

TÜSEV ATÖLYE

REGISTRATION PROCESSES OF FOREIGN CSOs IN TURKEY UNDER FREEDOM OF ASSOCIATION

The Info Note includes the basic principles recommended within the framework of international norms and standards with respect to the right to freedom of association and registration of CSOs. The text also includes an evaluation regarding the registration and operation processes of foreign CSOs in Turkey, as well as a comparative discussion of the current legal situation and practices in Western Balkan countries, USA, Belgium and Bulgaria.

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TÜSEV
Türkiye Üçüncü Sektör Vakfı
Third Sector Foundation of Turkey

Bankalar Cad. Minerva Han No:2 Kat:5
34420 Karaköy-İstanbul
Tel: 0212 243 83 07 • Fax: 0212 243 83 05
info@tusev.org.tr • www.tusev.org.tr

FREEDOM OF ASSOCIATION AND THE REGISTRATION PROCESSES OF FOREIGN CSOS

International Standards on CSOs' Registration Processes

The right to freedom of association is one of the basic rights under the protection of the international human rights law. The *Universal Declaration of Human Rights* (UDHR)¹, *International Covenant on Civil and Political Rights* (ICCPR)² and the *European Convention on Human Rights* (ECHR)³, which are binding or consultative on international and regional level, contain provisions that guarantee the right to freedom of association.

The *Guidelines on Freedom of Association* prepared by the Organization for Security and Co-operation in Europe (OSCE) sets the minimum requirements that should be fulfilled by national authorities.⁴ While many countries in the OSCE and European Council area require registration of CSOs, the procedures relating to this process do not promote exercise of the freedom of association in some countries. Obstacles to exercising the freedom include unclear registration processes, requiring too many documents, high registration fees, extensive powers of discretion granted to registering institutions and lengthy registration processes. In addition, other rules such as requirement of citizenship and residence

permit also prevent those who are not citizens of the country in question and foreign CSOs from exercising their rights to freedom of association.

According to the *Guidelines on Freedom of Association* prepared by OSCE, the following standards set out in the part titled "Notification and Registration" should be observed equally for CSOs, their branches, foreign CSOs, branches and/or representative offices opened by foreign CSOs and CSO networks.

- 1- **Legislation should make the notification process or registration as simple as possible and, in any case, not more cumbersome than the process created for other legal entities (such as businesses).** For example, charging fees in the process should be taken into account in terms of whether it encourages the exercise of freedom of association by not for profit organizations. They should not, therefore, be set at a level that discourages or makes applications for registration impractical.
- 2- **The list of documents required for registration should be minimal and clearly defined in legislation.** In general, evidence of a by-law or statute and the payment of registration fees (as applicable), as well as relevant details relating to the association's founders, should be sufficient. Documents, such as lists of members, fiscal records of founders, lease agreements and other irrelevant documentation should not be demanded.
- 3- **Apart from the objectives and name of the CSO, the substance of the documentation submitted to the authorities for registration should not be subject to review.** Only the CSO's ability to meet formal requirements should be relevant for the question of registration.
- 4- **The law should refrain from restricting the use of names of CSOs, unless they impinge on the rights of others or are**

1 Approved on 10 December 1948. Article 20/1: 1) Everyone has the right to hold peaceful meetings and association.

2 Approved on 16 December 1966 and enforced on 23 March 1976. The article 22/1 of the Covenant, approved by Turkey on 23 September 2003, protects the right to freedom of association: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests".

3 Approved on 4 November 1950 and enforced on 3 September 1953. The article 11/1 of the ECHR, which was approved by Turkey on 18 March 1954, protects the right to freedom of association: "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."

4 These guidelines were created by OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Council of Europe's European Commission for Democracy through Law (Venice Commission). The guidelines constitute a directive established to guarantee the right to freedom of association and support its implementation for legislators. Date of Access: March, 27 2015. www.osce.org/odihr/132371

clearly misleading (such as when the name gives the impression of being an official body) or leads to the CSO being confused with another association.

Legislation should also refrain from placing territorial restrictions on the operations of CSOs and should maintain the same procedures for registration throughout the whole country.

- 5- **The law should not deny registration based solely on technical omissions, such as a missing document or signature, but should give applicants a specified and reasonable time period in which to rectify any omissions, while at the same time notifying the association of all requested changes and the rectification required.** Meanwhile, the association should be able to continue to function as an informal body.
- 6- **Applications for registration should be determined without undue delay and should be dealt with within a matter of weeks.**
- 7- **The responsible public institution should be required to provide a detailed written statement of reasons for a decision to reject the registration of an association.** Such reasons should not go beyond what is specified in the applicable law. The reasons set out in law should be compatible with international human rights standards; the rejection of a registration should be exclusively based on non-compliance with the prescribed formalities, or the existence of inadmissible names or objectives.
- 8- **CSOs must have the opportunity to appeal decisions denying their application for registration or any failure to deal with their applications within a reasonable time, and should be able to do so before an independent and impartial tribunal.** Applications rejected due to a failure to comply with the respective formalities should have the right to reapply for registration.

9- **The state should maintain a database of registered CSOs that is accessible to the public, with due consideration for data protection principles and the right to associational privacy.** In order to ensure public accountability, the number of accepted and rejected applications should also be made available.

10- **Re-registration should not automatically be required following changes to legislation on associations.** Renewals of registration may be required in exceptional cases where significant and fundamental changes are to take effect. In such cases, the competent authorities should first notify the respective CSO of the need to comply with the rules within a reasonable timeframe. In any case, even if they do not re-register, the CSOs should be able to continue to operate lawfully.

EVALUATION ON THE REGISTRATION PROCESS OF FOREIGN CSOS IN TURKEY ⁵

Establishment of Foreign CSOs

The Article 4 of the *Regulation on Associations* describes a foreign association as “associations and non-profit institutions other than associations and foundations which are established abroad”.⁶ Registration and operation of foreign associations, foreign foundations and foreign non-profit organizations (Foreign CSOs) are regulated under the *Turkish Civil Code No: 4721*⁷, *Law on Associations No: 5253*⁸ and the *Regulation on Associations*.

⁵ The legal framework analysis in this part is extracted from the “Active Participation in Civil Society: International Standards, Obstacles in National Legislation and Recommendations” report published by TÜSEV within the scope of Strengthening Civil Society and Civil Society Public Sector Dialogue Project, as well as the related parts of the Civil Society Development Center’s publication titled “Law for NGOs”.

⁶ Regulation on Associations. . Date of access: 5 June 2016. www.mevzuat.gov.tr/Metin.Aspx?MevzuatKod=75.8038&MevzuatIlski=0&sourceXmlSearch=Dernekler%20Y%C3%B6netmeli%C4%9Fi

⁷ Turkish Civil Law (numbered 4721, Official Gazette date: 8/12/2001 Number: 24607). Date of access: 5 June 2016. www.mevzuat.gov.tr/MevzuatMetin/1.5.4721.pdf

⁸ Associations Law (5253 sayılı, Official Gazette date: 23/11/2004 Number :25649). Date of access: 5 June 2016. www.derekle.gov.tr/tr/mevzuat/kanun/5253-dernekler-kanunu.aspx

The aforementioned right is restricted with the statement “foreign associations may operate or cooperate, set up representative offices or branches, establish associations or parent organizations or participate in existing associations or parent organizations in Turkey, with the authorization of the Ministry of Interior, upon obtaining the opinion of the Ministry of Foreign Affairs” in the Article 5 of the Law on Associations. However, this restriction grants an unlimited power of discretion to the executive. The Ministry of Interior and the Ministry of Foreign Affairs may impose restrictions on Foreign CSO’s right to association, without any justification. There are no exceptions specified in the law in this regard. This situation prevents even associations that carry out activities for the public good in areas such as environment or human rights from operating in Turkey without permission.

After setting up branches, foreign associations would be subject to the same sanctions prescribed in the legislation concerning national associations in case they carry out activities in conflict with the legislation. Therefore a further authorization procedure for foreign organization is not necessary. In terms of improving the freedom of association of Foreign CSOs, it appears more advisable to amend the Article 92 of the Civil Law and the Article 5 of the Law on Associations, so that the articles prescribe the notification procedure instead of authorization for foreign associations. **The current prohibition in the Article 5 of the Law on Associations should either be abolished altogether or should be restricted to associations that carry out activities in certain fields, with such activities clearly specified in a restrictive manner in the law.**

There is no timeframe prescribed in the legislation regarding the conclusion of applications made by Foreign CSOs to the Ministry of Interior for authorization to operate in Turkey. According to the guideline published by the Department of Associations, the conclusion period of

Foreign CSOs’ applications varies depending on the field of activity of the applying CSO, the region where the activities will be carried out, the origin country, its international recognition, etc.⁹

Under the Article 32(g) of the Law on Associations, an administrative fine in the amount of TL 1.000 (as of 2016) shall be imposed on those who open or operate representative offices or branches of foreign associations and nonprofit organizations without the permission. In such cases, the representative offices and branches which are opened illegally shall be closed. This regulation also prescribes a closure sanction in addition to the administrative fine. **This situation conflicts with the principle of proportionality and it appears more acceptable to impose the closure sanction after issuing a warning first.**

Foreign CSOs that are authorized to operate in Turkey also need authorization by the Ministry in order to change their field of activity and region of operation. The applications of foreign CSOs are examined by taking into account the objectives and activities specified in the application file, as well as the province, provinces or overall country specified as their area of operation. The authorization granted cover the specified activities which will be carried out in the determined area of operation.

Freedom of Association of Foreign Real Persons

Although the Article 33 of the Constitution states that everybody can establish associations without prior authorization and does not impose any restrictions with regard to foreigners, there is a series of restrictions in the laws.¹⁰ Under the Article 93 of the Civil Code, “Foreign real persons with the right

⁹ Ministry of Interior. Department of Associations. Associations Legislation Regarding the Pre and Post Application Process for Foreign CSOs. Date of access: 4 June 2016. www.dernekler.gov.tr/media/templates/dernekler/images/folder/Yab.STK.E%4%9Fit.Sun-TR.ppt

¹⁰ Constitution of the Republic of Turkey. (Law No.: 2709 Date of Approval: 7.11.1982). Date of access: 6 June 2016. www.tbmm.gov.tr/anayasa/anayasa_2011.pdf

to reside in Turkey may found associations or become members. This condition shall not be required for honorary membership.” This means that only the foreigners with the right to reside in Turkey may establish an association in Turkey. **This practice does not seem practical and the condition of residence required for establishing associations should be repealed from the Civil Code.**

The legislative provisions explained above are applicable to associations and foundations. However, when it comes to foundations, there are remarkably more restrictions for foreigners. Under the Article 5 of the Law on Foundations, “Foreigners may establish new foundations in Turkey, in accordance with the principle of de jure and de facto reciprocity.”¹¹ The application of the principle of reciprocity to foreigners in addition to the current liabilities on the establishment of foundations would prevent the citizens of certain countries from exercising their freedom of association for a reason beyond their control. Therefore, **the phrase “in accordance with the de jure and de facto reciprocity” in the Article 5 of the Law on Foundations should be abolished.**

The current situation in Turkey is examined comparatively with the practices in Western Balkan countries, USA, Belgium and Bulgaria in the following table.

In comparison to other countries analyzed within the scope of the research, Turkey appears to be the country which demands most documents for registration from foreign CSOs as well as being the only country which sets different registration criteria than national CSOs, which requires the approval of a superior authority for registration and which does not determine an official evaluation period for evaluation of the application.

¹¹ Law on Foundations. (numbered 5737, Official Gazette date: 27/2/2008 No: 26800
Access date: 6 June 2016. www.mevzuat.gov.tr/MevzuatMetin/1.5.5737.pdf

INFORMATION ABOUT THE REGISTRATION PROCESSES OF FOREIGN NGOS IN DIFFERENT COUNTRIES							
	Institution Responsible from Registering Foreign CSOs	Documents submitted by foreign CSOs for registration	Rules different than the registration process of national CSOs	Is the approval or opinions of different institutions required for foreign CSOs' registration processes as opposed to those of national CSOs?	Are there any different criteria applicable in the evaluation of foreign CSOs' registration processes than national CSOs?	Is there an official timeframe for evaluation of applications?	Is feedback provided regarding the acceptance or rejection of the application/declaration?
USA	Internal Revenue Service	The foundation charter that indicates the Foundation's objective, address, name of the institution and the authorized individual should be provided, along with payment of an immaterial registration fee. The authorized individual does not have to be an American citizen.	There is no difference in terms of rules and the registration process. There is no tax exemption for foreign CSOs (unless there is an exemption required by special treaties between USA and the country of establishment).	No			
Belgium	The Commercial Court	The charter indicating the Foundation's purpose, as well as information on the budget and the board of directors should be translated so that they can be recognized by the Belgian authorities and the necessary legal approvals should be obtained for them. The Board of Directors should take a decision regarding the set-up of an office in Belgium. The decision should also specify the ID details of the Founder/Legal Representative, as well as office address and activities of the representative office. Furthermore, a certificate of authority that authorizes the Founder/Legal Representative and a letter of acceptance indicating the Founder's/Legal Representative's acceptance of the authority are required.	There is no difference in terms of rules and the registration process. The institution should designate an individual as its "founder/legal representative" in Belgium. The individual should be a real person either with a permanent residence permit in Belgium or with Belgian citizenship. In this respect, legal entities may not be designated as the legal representative.	No	No The relevant articles of the law on non-profit institutions apply equally to national and international institutions and specify the conditions required for establishment.		
Bulgaria	District Courts	The name of the foreign CSO and the address of its head office, its main fields of activity, the address and main objectives of the branch applying for registration, personal details of the branch founder/legal representative, as well as their job description and responsibilities as specified in the foundation statute should be indicated. For Associations: Along with the by-laws and organization certificate, the board of directors decision regarding the set-up of the foreign branch, notarized copy of the association chairman's signature and registration fee receipt are required. For Foundations: In addition to the documents above, bank account details demonstrating the main assets, notarized foundation statute and organization certificate are required.	While there are differences in terms of the documents submitted for registration, the registration procedures are similar. The conditions required for registration are as follows: Founder/ legal representative of the branch must be a Bulgarian resident. The legal entity and founders of the foreign CSO must possess capacity to act. The name of the foreign CSO applying for registration may not be misleading and unethical. The foreign CSO should not pursue profit generation.	No	No However, since there are no rules regulating the evaluation process, decisions of District Courts may differ.	No The district court takes a decision regarding the application in due time.	If there are missing documents, the legal procedure is ceased and the necessary guidance is provided. If the application is against the law, the judge may reject the registration request, with justification. An appeal may be made to the Supreme Court against this decision.

INFORMATION ABOUT THE REGISTRATION PROCESSES OF FOREIGN NGOS IN DIFFERENT COUNTRIES

	Institution Responsible from Registering Foreign CSOs	Documents submitted by foreign CSOs for registration	Rules different than the registration process of national CSOs	Is the approval or opinions of different institutions required for foreign CSOs' registration processes as opposed to those of national CSOs?	Are there any different criteria applicable in the evaluation of foreign CSOs' registration processes than national CSOs?	Is there an official timeframe for evaluation of applications?	Is feedback provided regarding the acceptance or rejection of the application/declaration?
Bosnia and Herzegovina	The Ministry of Justice in the Federation of Bosnia and Herzegovina and its cantons; District Courts in the Republic of Serbia.	Along with the foundation statute that indicates the foundation's objective, the required form should be filled in and one representative should be specified (no citizenship requirement).	There is no difference in terms of the rules and the registration process.	No	No The objectives specified in the foundation deed are evaluated in terms of articles conflicting with the constitution of the Bosnia and Herzegovina as well as international agreements.	30 days	Yes
Serbia	Serbian Business Registers Agency	Required documents are same as the ones required in the registration process of national CSOs.	There is no difference in terms of rules and the registration process. Original documents are required in the application process for national CSOs, while foreign CSOs may submit notarized documents.	No	No There are articles concerning foreign CSOs in the law for non-profit organizations. Applications that do not conflict with the laws are positively concluded, as long as all the required documents are provided.	5 days Same timeframe for the registration of national CSOs.	Yes Feedback is provided with respect to the submission of missing documents.
Albania	District Court of Tirana	A document indicating the legal entity of the foreign CSO in the country where it is established. A document prepared by the related decision-making authority of the foreign CSO, which indicates the purpose of operating and registering in Albania, along with the preparation of the foundation statute. The said documents should be translated to Albanian and notarized.	There is no difference in terms of rules and the registration process.	No	No Non-profit organizations are arranged under the relevant articles of the Associations Law, which states that foreign CSOs are subject to these rules as well. Foreign CSOs are supposed to act in accordance with the laws and rules of Albania, just as expected of national CSOs.	Yes Same as the registration period of national CSOs. The Court concludes the application in 15 days and the decision is communicated to the applicant in 3 days.	Yes If missing documents are detected, the court sets a suitable date for completing the application file.
Macedonia	The Central Register of the Republic of Macedonia (embodies a separate department for foreign CSOs)	A document that specifies the name of the foreign CSO and the responsible individual, the name of the branch to be set up by the foreign CSO and the responsible individual; the objective and mission of the CSO as well as the objective and mission of the branch it will set up. The documents must be signed by the responsible individual and certified by a public notary.	There is no difference in terms of rules and the registration process.	No	No Documents required for application under the related article of the Law on Associations and Foundations are same for National and Foreign CSOs.	Yes Concluded in 5 days; the decision is communicated to the applicant in 3 days.	Yes Feedback is provided with respect to the submission of missing documents.

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Turkey	Department of Associations	<p>The Foreign CSO's status in the original language and carrying an apostil annotation, the notarized Turkish translation of the part of the foreign CSO's status that describes the objectives and fields of activity (approval of the Consulate of the Republic of Turkey in the country in question is also accepted);</p> <p>Copy of the decision taken by the authorized body of the foreign CSO regarding the set-up of a branch in Turkey, which also specifies the individuals designated as branch founders; the application form specified in the Regulation on Associations, with each page signed by the individuals designated as branch founders or the authorized individual of the foreign CSO; status prepared in accordance with the example in the Regulation on Associations, each page of which is signed by individuals designated as branch founders; if there are individuals with foreign nationality among the individuals designated as branch founders, copies of their residence permits indicating their right to reside in Turkey.</p>	<p>The registration processes of foreign CSOs are subject to a different authorization process than national associations. In addition, the legislative provisions applicable to associations and foundations established as foreign branches/representative offices are same as those applicable to the other associations and foundations established in Turkey. However, foreign CSOs are subject to different liabilities and restrictions regarding matters such as the manner of application and notification of activities, in addition to the national legislation.</p> <p>Under the Article 22 of the Regulation on Associations, the set-up of branches and representative offices by foreign foundations in Turkey is subject to the reciprocity condition and is restricted with the situations deemed beneficial for cooperation on international level.</p>	<p>Yes</p> <p>The registration process of branches and representatives or foundations of foreign CSOs is subject to the authorization of the Ministry of Interior and the opinion of the Ministry of Foreign Affairs is also required.</p>	<p>Yes</p> <p>The Ministry of Interior concludes the application processes of foreign CSOs upon obtaining the opinion of the Ministry of Foreign Affairs. However, there are no explanations in the legislation regarding the criteria based on which the Ministry of Interior issues the approval and the Ministry of Foreign Affairs provides its opinion. The criteria on which the grounds for authorization approval and rejection are based are not known either.</p>	<p>There are no provisions in the legislation regarding the possible period of time of evaluating the application or the time required for concluding the application by the authorities.</p> <p>When the Ministry of Interior completes the evaluation process, a notification is made to the applicant and the related governorship in 10 days.</p>	<p>Yes</p> <p>If missing documents are detected, they are asked to be completed. Upon conclusion of the application following the evaluation made by the Ministry of Interior after obtaining the opinion of the Ministry of Foreign Affairs, the applicant is notified with the form and its attachments.</p>