

Barriers To Freedom Of Association Of Associations In Turkey

Executive Summary Of Findings Of The Preparation
Of Methodology For The Monitoring Of Freedom
Of Association In Turkey Project



"This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of TÜSEV and can in no way be taken to reflect the views of the European Union."

BARRIERS TO FREEDOM OF ASSOCIATION OF ASSOCIATIONS IN TURKEY

Executive Summary Of Findings Of The Preparation Of Methodology For The Monitoring of Freedom of Association in Turkey Project

Freedom of association is one of the most important issues of civil society. Recently completed, the European Union's European Instrument for Democracy and Human Rights (EIDHR) funded and supported "Preparation of Methodology for the Monitoring of Freedom of Association in Turkey Project", studies the limitations to freedom of association created by deficiencies in the law, in the application of the law, and by other means. The project was implemented by the Third Sector Foundation of Turkey (TUSEV) in cooperation with the Civil Society Development Center Association (STGM).

In the scope of the Project, a comprehensive report has been drafted in order to identify the barriers to freedom of association. The report is made up of two parts: the first contains the study titled The Evaluation of the Associations Law through the Perspective of Freedom of Association. The second, titled Monitoring Assessment Report contains the results of the pilot monitoring mechanism created and implemented after a series of national and regional workshops involving civil society representatives and experts in the field.

As it's already known, one of the most fundamental duties of democratic movements is to protect equal citizenship, freedom of thought and individual rights and freedoms. In line with this, the ability of individuals to freely unite around a common cause is a fundamental democratic right. Freedom of association, in this context, is the transition from an individual right to a collective right which empowers and enhances democracies. In such environment, civil society organizations are the vital voice of participatory democracy.

Due to this fact, in developed countries, when discussing the debt of democracy, freedom of association and civil society are used as a criterion. Additionally, pluralism and participation are among the important parameters of right to association. It is hard to talk about democracy in a society, if that society does not give value to such concepts.

This study shows that laws that are designed to protect equality and freedoms actually do not fulfil their intended purpose and that there is a general misperception among the public about the meaning of this problem. The reason for this is that these fundamental concepts are not understood through an objective and scientific perception and there is a heavy volume of laws which are prone to quick and unexpected change. Additionally, the inconsistent application of the law to differing situations all proves to be a serious impediment to freedom of association.

Any formalities, conditions, restrictions, and punishments developed in this context should not conflict with democratic values and legitimate claims. All parts of society must accept that the framework of freedom of association described in the Constitution and in international documents are a fundamental right that allows for a free and vibrant civil society.

The 1982 constitution and related laws drafted immediately after the 12 September Military intervention reflects an antidemocratic perception in which individual freedoms are viewed as a threat to the continuity of the state. Constitution, Law on Political Parties, Law on Trade Unions, Foundations Law, Associations Law, Law on Meetings Demonstrations and others clearly displays how civil society is seen as a potential threat and should be kept in order.

This perception is not present in the law alone but can easily be seen in other parts of society. Association and the right to association are concepts that are unconsciously questioned in terms of their legitimacy. The socio-psychological environment created by the 12 September military intervention generated and spread the fear that any kind of organization will inevitably lead to lawlessness and anarchy and that organized individuals will unavoidably divide into separate political camps leading to severe polarization. So, associations have been viewed as establishments, if left alone, would engage in harmful activities and therefore should be subject to certain limitations.

The judiciary has also been affected by this suspicious environment; both lower and higher courts have been interpreting the already restrictive laws against individual rights and freedoms. As a result of all of this, closure of political parties, trade unions, foundations and associations has become a routine phenomenon.

This restrictive and suspicious form of governance has been operating quite isolated from rest of Europe and European institutions until Turkey was brought before the European Court of Human Rights. The Court has repeatedly found Turkey guilty especially in party closure cases. Turkey's second "encounter" with Europe has been during the European Union (EU) accession process where legal reforms became a necessity to satisfy the Copenhagen criteria.

Soon after, Turkey started to see the fruits of the accession process; many of the laws and regulations limiting the right to association were reviewed and revised. During this time, Associations Law which is of great importance for associations went through a comprehensive revision in 2004. The report prepared under this project evaluates the amended version of the law.

In addition, the project developed a pilot monitoring mechanism after a series of regional and national workshops involving civil society representatives, experts and public officials. All of these efforts aim to develop effective means to monitor freedom of association with support from both civil society and the public sector. Results from the surveys that were handed out throughout the implementation phase of the project makeup an important part of the report.

Since 2000, there have been major changes in the laws regarding civil society. For many associations, EU accession process and the level of importance given to democratization during this period coupled with the new Associations Law has been a turning point. However, since 2004, it became apparent that many organizations were still facing difficulties and sanctions. Due to this reason, it became necessary to develop a monitoring mechanism to alleviate some of the persisting problems.

Monitoring Assessment Report produced the following results and recommendations:

After a careful examination of the surveys, two points can easily be drawn from the results: (1) the monitoring process proved to be invaluable and the findings were not only significant but worth a comprehensive discussion, (2) however, it was observed that there was inadequate participation in terms of quantity and quality by associations. Some of the answers to survey questions reveal that the participants did not accurately understand the intent of the question. Additionally, some of the surveys were partially filled out raising the concern whether such long questioners were productive.

Generally speaking, although the associations are satisfied with the developments and their relations with the Department of Associations, they still face barriers and difficulties due to legislation and some related regulations. If there are initiatives to mend these deficiencies within the law, it would not be surprising that future responses will be more positive. Additionally, along with improvements in the implementation side of the law, there must be progress made in how the Department of Associations personnel interact with representatives of associations. Staff should be more patient and act as a guide rather than an inspector. In certain regions these problems are more persistent than others. Normalization of relations will lead to the elimination of many problems.

Along with the importance of sustaining the continuity of the monitoring process, it is now necessary to develop an effective monitoring methodology. Collaboration with the public sector can yield important results. Additionally, in order to guarantee the sustainability of the monitoring process adequate human and financial capital must be secured. Monitoring should be carried out by an experienced institution to assure it is implemented in a flexible fashion without any interruptions. Collaboration with the public sector should be sustained throughout the entire process.

An overview of the current condition illustrates that many problems still continue to exist mainly due to legislation and related regulations and the application of these rules. As a result of our review of the legislation, we found the following deficiencies and made recommendations to help improve the situation. These are organized under the below headings:

Number of Founders

The minimum number of founding members required to establish an association should be lowered to three (3) from its current number of seven (7). Similarly, associations should be able to form an executive board with three (3) members instead of five (5).

Restrictions on Membership

“Absolute” restrictions to individuals with certain occupations on becoming members of associations or other organizations should be replaced with “concrete criteria” to identify which organization they can and which they cannot become a member of. Members of law enforcement or military should be free to join other associations if they wish to do so.

Condition of Foreigners

Laws and regulations concerning foreigners need to be amended. There are good examples present in the current Foundations Law regarding this matter. Article 6 of the Foundations Law (Law 5737) states “The management body of New Foundations shall be appointed according to their deeds of trust and the majority those who assume positions in these management bodies of these foundations shall be residing in Turkey.” This language allows foreigners to become members and even assume positions at management level. However, the majority of the management body must still be legally residing in Turkey. A similar regulation must be adopted for associations so foreign individuals do not face restrictions and barriers. Additionally, foreigners should not be subject to acquire a “residence permit” when becoming a member, this should be only required of founding members and those who assume positions in the management body.

Illegality, Mending Deficiencies and Sanctions

Article 6 of the Associations Regulation which reads “If illegalities and deficiencies are not mended within thirty (30) days, appropriate civil servant shall inform the public prosecutor to open a closure case against the association in the authorized Civil Court of First Instance” should be amended by removing the word “deficiencies” and adding “if the illegality resulting from not complying with a particular law is not mended within thirty (30) days”.

Content of the By-laws

The section of the Association Law regarding by-laws should be amended. The information that is required be present in the by-laws should only be restricted to the “name of the association, address, and the mission” and the language of the law should be changed accordingly.

Compulsory Record Keeping

A significant proportion of fines given to civil society organizations are due to “improper” record keeping. This shows how civil society is forced to deal with a cumbersome bureaucracy. Steps should be taken to improve the current situation. The quantity of records mandated by the law can be decreased. Additionally, record keeping should be simplified. Associations that can’t fill out the required documents due to lack of information and those inadvertently make mistakes should be subjected to a warning not a fine. Otherwise, the law will continue to be a source for burdensome fines for associations.

All necessary forms should be able to be filled out online and the use of this method should be encouraged. Currently, electronic documents are required to be notarized, this too should be lifted. Records kept electronically will be cost-effective and less prone to mistakes.

Registration and the language of correspondence

Laws and regulations regarding language should not be open to arbitrary application and practice. Currently, the law requires documents and internal correspondence of associations to be only carried out in Turkish. This restriction should be eased and associations should only be required to use Turkish when corresponding with public authorities.

Moreover, in practice, Province Directorates of Department of Associations requires associations to prepare a Turkish sample of the grant applications/project documents sent to foreign organizations in languages other than Turkish. This practice is unlawful, cumbersome and should be revised.

Government Audit

In late 2008, Department of Associations published a rule stating that government audits of associations are to be carried out, if it is suitable, at the headquarters of the organization. However, in practice, auditors have been

demanding that managers bring their documents to Province Directorates or any other suitable governmental office without making the attempt to visit the headquarters of the association. This matter should be examined and aside from those which do not have an appropriate place, audits must be carried out at the headquarters of each association.

Internal Audit

Auditing Committee of each association is an internal auditing organ of the organization and it is solely accountable to the general assembly. The Auditing Handbook published by the Department of Associations intended to assist organizations through the auditing process should be rewritten. In fact, the content of the handbook raises suspicions about what purpose it actually serves. In its current form, it certainly is not of any guidance to associations.

International Activities

Foreign associations are subjected to serious bureaucratic rules when opening a branch in Turkey. Also, there seems to be a certain level of “distrust” of these organizations which leads to the mindset that they should be closely watched. There is an assumption that by opening a branch in Turkey only the foreign association will benefit from doing so. In reality, when organizations working in the area of human rights, environment, children, women, democracy, etc. open a branch and become active in Turkey, people living in this country will be the beneficiaries of these programs and projects. The mentioned practices continue to hamper the activities of many foreign associations attempting to work in Turkey.

Additionally, current practices will deter those organizations planning to implement projects in Turkey and in terms of international projects make it more difficult for Turkish associations to form partnerships with foreign counterparts.

These cumbersome and over-bureaucratic practices should be eliminated so foreign associations can easily open local branches and operate more freely.

Receiving Foreign Funding

The practice of “prior notification” of public authorities when receiving foreign funding should be stopped because organizations already specify this in their yearly statements. The current practice is both cumbersome and time-consuming for civil society organizations.

Platforms

Current legislation does not address the needs of platforms. Although platforms are not recognized as separate incorporated bodies under the law, they still should be able to perform activities independent of their founding entities. For example, platforms should be able to open bank accounts, employ individuals, receive and spend money in the name of the platform and if need be taxed in this form. Appropriate amendments should be made in the law so they can perform activities as platforms.

Federations and Confederation

In order to form a federation, five (5) and a confederation, three (3) organizations must come together. These numbers should be lowered to two (2) for both. Additionally, the law states that those organizations trying to form such entities must have the “same purpose.” This should be reworded to “similar” so a greater range of organizations can establish federations and confederations.

Public Benefit Status

The law in Turkey does provide for a public benefit status for CSOs. A very limited number of organizations, however, benefit from this status. Article 27 of the Associations Law grants authority to the Council of Ministers to determine which NGOs can be given this status. The process can be highly political at times.

This status should be granted by an autonomous and transparent authority which bases its decisions on criteria that are objective. This body should be easily accessible by various stakeholders and be open and accountable in its decisions. Also, civil society representatives should be able to participate in the decision-making process. Regarding this matter, there are numerous examples of best practices especially in European Union member countries.

Fines

The principal task of the Associations Department should be to act as a guide to associations, not to issue rigid fines as they see fit. The Department should take all necessary steps including training to guide associations so their activities are within the bounds of the law thus avoiding unnecessary fines. Additionally, fines should be lowered and only issued after a warning and a sufficient time to respond by the association.

Issuing of Fines

Article 33 of the Associations Law holds the chairman of the executive board sole agent responsible for any sanctions and/or fines. This creates inequalities among board members, damaging the rule of equal rights and equal responsibilities and individuals hesitate to become a chairman, leading to a leadership vacuum. This portion of the law should be amended.

Law on Meetings and Demonstrations—Law 2911

This Law forbids security forces from attending close-door meetings of associations. However, in practice security personnel from time to time act as though this legislation does guarantee the abovementioned right to associations. This is a clear violation of the law and an obstacle to the development of freedom of association in Turkey. The General Security Directorate should clarify the issue and should avoid comments and practices that harm and limit the right to freely organize.

Restrictions on Fundraising

Law on Collection of Donations and related regulations should be abolished entirely. Yearly statements and public audits already provide the necessary instruments to determine whether or not the donations are used appropriately.

Publishing

The process of publishing by associations should be eased through amendments to the Press Law.

Tax Related Problems

There should be a comprehensive re-examination of tax laws regarding civil society organizations. The entire legislation should be reorganized and amended.

