a practical obstacle to the formation of associations, particularly associations promoting less popular goals”⁵.

Are there effective remedies in the cases where registration is denied, delayed (e.g. judicial, administrative?)

² ARTICLE 10. All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations.

No privilege shall be granted to any individual, family, group or class.

State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

³ ARTICLE 14. None of the rights and freedoms embodied in the Constitution shall be exercised with the aim of violating the indivisible integrity of the State with its territory and nation, of endangering the existence of the Turkish State and Republic, of destroying fundamental rights and freedoms, of placing the government of the State under the control of an individual or a group of people, or establishing the hegemony of one social class over others, or creating discrimination on the basis of language, race, religion or sect, or of establishing by any other means a system of government based on these concepts and ideas.

The sanctions to be applied against those who violate these prohibitions, and those who incite and provoke others to the same end shall be determined by law.

No provision of this Constitution shall be interpreted in a manner that would grant the right of destroying the rights and freedoms embodied in the Constitution.

⁴ ARTICLE 41. The family is the foundation of Turkish society.

The State shall take the necessary measures and establish the necessary organisation to ensure the peace and welfare of the family, especially the protection of the mother and children and for family planning education and application.

⁵ TÜSEV, Comparative Report on Turkish Association Law Provisions, September 2004.

Associations have rights to appeal to courts including the European Court of Human Rights at the last resort when the registration is denied by the public authorities.

Does registration automatically entail obtaining separate legal personality?

The law states that if an association is created in violation of the law, and if the associates do not make the necessary corrections notified by the Administration, the Ministry asks the Prosecutor to sue the association before a Tribunal, and the Tribunal will have competence to declare the associations as nul. Therefore, and in consequence, I think the Turkish law considers that the association is created since the declaration and not since the registration, otherwise why should an annulation be pronounced by a Tribunal? You can only pronounce the annulation of something that already exists.

Are there other viable alternatives if the right to freely form and incorporate an association is denied (e.g. incorporate as a company, a trust a "Wakf")

Establishing company was a common behaviour in some fields and in some regions before the amendment of the Associations Law in 2004. For example, a women organisation in Diyarbakır established as a company in 1997 because of the extraordinary suppression in the South East during that period. But, it formed itself after the legal reform process took place as an association. For some of women organisations prefers to establish cooperatives rather than establishing association because of all redtape procedural issues. Cooperatives are under the mandate of Ministry of Industry and Trade which have procedures for cooperatives similar to companies.

Part 2: Dissolution and Suspension

1. What are the causes/grounds of dissolution? Suspension?

Restriction to use certain names and signs

ARTICLE 29- Use of names, logos, symbols, rosette and similar other signs of a political party, union or association or supreme organization of an association which is presently operating or subject to liquidation or dissolution under the court decision, or use of a flag, logo and pennant of another country or previously founded Turkish states, is restricted by the Law.

Associations subject to restrictions and prohibited activities

ARTICLE 30- The associations;

- a) May not carry out activities other than those indicated in the Statute as the objective of the association.
- b) May not be founded to serve a purpose expressly restricted by the Constitution or the laws, or to execute acts which may constitute an offense according to the laws.
- c) May not engage in preparatory educational or training activities for the military service, national defense and security services, and may not open camps or training centers for this purpose. Besides, the associations may not use special cloths or uniforms for their members.

Language to be used in registration and correspondences

ARTICLE 31- The associations shall use Turkish language in their books and records and correspondences with the official authorities of the Turkish Republic.

“ARTICLE 60-The correctness of the file comprising incorporation declaration, required documents and by-laws of the association is examined by the highest administrative authority within sixty days.

In case of determination of contraries to the laws in the incorporation declaration, by-laws and incorrect information the status of the founders, or negligences in the presented documents; the founders are requested to recover such negligences or

complete the file. If it is failed to recover the contraries to the law, or recover the negligences within thirty days as of notification date; the highest administrative authority informs the Public Prosecution Office about necessity for filing an action in the competent court of first instance for the abolition of association. The Public Prosecutor may claim from the court to give judgment for the suspension of activities of the said association.

In case the incorporation declaration, by-laws and information about the status of the founders are found to be accurate and complete, or the negligences or contraries to the law are recovered within the specified period; then his fact is notified to the association in writing and the association is registered in the log reserved for associations.”

The dissolution or suspension of associations seems to be more difficult than the pervious practices, the Association Law provided heavy penalties for associations which may lead to closure. Following articles are providing reasons for penalties:

Penalty Clauses

ARTICLE 32- Following penalties shall apply to those acting contrary to this Law;

a) An **administrative fine**, at the amount of **five hundred million lira**, is imposed to **those who establish associations although not entitled to do so; those who become a member of an association although his/her membership in associations is restricted by the laws; those who purposely admit persons to membership although his/her membership is restricted by the laws**, or the executives of the association who neglect to write off registration of such persons, or others who lost the credentials of a member.

b) **A heavy fine**, at the amount of five hundred million lira, is imposed to the executives of the association, who hold the meetings of the general assembly contrary to the laws and the Statute, or convene the meetings at a place other than the head office or any other place not indicated in the Statute. Besides, the court may adjudicate cancellation of the general assembly meetings which are held contrary to the laws and the Statute.

c) An administrative fine corresponding to five percent of the amount transferred from abroad is imposed to the executives of the association if the foreign fund in the form of aid is not received through the intermediary of the banks.

d) An administrative fine, at the amount of five hundred million lira, is imposed to the executives of the association if the statutory books or records of the association are not kept properly.

e) Unless the offenses do require heavier punishment, imprisonment from six months to two years and a heavy fine at the amount of five hundred million lira is imposed to the persons who involve in mischief during the elections and voting, counting and breakdown of votes in the general assemblies and other organs of the association; who falsify, destroy or hide the books or records.

f) Unless the offenses do require heavier punishment, imprisonment from six months to two years and a heavy fine, at the amount of five-hundred million lira, is imposed to the chairman and members of the board of directors, or auditors and other personnel of the association who use or produce or pledge or sell, conceal, destroy, deny, falsify or modify a cash or a paper, bill or other properties with monetary value for their own benefit or for the benefit of others.

g) A fine up to five hundred million lira is imposed to those who open representations or branches of foreign associations in Turkey without the permission of the concerned authorities; those who establish cooperation with

these associations or admit members to these associations. The representations and branches which are opened illegally are closed by the competent authorities.

h) An administrative fine, at the amount of five hundred million lira, is imposed to the executives of the printing office who fail to fulfill the obligations stipulated in article 16.

i) An administrative fine, at the amount of one hundred million lira, is imposed to those who do not meet the requirements set out in article 17.

j) A heavy fine, at the amount of three billion lira, is imposed to those who intentionally submit wrong information in the statement mentioned in article 19.

k) An administrative fine, at the amount of five hundred million lira is imposed to those who do not meet the requirement in article 9 and subsection three of article 19.

l) An administrative fine, at the amount of five hundred million lira, is imposed to the executives of the association who fail to fulfill the obligations stipulated in articles 21, 22, 23 and 24 and to submit a statement as per article 19 of this Law.

m) A heavy fine, at the amount of five hundred million lira is imposed to the executives of the association who open the facilities mentioned in article 26 without permission, and the facilities which opened illegally are closed with decision of the competent authority.

n) Unless the offenses do require heavier punishment, a heavy fine, up to five hundred million lira, is imposed to the executives of the associations who act contrary to the restrictions stated in article 29, in spite of the warnings made in writing, and decision is taken for the dissolution of the association.

o) A heavy fine, from five hundred million lira to one billion lira is imposed to the executives of the association who act contrary to the restrictions stipulated in paragraph (a) of article 30; in case recurrence of such offense, this heavy fine is increased by one half. Unless the offenses do require a heavier punishment, imprisonment not less than one year is imposed for the executives of the association who execute acts contrary to paragraph (c) of the same article, and decision is taken for the shut-down of the facility.

p) Unless the offenses do require a heavier punishment, imprisonment from one year to three years and a heavy fine, at the amount of five hundred million lira, is imposed to the persons who act contrary to paragraph (b) of article 30, and establish associations restricted in the same paragraph, and decision is taken for the dissolution of the association.

r) An administrative fine, at the amount of one billion lira is imposed to those who do not meet the requirements stipulated in article 31.

Enforcement of the penalties

ARTICLE 33- The penalties declared in this Law is applicable also for the children associations, in case of recurrence of the illegal act despite the warnings.

The phrase “executives of the association”, used in article 32 of this Law, means the chairman of the board of directors.

The administrative fines written in this Law are imposed by the local administrative authority. The decisions relating to the administrative fines are notified according to the provisions of the Notification Law Nr. 7201.

Objection may be raised against these decisions to the competent administrative court within thirty days as of the date of notification. The objection may not suspend enforcement of the punishment given by the administration. The decision given upon objection is considered as the final decision. Where deemed unnecessary to take further action, the objection is finalized within the shortest period through review of the document.

The administrative fines imposed according to this Law are collected according to the Law Nr. 6183 relating to the Procedure For Collection Of Public Receivables.

2. What authorities pronounce these decisions? (role of the Judiciary, Executive ...)

3. Are there effective remedies and appeals?

Trial Procedure

ARTICLE 18-The ordinary trial procedure is applicable in the actions to be proceeded before the civil courts pursuant to this Law.

The prosecution and investigation relating to the offenders acting contrary to the provisions of this law is carried out according to the provisions of the Law 3005 Relating To Trial Procedure In Flagrant Crimes, irrespective of place and time.

Part 3: Organization and Operation:

1. *What is the extent of the freedom of members to draft and amend their own statutes and by-laws and to determine their own object? (are such documents imposed? to what extent?)*

Although it seems that the associations are free to draft and amend their own status and by-laws and to determine their own objectives, there are legal and practical limitations. The Department of Associations of the Ministry of Interior has produced a template for the statutes of the associations published on its internet site. This template provides the general shape of the statutes of associations. The desk officers examine the statutes of associations according to template and react if any provisions does not comply what is written in the template.

Statute of the Association

ARTICLE -4 Each association shall have a Statute. This statute must contain the following:

- a) Title and registered head office of the association.
- b) The objective of the association and subject, type and field of activity to be carried out by the association to achieve this object.
- c) Criteria and conditions for admission to and dismissal from membership of the association.
- d) Composition and time of the General Assembly meeting.
- e) The functions and powers of the General Assembly, procedures and mode of voting and decision taking.
- f) The functions and powers of the Board of Directors and Auditors, how they shall be elected, number of principal and alternate members.
- g) Whether the associations shall have branches or not, if so, how the branches shall be established, their functions and powers, and how they shall be represented in the General Assembly of the associations.
- h) Procedure for defining of the entry and annual membership fees payable by the members.
- i) Indebtedness procedure adopted by the associations.
- j) Internal auditing procedure adopted by the association.
- k) How the Statute of the association shall be amended.
- l) Procedure for liquidation of the assets of the association in case of dissolution.

There are some cases that the Association Desks return the Statute to associations for correction by claiming that the name of the association and the objectives laid down in the statute do not comply each other and ask the association to change the objective.

2. How strict is the level of freedom of members to adhere to or leave associations?

Adherence to and leave an association are laid down in the Association Law:

II. Termination of membership

1. Automatically

ARTICLE 65-The membership of a person automatically terminates if he/she later on loses the qualifications required by the law or by-laws of the association.

2. Discharge from association

ARTICLE 66- No person may be forced to continue its membership in the association. Every member has the right to leave the association provided that he/she presents a written notification *.

3. Discharge reasons

ARTICLE 67-The reasons for discharge from the association may be indicated in the by-laws.

If the reasons for discharge are clearly indicated in the by-laws; no objection may be made to such decision asserting that these reasons may not be accepted as justifiable.

If the reasons of discharge are not clearly indicated in the by-laws; a member may only be discharge on justified grounds. An objection may be made to this discharge decision stating that it is not based on justified grounds.

3. Are there any interference in the corporate bodies: e.g. attendance of meetings (Board, General assemblies) by "supervisors", elections.

There is no interference on who attend in meetings or elections. Only limitation is brought to the participation in elections. Those who are not members of the association cannot vote in elections.

4. Are there any restrictions (legal or de-facto) promoting, limiting or banning participation of women in associational offices (e.g. Board).

The Association Law has an equality article which grants equal rights to the members. Article 68 bans the discrimination of the grounds of language, race, colour, sex, religion, sect, lineage, society and class. However, de facto, participation of women in associational life is rather limited, except in women associations. Many associations, except women associations, have very limited number of women in their board. There is no significant research available in Turkey to examine the participation of women in associational life.

ARTICLE 68-It is a basic principle to grant equal rights to the members of an association. The association may neither make discrimination among their members in respect of language, race, colour, sex, religion, sect, lineage, society and class nor may adopt any behaviour deteriorating the balance between the members.

Every member has the right to participate in the activities and administration of the association.

The member who voluntarily leaves the association or discharged on justified grounds may not have the right to raise a claim for producing advantage from the assets of the association.

b. Voting right

ARTICLE 69- Every member entitled to a voting right in the general assembly; the member is obliged to use his/her vote personally.

Honourable members may not have voting right.

5. Are there any interference in the freedom of associations do decide on projects and activities? If yes, how and why?

There is no direct interference on deciding projects and activities reported since the enforcement of the new Association Law of 2004.

6. Is the association's right to freely assemble or organize private and public meetings, move freely (including international travel) restricted in any way?

There is no restriction on assembling, organising private and public meetings or moving freely internationally or domestically by the Law. However, in implementation, the Law on Demonstration and Public Meetings are applied for big demonstrations or public meetings. There are also restrictions especially for human rights organisations to monitor the areas where military is conducting military operations.

7. Are associations subject to specific limitation on their right to freely communicate (e.g. access to media, publish and develop internet sites)?
In general there are no limitations to Access to media, publish and develop internet sites. However, especially for LGBTT organisations there are limitations in developing web sites

8. Is the freedom of associations to cooperate and network with others limited (both domestic and international)?
There are some limitations in the Association Law on cooperation and networking.

9. Is the participation of associations sought for opinion or participation in deciding on public interest issues? What is the nature and level of such consultations?

Attitudes and practices of public officials, politicians, and the media, as they are targeting advocates of human rights, representatives of civil society and NGOs, bring about a lack of public confidence in organizations for human rights and NGOs, and at the same time they prevent the development of a medium for dialog.

There does not exist healthy or sound mechanisms in the activities of public administration that could take into account opinion and recommendations of the civil society. The institutional structures through which the civil society could easily and effectively oversee the legislative and executive activity are not functional.

10. Are there effective remedies and appeals?

Part 4: Funding and Taxation

1. Are there any limitation on the rights of associations to receive and own property and funds? How?

Acquisition of immovable property

ARTICLE 22-Immovable property may be purchased or sold with the decision of board of directors, based on the authorization given by the general assembly. The associations are liable to notify the purchased immovable to the local administrative authority within one month as of the entry date in the land registry. (Association Law, Article 22)

The aid collection by associations and foundations have strict rules. The aid collection requires a prior permission from the authorities.

“Besides the associations, institutions and foundations serving for public interest and allowed by the Ministers’ Council to collect aid without permission, the persons and institutions willing to engage in aid collection activity should obtain permission from the authorities mentioned in Article 7 of the Act Nr. 2860 according to the procedure set-forth in this Regulation. The associations, institutions and foundations collecting aid without permission pursuant to the decree of Ministers’ Council is liable only to notify their activities within the scope of this Regulation to the competent and authorized bodies according to the procedure determined by Article 7 of the Act. Nr.2860. Aid collection activities carried out without obtaining permission or notifying the competent and authorized bodies are ceased by the security forces and prosecution is commenced against the persons responsible from such failure.” (*Regulation relating to procedure and principles applicable in collection of aid, Article 5*)

One of the recent victims of this regulations was the Amnesty International-Turkey. The Amnesty International Turkey put a notice on its website by indicating a bank account for donations. The authorities found this act conflicting with the above mentioned Regulation. The authorities frozen the bank account of Amnesty International. Bank accounts are still frozen.

2. Are there any limitation on the rights of associations to use the funds, other than by the conditions of their granting?

The practice cannot be regarded as limitation, however, all Grant holders should provide the copy of their projects if they received a fund from foreign organisations to the Department of Association’s Desks in provinces. Although there is no legal ground, officials of these Desks occasionally audits all expenditures made in the context of projects. This is an indication of the lack of confidence of public authorities towards civil society organisations.

3. Are there specific limitations on receiving foreign funds?
The legal framework remains unduly restrictive in several aspects regarding international cooperation. While the Law on Associations specifically permits associations to engage in international activities and establish cooperation abroad (a significant improvement over the prior legal framework), the Association Regulations impose burdensome notification requirements on both associations and foundations, which could be confused with requiring actual governmental approval, and furthermore, still require foundations to receive permission to engage in international activities.

Assistance and Cooperation

ARTICLE 10-The associations, for the realization of the objective declared in the Statute, may provide financial assistance from the similar Associations, political parties, labor and employer unions and professional organizations and may render financial assistance to the mentioned institutions. (Association Law)

Notwithstanding the provisions of the Law Nr.5072⁶ relating to The Relations of the Associations and Foundations with the Public Institutions and Corporations, the

⁶ Law 5072 (Regulating Relations of Associations and Foundations with Public Institutions and Enterprises) was enacted to regulate those foundations and associations established to raise additional support (through the receipt of private donations or through self-generated income) for state institutions, such as hospitals, schools, orphanages etc. The intent of the law was apparently to curb abuses and improper practices related to these state-established NGOs. Reportedly, these foundations and associations were using public funds without formal authorization, and raising funds from clients (i.e. parents, patients, other customers) for services rendered by a public institution (which were asked to make a "donation" in return for what is a public service, often regarded as "forced donations"). In addition these foundations set up offices in government buildings and used their resources (staff, vehicles, equipment, etc.) to achieve their objectives, creating unclear boundaries between these NGOs and the state. The Turkish government, through Law 5072, intended to counteract this corrupt practice by severely restricting financial flows between private and public actors (i.e. the citizens as clients or donors and the state established foundation).

associations may carry out common projects on the subjects which are within the field of competence of the public institutions and corporations. The participation of the public institutions and corporations in these projects, either in kind or cash, may not exceed fifty percent of the cost of the project.

Provision Of Assistance From Abroad

ARTICLE 21- Associations may provide assistance from the persons, institutions and corporations from abroad, either in kind or cash, provided that a notice is served to the local administrative authority on this subject. The method and content of notifications is adapted in a regulation. It is necessary to collect the cash funds through the intermediary of the banks. (Association Law)

The Decree Law of General Directorate of Foundations (1984) describes under which conditions foundations can engage in international relations. This decree 'allows' Turkish foundations to engage in international cooperation, open branches or representative offices and become members of foreign foundations only upon obtaining prior authorization from the Ministry of Interior and Ministry of Foreign Affairs. These regulations also apply to foreign foundations operating in Turkey. Furthermore, the Ministry of Interior issued a circular in 9 January 2004 regarding the international relations of foundations, which requires these requests to be processed through the Department of Associations, but uses such vague language as to create additional confusion. Regulatory burdens on international cooperation potentially undermine the ability for domestic CSOs to have access to a full range of information and funding, which in turn, could undermine their ability to serve as effective partners with the public sector.

4. Do associations benefit from tax benefits? Under what conditions?

In general, associations are not exempted from taxes. Associations are paying tax of rent, income tax and other relevant taxes applied in good and services.

With the decision of the Council of Ministers, only associations and foundations granted for public benefit status are exempted from tax.

5. Are public funds made available to associations? How? Are these processes prone to discrimination?

There are very limited public funds available for associations. However, these funds are available only for associations and foundations granted with the public benefit. This is already a discrimination made in the Association Law.

Part 5: Oversight, Governance and Transparency

1. What are the supervisory authorities that oversee associations (e.g. courts, ministries, independent bodies, security apparatus)? How consistent are the activities of these authorities with the principles of freedom (check principle 16 of the Declaration)?

The original intent of this law and the importance of fighting corruption and preventing conflicts of interest in public services are unquestionable. Regrettably, however, the **actual regulation severely curtails the income generation and partnership possibilities of almost all foundations and associations⁶**, reaching beyond the presumed original intention of the lawmakers. The restrictions spelled out by the law include:

- *Public institutions can not allocate funds or provide assistance to these organizations from their budgets. (Article 2.g.)* While a legitimate restriction for a concrete organization, by extending the scope of the law to all CSOs, it becomes a severe impediment to cooperation.
- *These organizations are not allowed to make use of any public property (building, car, devices etc.) which belongs to the state. (Article 2.a.)* If applied to all CSOs, this cuts off an important opportunity for government support. Making public property available for the use of CSOs is a common form of in-kind support in Europe.

While this regulation affects CSOs, we chose to include it under the legal framework of the state actors, as it is our belief that the above restrictions should be applied exclusively to organizations established and operating under the public law.

Internal Audit

ARTICLE 9- Internal audit is basic principle in the associations. The internal audit may be accomplished by the general assembly, board of directors or board of auditors, as well as by the independent auditing groups. Realization of internal audit by the general assembly, board of directors, or independent auditing groups may not suppress the responsibility of the board of auditors.

The Board of Auditors is responsible from the auditing of the associations with intervals not exceeding one year according to the procedures and principles set out in the Statute in order to determine whether the activities are carried out in the direction of the object and scope declared in the Statute; whether the books, accounts and records are kept in conformity with the laws and the Statute of the association. The audit results are presented in a report to the board of directors, then to the general assembly when the meeting is held.

Upon request, the authorities of the association are obliged to render full assistance to the members of the board of directors during the review of all kind information, documents and records and to enable access to the management buildings, plants and premises.

Liability To Submit Statements and Inspection

ARTICLE 19- The associations are obliged to submit their statements containing the year-end results of the activities, income and expenditure transactions to the local administrative authority each year, until the month of April. The procedures and principles relating to preparation of the statement are adapted in a regulation.

Where deemed necessary, the Ministry of Interior or the local administrative authority may start inspection to determine whether the association is operating in the direction of the object declared in the Statute, and the statutory books/records are kept in conformity with the laws, or not. The personnel of the security department may not be assigned in these inspections. The inspections to be performed by the Ministry of Interior and the local administrative authority shall be made within the business hours. Such inspections are notified to the associations at least before 24 hours.

The authorities of the association are obliged to show all kinds of information, documents and records to the officers assigned with inspection duty, and to enable their access to the management building, plant s and premises.

The Chief Prosecutor's Office is notified immediately by the local administrative authority in case of determination of illegal activity during the inspection that may constitute an offense.

2. Are accounts and other information transparently available to the public?
Associations declares their accounts and other relevant information in their General Assemblies. It is not easy to say that all associations and foundations have a transparency rules and principles.
3. What penalties (e.g. criminal, fines, etc) and harassment measures are applied in cases of violations?
As it can be observed from the following article of the Association Law, administrative fine, heavy fine, imprisonment are applied in cases of violations.

ARTICLE 32- Following penalties shall apply to those acting contrary to this Law;

q) An **administrative fine**, at the amount of **five hundred million lira**, is imposed to **those who establish associations although not entitled to do so; those who become a member of an association although his/her membership in associations is restricted by the laws; those who purposely admit persons to membership although his/her membership is restricted by the laws**, or the executives of the association who neglect to write off registration of such persons, or others who lost the credentials of a member.

r) **A heavy fine**, at the amount of five hundred million lira, is imposed to the executives of the association, who hold the meetings of the general assembly contrary to the laws and the Statute, or convene the meetings at a place other than the head office or any other place not indicated in the Statute. Besides, the court may adjudicate cancellation of the general assembly meetings which are held contrary to the laws and the Statute.

s) An administrative fine corresponding to five percent of the amount transferred from abroad is imposed to the executives of the association if the foreign fund in the form of aid is not received through the intermediary of the banks.

t) An administrative fine, at the amount of five hundred million lira, is imposed to the executives of the association if the statutory books or records of the association are not kept properly.

u) Unless the offenses do require heavier punishment, imprisonment from six months to two years and a heavy fine at the amount of five hundred million lira is imposed to the persons who involve in mischief during the elections and voting, counting and breakdown of votes in the general assemblies and other organs of the association; who falsify, destroy or hide the books or records.

v) Unless the offenses do require heavier punishment, imprisonment from six months to two years and a heavy fine, at the amount of five-hundred million lira, is imposed to the chairman and members of the board of directors, or auditors and other personnel of the association who use or produce or pledge or sell, conceal, destroy, deny, falsify or modify a cash or a paper, bill or other properties with monetary value for their own benefit or for the benefit of others.

w) A fine up to five hundred million lira is imposed to those who open representations or branches of foreign associations in Turkey without the permission of the concerned authorities; those who establish cooperation with these associations or admit members to these associations. The representations and branches which are opened illegally are closed by the competent authorities.

x) An administrative fine, at the amount of five hundred million lira, is imposed to the executives of the printing office who fail to fulfill the obligations stipulated in article 16.

y) An administrative fine, at the amount of one hundred million lira, is imposed to those who do not meet the requirements set out in article 17.

z) A heavy fine, at the amount of three billion lira, is imposed to those who intentionally submit wrong information in the statement mentioned in article 19.

aa) An administrative fine, at the amount of five hundred million lira is imposed to those who do not meet the requirement in article 9 and subsection three of article 19.

bb) An administrative fine, at the amount of five hundred million lira, is imposes to the executives of the association who fail to fulfill the obligations stipulated in articles 21, 22 ,23 and 24 and to submit a statement as per article 19 of this Law.

cc) A heavy fine, at the amount of five hundred million lira is imposed to the executives of the association who open the facilities mentioned in article 26 without permission, and the facilities which opened illegally are closed with decision of the competent authority.

dd) Unless the offenses do require heavier punishment, a heavy fine, up to five hundred million lira, is imposed to the executives of the associations who act contrary to the restrictions stated in article 29, in spite of the warnings made in writing, and decision is taken for the dissolution of the association.

ee) A heavy fine, from five hundred million lira to one billion lira is imposed to the executives of the association who act contrary to the restrictions stipulated in paragraph (a) of article 30; in case recurrence of such offense , this heavy fine is increased by one half. Unless the offenses do require a heavier punishment, imprisonment not less than one year is imposed for the executives of the association who execute acts contrary to paragraph (c) of the same article, and decision is taken for the shut-down of the facility.

ff) Unless the offenses do require a heavier punishment, imprisonment from one year to three years and a heavy fine, at the amount of five hundred million lira, is imposed to the persons who act contrary to paragraph (b) of article 30, and establish associations restricted in the same paragraph, and decision is taken for the dissolution of the association.

r) An administrative fine, at the amount of one billion lira is imposed to those who do not meet the requirements stipulated in article 31.