

United Nations Human Rights Committee (CCPR) – 142nd session

Submission for the adoption of the List of Issues

Freedom of expression, peaceful assembly and association (arts. 19, 21 and 22)

The right to participate in public affairs, voting rights and the right of equal access to public service {Article 25a, 25b, HRC General Comment No. 25 (57), para 8}

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BACKGROUND

1. Association of Civil Society Development Center (STGM) submits the following information to the UN Human Rights Committee (Committee) prior to the adoption of the List of Issues List on Türkiye's report at its 142nd session. The provided information covers "Freedom of expression, peaceful assembly and association (arts. 19, 21 and 22)" and "the right to participate in public affairs, voting rights and the right of equal access to public service {Article 25a, 25b, HRC General Comment No. 25 (57), para 8}"
2. The data presented in this report is based on the findings of a comprehensive field research completed in 2023, approximately 200 requests for information (on freedom of association and right to participation), and desk research. As part of the field research, a quantitative research was conducted with a total of 1,003 CSOs, including 800 associations and 203 foundations. In-depth interviews were also conducted with 48 CSOs, including 33 associations, 12 foundations, 2 networks/platforms, and 1 union. In addition, two separate focus group meetings were held with 16 CSOs. The full monitoring report published by STGM can be accessed on the web site of STGM¹. The report was prepared within the scope of the "Monitoring Freedom of Association" Project, which was carried out with the financial support of the European Union.

FREEDOM OF EXPRESSION, PEACEFUL ASSEMBLY AND ASSOCIATION

Overview

3. The core problem related to freedom of association in Türkiye is the complexity of regulatory space that always causes significant confusions and the extension of administrative discretion. The legal procedures and obligations are generally too complex and in many cases are unfavorable in terms of predictability to meet by most of the CSOs in Türkiye who rely on volunteers basically.
4. The overregulation hinders the free exercise of freedom of association in Türkiye at various levels. There are many issues that can/should be managed by CSOs themselves that are regulated in extreme detail. Moreover, most of the obligations are disproportionate regardless of the size and status of CSOs and legislation provides for severe administrative and judicial sanctions for breaches of these obligations instead of providing guidance. A clear indication of this overregulation are the custodial sentences under the current Law on Associations.
5. In Türkiye, a fairly large number of people are required to establish an association and to form organs that are legally required to be established. Although Article 56 of the Turkish Civil Code foresees 7 real and/or legal persons are sufficient to establish an association, in the de facto situation this requirement rises to 16, since the organization has to have at least 16 members to establish all mandatory organs. Such a requirement created excessive burdensome for the expertise-based organizations. On

¹ Civil Society Organisation in Türkiye: Freedom of Association and Right to Participation
<https://www.stgm.org.tr/en/publications/civil-society-organizations-turkiye-freedom-association-and-right-participation>

the other hand, as addressed in detail below, the legal requirement to report all members to the Ministry of Interior inaugurated recently has also been a serious challenge for organizations to freely exercise freedom of association.

6. One of the greatest difficulties in forming an association is the obligation to rent or provide an office belonging to the association during the formation phase. Although the legislation states that the charter, which is the will of the founders, is sufficient for the establishment of an association, in practice the obligation to provide an office address for this association is required. The Ministry of the Interior does not accept that it is sufficient for one of the founders to provide their address as the association's contact address.

What makes the situation even worse is the fact that a de facto obstacle has been imposed on associations to use the same address on the basis of an opinion from the Ministry of the Interior's legal advice, the legality of which is questionable.

7. Additionally, fundraising activities of CSOs have become a minefield as a result of unclear distinction between “donations” and “aids” considering the fact that all associations can receive donations freely but there are very strict and complex prior permission procedures for collection of aid. There are only 50 organizations that can collect aid without a permission under article 6 of the Aid Collection Law No. 2860. This status granted to the President causes significant discrimination in terms of access to resources within civil society.
8. On the other hand, there are some other issues that should be regulated to ensure the use of the right of freedom of association in line with international standards also suffer from the problem of lack of regulation. Regulation of unregistered organizations is a typical example. But more importantly, there is a need for binding regulations that will guarantee the equal participation of all sectors relating to the participation of civil society in decision-making processes and the failure to regulate special statuses like public benefit, tax exemption, fundraising without permission, etc. by adopting an objective and fair approach are among the common problems challenging the exercise of freedom of association according to universal standards in Türkiye.

What are the Challenges Faced during the Establishment of CSOs?

9. In Türkiye, the procedures for forming associations and foundations differ from each other. To form an association is free of charge and not subject to permission, as specified in Law 5253 on Associations. However, although the UN Special Rapporteur on the Freedom of Association and Peaceful Assembly recommends that “two (2) persons should be sufficient to establish an association”², the provision of the Law on Associations requiring minimum seven (7) persons to establish an association is still in force. Another major challenge is the need to provide an address when setting up an association. P.O. boxes or virtual offices are not recognised as an address when applying. The address at which the association has its registered office also proves to

² OHCHR, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, A/HRC/20/27, 21 May 2012, para. 54, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf

be another problematic area. The address must be independent or entered in the register as a business address.³

- 10.** Another point relating to the establishment of association is that any applications made by an association or foundation based in a foreign country for operating or opening a representation or branch office in Türkiye is subject to permission. This also creates an obstacle to potential collaborated activities in Türkiye. The number of the CSOs which are based in a foreign country and permitted to operate or open a representation or branch office in Türkiye is 132. Distribution by legal status of CSO is as follows:

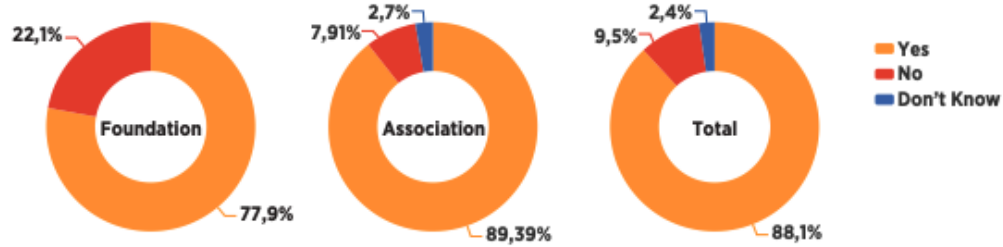
CSOs Permitted to Operate	Membership in Upper Organisation/Be a Founding Member	Collaboration	Representation Office	Branch Office
10	11	2	91	18

To establish a new foundation is, on the other hand, much more complicated and costlier. Foundations are established according to the provisions of the Turkish Civil Code No. 4721 and Law 5737 on Foundations and the Regulation on Foundations.

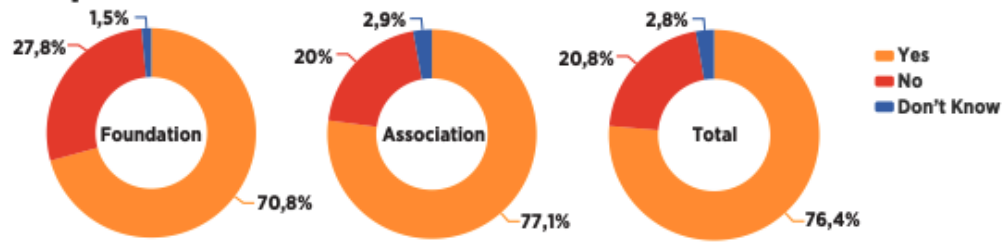
- 11.** The complex process mentioned above relating to the establishment of foundations were also reflected in the findings of the Field Research 2022. As part of the Field Research 2022, a series of questions about the establishment stage were asked to the associations and foundations established in 2016 or later. Based on the data we obtained:
- The registration of 12% of CSOs was not completed within the legal period.
 - 21% of the participants thought that it was acted according to the political criteria during the registration.
 - 11.5% of CSOs were asked to submit additional documents although the law stipulates no such requirement.
 - The transactions were not easy and quick for 20.5% of CSOs. In addition, approximately one out of every five CSOs stated that it faced difficulties due to the legal regulations.
 - The rate of CSOs that faced challenges due to the attitude of the administration/court was 11%.
- 12.** The questions asked to and the responses given by the CSOs established after 2016 that participated in the Field Research 2022 relating to the establishment stage are pro

³ STİGM, Address of Association, 10.04.2019, <https://www.siviltoplum.gov.tr/dernek-ikametgahi>

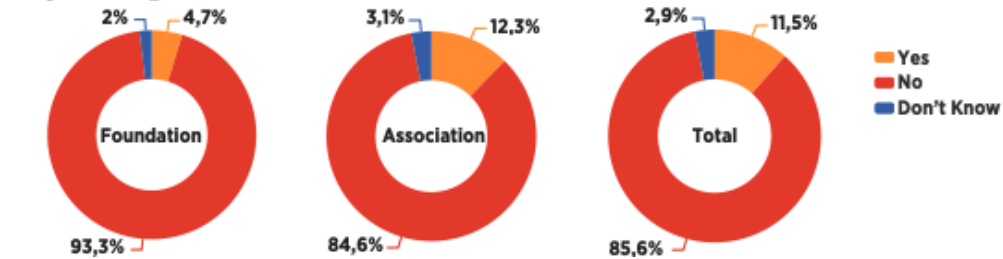
Was the registration of the organisation completed within the legally specified timeframe?



Was the registration process treated with the framework of impartial, non-political criteria?



Did they request additional documents for the organisation beyond what is required by law?



vided below:

Figure 1 Problems faced during the establishment stage by the CSOs participating in the research (only for the CSOs established after 2016)

Which Problems are Faced for Membership in CSOs?

13. In Türkiye, the most important problem faced in membership in CSOs is the membership notification requirement. Law 7226 Amending Some Laws, stipulating making amendment to articles 23 and 32 of the Law on Associations No. 5253 dated 04/11/2004 and adding a provisional article to the cited law, entered into force upon its publication in the Official Gazette dated 26/03/2020. This amendment requires associations to notify their current and new members and the termination of membership procedures to the relevant department for associations in the area where association headquarters is based within 45 days. So, the requirement which put into force through a similar amendment to the Regulation on Associations previously has gained a legal basis. This amendment requires associations to notify each new member and each member resigned or dismissed from the association. Penal provisions are established for those associations failing to make such notification. It

should be noted that the number of association memberships fell by around 4 million following the introduction of the obligation to notification. In light of the notification requirement and the decline in membership numbers, the administration should prioritise the provision of more transparent and organised information on association memberships.

14. As part of the Field Research 2022 field research, the associations participating in the research were asked a question to understand the impact that the obligation to report membership has on the associations. Accordingly, 12% of the associations stated that they face challenges due to the obligation to report membership. These challenges can be considered both as a single obstacle and as the various considerations of obstacles to freedom of association.

The challenges uttered by the CSOs are as follows:

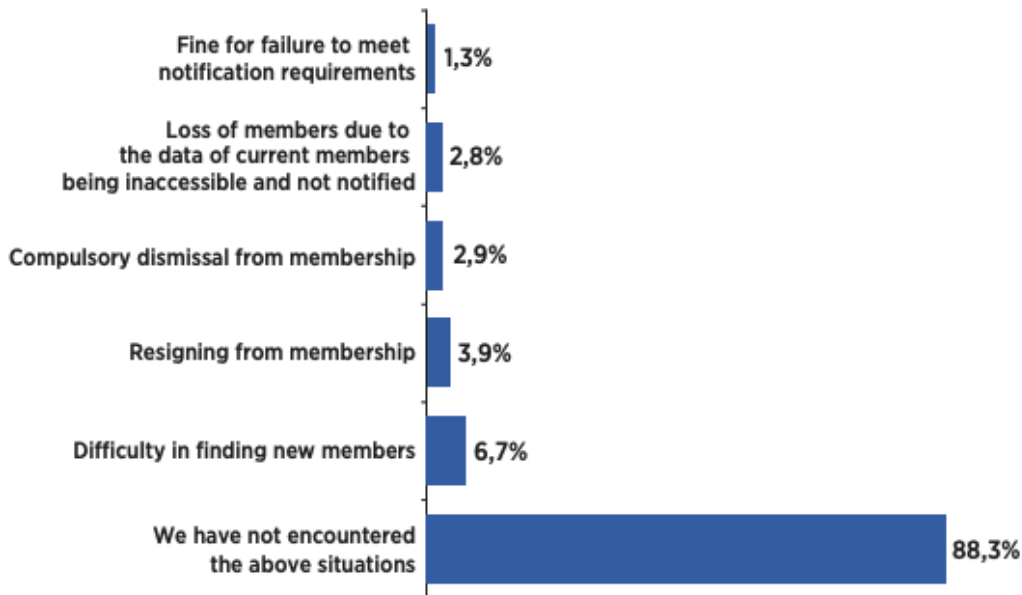


Figure 2 Challenges faced by the associations participating in the research due to the membership notification requirement

In which areas do the organisations adopting a rights-based approach face problems?

15. One of the most important observations during the monitoring and research processes was that the problems faced by civil society in Türkiye are not the same for all civil society organisations and that especially the organisations that follow a rights-based approach and position themselves, by nature, through a more critical approach are more affected by these problems. It can be observed that locally organised organisations with low capacity that carry out activities on a smaller scale are less affected by the problems arising from legislation and practise. Such organisations are often unaware of the problems in the area of freedom of association. As a result, they

are less exposed to violations of freedom of association and this issue is less likely to be placed on the organisation's agenda.

16. In an effort to test these observations, it was tried to form sub-groups relating to the rights-based approach of the organisations and compare these groups as part of the quantitative research. The findings of the field research include these:

- The organisations that take a “strong” rights-based approach experience various elements of pressure exerted by both politicians and non-state actors more negatively. **While the proportion of organisations with a “weak” rights-based approach that experience intimidation or attacks from politicians and/or public officials is 5%, the proportion of organisations with a “strong” approach rises to 15%.**
- The organisations that pursue a “strong” rights-based approach experience audits more negatively than the other two groups. **While 8% of organisations with a “weak” approach are affected by uninformed audits of public bodies, 14% of organisations with a “strong” approach are affected.** While the rate of frequent and very detailed audits among organisations with a “weak” approach is 6%, the rate of audits among organisations with a “strong” approach is 13%.
- **While around 15% of the organisations adopting “weak” and “moderate” rights-based approaches state that they face challenges due to the membership notification requirement imposed on the associations, the rate of facing such challenges rises to 29% for the organisations adopting a “strong” approach.**
- **The organisations that take a “strong” rights-based approach have had more negative experiences with the audits than the other organisations.** In addition, these organisations were audited more often in 2020 or 2021, along with the organisations taking a “moderate” approach. While 28.5% of organisations that take a “weak” approach state that they are audited, the rate of organisations that take a “moderate” and “strong” rights-based approach is 45%. In addition, 8% of organisations that take a “strong” rights-based approach state that their work is interrupted due to audits. The proportion of organisations taking a “weak” approach in this regard is less than 1%.
- **Only 10% of organisations with a “weak” rights-based approach or their representatives participated in a peaceful demonstration in 2020 or 2021.** This compares to 32.5% of organisations with a “moderate” rights-based approach and 40% of organisations with a “strong” rights-based approach.
- **The organisations adopting a “strong” rights-based approach experienced more pressure due to their critical statements and works than the remaining two groups (“weak” 2%, “moderate” 2%, “strong” 8%).** This group also states that it practised much self-censorship than the remaining two groups (“weak” 4%, “moderate” 6%, “strong” 15%).

Attitude of Administration and Audits towards CSOs in Türkiye

17. The associations in Türkiye are regularly audited by the Ministry of Interior. As for the foundations, the General Directorate of Foundations (VGM) conduct the audits of the foundations. The Ministry of Interior publishes the number of associations regularly audited by the Ministry in the annual administrative activity report. However, VGM makes no statement relating to the number of the foundations audited by VGM. The Ministry of Interior conducts two types of audit for the associations: The first audit type is “Special Investigation and Audits”. The second audit type is the regular audits of the Ministry of Interior. 10,307, 18,747 and 29,987 audits were conducted in 2020, 2021 and 2022 respectively as part of the regular audits of the Ministry of Interior.

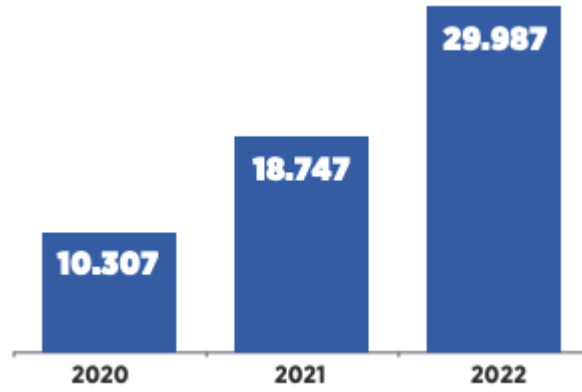


Figure 3 Number of audits by year

18. Although the audits that are carried out on the associations do not appear to be problematic in terms of legality, it can be said that the audits carried out by the administration, and in particular the administrative measures, are administrative practises that interrupt the work of the organisations or sometimes cause them inconvenience. Almost all of the recent closure cases addressed in detail below were filed following administrative audits conducted after a targeting campaign started on the social media. Also, there are practices that did not lead to a closure case, but resulted in an audit.
19. During the focus group sessions, part of the qualitative research conducted as part of the field research, it was observed that participants view audits in two different categories. They can be labelled as routine audits and audits related to Law 7262 on the Prevention of Financing of Proliferation of Weapons of Mass Destruction. In the routine audits, which seem to be simpler, financial and administrative books such as financial documents, membership books, etc. were audited and it was investigated whether there were violations of the legislation or not. It is understood that the audits in this respect were mostly conducted towards the CSOs with high-risk. At this point, receiving foreign aid is of primary concern. Also, being subject to defamation campaigns on the media or being funded by the targeted foundations emerge as the reasons for the audit. It was stated that audits could be conducted following the complaints submitted to CİMER. Another significant point is that the information provided during the audit is published on several media channels later.

20. It is understood that the training materials, project documentation and other documents such as the translation of these materials and documents may be requested during the audits conducted in accordance with Law 7262 on the Prevention of Financing of Proliferation of Weapons of Mass Destruction. This is not welcomed by CSOs and poses challenges for them. It can also be observed that some CSOs are audited more than once at short intervals apart from the routine audit. The crux of the matter is that CSOs do not know whether the audit process has been completed and why the audits are repeated, which confuses them and makes them hesitate.
21. In this context, the prevailing opinion is that the audits are off the track and are aimed at repressing civil society - especially organisations working in certain areas or on certain issues - and that they are not carried out equally and fairly. There is also the opinion that there are no standards for audits and that legal loopholes are exploited arbitrarily.
22. In the opinion of the participants, CSOs should of course be audited. However, the audits should be conducted according to the certain pre-defined principles and rules that are announced in advance. Above all, these principles and rules should be the same for every CSO. According to the participants, audits should not be conducted to intimidate, suppress and impose penalties, but provide guidance. Organisations should be made aware of their mistakes, provided with the right information about the practise and given time to make corrections before immediate penalties are imposed. It should also be borne in mind that the organisations already carry out internal audits and that they are established and operate in accordance with the law and that they are audited by the institution that grants them subsidies. So there are participants who believe that such audits are not necessary. These participants believe that such audits destroy the spirit of civil society.
23. Such a state of hesitation also has implications for freedom of association. An official from an association working in the LGBTI+ field explained that they mainly saw more pressure and scrutiny, which is why the other organisations moved away and they became isolated. It was also reported that one LGBTI+ association, exhausted by the pressure, disbanded itself.
24. Kaos GL is an association operating for LGBTI+ rights in Ankara, Türkiye. The association has paid the usual annual membership fees to The International Lesbian, Gay, Bisexual, Trans, Queer and Intersex (LGBTQI) Youth & Student Organization (IGLYO) and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA World), of which it is a member at the international level. However, during the inspection conducted by the Ministry of Interior, it evaluated the membership fee payments made by Kaos GL to IGLYO and ILGA World as aid to abroad and imposed an administrative fine on the association. This fine is not in line with the current legislation. Kaos GL appealed these decisions. Local courts rejected the appeals. Kaos GL made an individual application to the Constitutional Court. The outcome of the individual application will be determined in the coming years.

Attitude of Judiciary towards CSOs and Closure Cases Against CSOs in Türkiye

25. In Türkiye, the closure cases filed against the associations and foundations follow two main axes. The first one of these is about the closure cases filed against associations and foundations by the administration under the “state of emergency” declared after the attempted coup on 15 July 2016. The second one is about the closure cases filed after the state of emergency, but can be seen as the continuation of the state of emergency. In this section, firstly, the closure cases filed under the state of emergency will be handled and then the cases filed lately will be mentioned.

Attempted Coup of July 15th, State of Emergency (OHAL) and CSOs

A state of emergency (OHAL) was declared on July 21st, 2016 after the attempted coup on July 15th, 2016. OHAL was extended seven times at 3-month intervals and ended in July 2018.

A number of associations and foundations were closed via OHAL Decree Laws (OHAL Decree Law) under OHAL for allegedly being connected with terrorist organisations. Among these, a significant part of the associations and foundations carrying out rights-based activities were closed via OHAL Decree Law No. 677, promulgated in the Official Gazette issue No. 29896 dated 22/11/2016. Some associations and foundations filed an action for repeal against this decision. In addition, an Inquiry Commission on the State of Emergency Measures (OHAL Commission) was set up in 2017. The OHAL Commission took office on May 22nd, 2017 and started to receive applications from the institutions and organisations closed and civil servants dismissed under the OHAL Decree Law. Accordingly, courts ruled that “an application should be filed with the OHAL Commission before bringing a case before the court” in the lawsuits brought to courts. The OHAL Commission finalised all the applications under Law 7075 on the Adoption, with Certain Amendments, of the Decree Law on the Establishment of the Inquiry Commission on the State of Emergency Measures and was dissolved on January 22nd, 2023. The table presenting the number of decisions on the institutions and organisations closed in the final report of the OHAL Commission is given below:

OHAL Commission

Decree Law No	667	677	679	689	693	695	701	Total	Comm. Decision	Closed Net
Associations Closed	1106	374	83	14	3	6	12	1598	188	1410
Foundations Closed	104	0	0	18	0	7	0	129	20	109
Total	1210	374	83	32	3	13	12	1727	208	1519

26. The OHAL Commission did not provide any information about the number of the associations and foundations that filed an application. However, as a result of the applications filed, the OHAL Commission resolved that only 188 associations and 20 foundations should be reopened among a total of 1,727 CSOs closed. Accordingly,

only 12% of the CSOs closed were reopened. The decisions on the reopening of associations (11.7%) are lower, compared to foundations (15.5%). Interviews were conducted with some associations closed under Decree Law No. 677 in order to see whether there are rights-based CSOs among the associations and foundations reopened. Based on the data obtained, there aren't any CSOs carrying out rights-based works among the associations reopened. In the post-OHAL Commission period, the CSOs closed via Decree Law, filed an application with the administrative courts and started challenging the closure decisions. However, it is difficult to say the judicial attitude towards the closure decisions supports the freedom of association.

Cases pending after the OHAL Commission Decision

A series of interviews were conducted with the managers and lawyers of the CSOs closed via Decree Law adopted under OHAL and prior to closure, carrying out rights-based works, during the monitoring process⁴. The problems articulated during the interviews can be listed as follows:

- * Closure decisions created deterrent effects on some CSOs. Some CSOs did not challenge the closure decision. In short, their activities were terminated both legally and actually.
- * Following the closure decisions, some CSOs continue to be active through new associations with small revisions to their former statutes and titles. Therefore, the future of the closed CSOs is unclear.
- * Criminal cases were filed against the founders⁵ and managers of the closed CSOs and the judicial process continues.
- * Some CSOs stated that the OHAL Commission decisions were still awaited at the time of the interviews. This leads to delays in filing applications with the court.
- * In almost all cases, the administrative courts render negative judgments, which, sometimes, are on virtually the same grounds as the ones raised for the OHAL Commission decisions. Even though these judgments are reversed by the Court of Appeal on Facts and Law, the administrative courts rehearing the case may render negative judgments. In short, there is a bottleneck.

Closure Cases Filed in the post-OHAL Period

27. OHAL practices facilitated the closure of associations and led to the closure of associations and foundations without the need to take a court decision. However, even in the post-OHAL period, the risk for the closure of associations continues through the closure cases brought to the courts. The cases below provide a breakdown of the closure cases against the rights-based CSOs in the post-OHAL period.

⁴ The interviews were conducted with Van Women's Association, Rainbow Women's Association, Adıyaman Association of Women and Life, Ceren's Women Association, Free Women Congress, Progressive Lawyers' Association, Association of Libertarian Lawyers, Agenda of the Child Association, Sarmaşık Anti-Poverty and Sustainable Development Association, Scientific, Cultural and Social Assistance and Solidarity Association for Immigrants in the Mediterranean Region (Akdeniz Göç-Der), and Kurdish Institute of İstanbul.

⁵ Dr. Selim Ölçer is one of these persons. Selim Ölçer, <https://www.sessizkalma.org/tr/savunucu/selim-olcer>

28. Tarlabası Community Centre Cases:

Tarlabası Community Centre (TTM) is an association aiming to empower individuals secluded from the social life and fighting deprivation caused by poverty and migration in Tarlabası and support them in accessing their rights and reduce prejudices against Tarlabası. The Association was subject to an intensive lynching campaign first on the social media in 2021 especially due to its activities towards LGBTI+ and then was audited by İstanbul Provincial Directorate of Relations with Civil Society in June 2021. This audit was followed by a new one by the Ministry of Interior Associations Auditors between 26/07/2021-20/08/2021. As a result of these audits, İstanbul Governorship filed a “determination of absence” case against the association requesting that *“it should be determined that the association is dissolved automatically as required by the provision of article 87/1 of the Turkish Civil Code No. 4721 as it becomes impossible for the association to achieve its objective”* on October 15th, 2021 in accordance with Referral Report 4 prepared by the Associations Auditors. An expert report has been prepared during the process. Despite the assessment relating to Tarlabası Community Centre’s being not undergone an *“automatic dissolution process”* in the expert report, the Ministry of Family and Social Services, intervening party, challenged the expert report. The 8th Civil Court of Peace of İstanbul rejected the lawsuit filed on 14 May 2024. However, with the indictment issued by the İstanbul Chief Public Prosecutor's Office, a termination lawsuit was also filed against the Tarla Başı Community Centre at the İstanbul 18th Civil Court of First Instance for 'violation of law and morality'. This second lawsuit, whose first hearing was held on 18 May 2022, is ongoing. While this lawsuit was ongoing, STGM met with the Tarlabası Community Centre Association on 2 August 2024 and learned that a lawsuit was also filed against Gizem Külekçioğlu, the president of the Association, on the same grounds. In addition, an administrative fine of 268,290 TL was imposed on the Association.

29. We Will Stop Femicide Platform:

We Will Stop Femicide Platform is an association that closely follows and reports the cases of the women killed by men in Türkiye and strives for achieving gender equality and stopping violence in this regard. Bureau of Investigation of Intellectual and Property Rights of İstanbul Office of Chief Public Prosecutor filed a case on December 2nd, 2021 for the dissolution of the association in accordance with article 30/a of the Law on Associations and article 89 of the Turkish Civil Code. In the case, it was requested that the association should be dissolved on the grounds referred to in the letter dated 09/08/2021 from İstanbul Governorship. In the request of dissolution, the first reason was about *“acting contrary to the association’s objective and statute and to law and ethics from every aspect of the case”*, and the second reason was about *“breach of article 30 of the Law on Associations establishing that associations are not allowed to carry out activities not serving their objective indicated in their statute”*. Then İstanbul 13th Civil Court of First Instance filed a case for the dissolution of the Association on December 8th, 2021. The case, which was already postponed two times, was postponed for a third time in the hearing conducted on April 5th, 2023 and it was decided that the fourth hearing should be conducted on September 13th, 2023. The court decided that the relatives of the deceased women who want to appear as witness should be called to appear in court upon the request of the Association. However, the court rejected the request of women’s

associations to appear as intervener. We Will Stop Femicide Platform stated that the case was based on the complaints submitted to CİMER by 10 different men. We Will Stop Femicide Platform stated that all of the complaints, though submitted by 10 different men, were exactly in the same text, even to the spelling errors.

İstanbul 13th Civil Court of First Instance rendered a decision on denial of the case for the dissolution of the association in the hearing conducted on September 13th, 2023.

30. Migration Monitoring Association Case:

A case was filed against 23 managers and members of Migration Monitoring Association (GÖÇİZDER) on the grounds that “*they allegedly provide financing to organisational events in line with the goals and objectives of the PKK armed terrorist organisation using the funds received from international organisations*”. 17 of the 23 members against whom a case was filed were arrested. 4 of the members arrested were released in the first hearing conducted on December 15th, 2022 at the İstanbul 26th Court of Assize. The second hearing of the case was postponed until January 4th-5th, 2023. In the second hearing, the remaining members of the association who were in pre-trial detention were released. However, it appeared that while the case was ongoing, a motion for the “suspension of activities” was added to the case against GÖÇİZDER. While the association was still active, the court postponed the GÖÇİZDER trial to October 11th, 2024.

31. Cases against Civil Society Activists

CSOs are not only the ones against which judicial proceedings are initiated. Also, there are cases that have been filed against the persons affiliated with CSOs and the effects of these cases still continue. The Gezi Park Case is the most popular among these cases⁶. The Constitutional Court judgement is awaited after the Court of Cassation decision became final in the Gezi Park Case⁷. The cases filed against the managers of Rosa Women’s Association for allegedly “being a member of an armed terrorist organisation”⁸ are another example. Similarly, cases were filed against the managers of “Green Artvin Association”⁹. Some of the cases filed against the managers of Yeşil Artvin Association are now in the appeal process and before the Constitutional Court.

General Assessment about Closure Cases

32. Closure of an association should be seen as a last resort, which should be employed in cases that fully pass the test of being “necessary in a democratic society” and

⁶ Gezi Park Case, <https://www.sessizkalma.org/tr/savunucu/gezi-davasi>

⁷ A detailed assessment about the Gezi Park Case will be provided in the 2023 Monitoring Report along with the latest developments.

⁸ Rosa Women’s Association, <https://www.sessizkalma.org/tr/savunucu/rosa-kadin-dernege>

⁹ Green Artvin Association, <https://www.sessizkalma.org/tr/savunucu/yesil-artvin-dernege>

“proportionate”. Public authorities must certainly resort to other interim solutions before rendering a decision on the dissolution or closure of an association. If a decision on dissolution or closure is to be rendered, such decision should be rendered by independent courts. The decisions that the courts will render on dissolution or closure must also fully pass the test of being “necessary in a democratic society” and “proportionate”. It is a necessity to assess the aforesaid closure cases filed against the CSOs and their managers in the period 2015-2023 in Türkiye within the scope of the international human rights law. As far as this is concerned, it is questionable how successful are the closure cases in the test of being “provided by law”, “proportionate” and “necessary in a democratic society” persistently highlighted by the monitoring mechanisms of the conventions and considered cumulatively. Because the fact that the restrictions on the freedom of association, one of the key elements of a democratic society, are “provided by law” is not sufficient alone. At the point reached, particularly a series of judgments to be rendered by the Constitutional Court of the Republic of Türkiye about CSOs and the persons affiliated with them appear to reshape the progress of the freedom of association in Türkiye.

Verbal and Physical Pressure on CSOs in Türkiye

- 33.** In recent years, there have been verbal and physical assaults, which lead to discrimination especially on the basis of sexual orientation and sexual identity, on certain segments of society and mainly LGBTI+ associations and the associations engaged in advocacy activities on the basis of gender equality. Various groups coming together under the leadership of Unity in Ideas and Struggle Platform targeted LGBTI+ associations and organised meetings and demonstrations using discriminatory speech. The founders and members of Havle Women’s Association suffered such verbal harassment and assaults for supporting the Pride Week. On July 30th, 2022, Cemevi (Alevi gathering place) and Alevi associations and foundations based in Çankaya and Mamak districts of Ankara suffered armed attacks consecutively. An investigation was initiated and some suspects were detained for the attacks on Şahı-Merdan Cemevi, Batıkent Serçeşme Cemevi, Tuzluçayır Ana Fatma Cemevi, Turkmen Alevi Bektashi Foundation and Gökçebel Village Association.
- 34.** In addition to physical assaults on CSOs, there are verbal assaults, harassment and targeting by way of the media. Based on the data from the Field Research, it is observed that negative media coverages about CSOs are concentrated on specific issues and the well-known ones are often targeted most among the CSOs carrying out activities in these areas. Especially the groups carrying out activities relating to LGBTI+ and the human rights of women or, in general, human rights are the ones most targeted on some media organs and social media. Also, many CSOs were the subject of negative media coverage over their funding resources in the past two years. In these media coverages, some allegations were made towards the institutions that provide grants and the list of CSOs funded by such institutions were published and defamation campaigns were conducted. Following these media coverages, some organisations were audited on the grounds of using such funds.

35. Baseless media coverages about CSOs may also create a negative effect on the members. Some institutions reported that they were not affected much from the media coverage targeting them and their institutions and as they had already been on the list of targeted organisations, they became accustomed to this. Also, there are institutions continuing to initiate legal proceedings against hate speech in the press or social media. It was observed that even these institutions had reduced expectation from law and a strong perception of inability to find a solution. CSOs may be targeted by real persons apart from the press and social media. Such complaints are generally submitted to CİMER and then an investigation is initiated against the CSO relating to the complaint. Also, it was stated that CSOs had been subject to long audits following such complaints. Further, it was reported that especially the websites or social media accounts of the institutions carrying out rights-based advocacy activities about LGBTI+, refugees or the Kurds.

How does the Financial Status and Resource Seeking Capacity of CSOs affect Freedom of Association?

36. To seek resources and ability to secure and use resources is of vital importance for the viability of civil society organisations and their effective operation. Freedom of association becomes pointless without access to resources. To be able to seek, secure and use resources is necessary for the viability and effective operations of a CSO however small it is. CSOs need resources to be viable and operate and being unable to access resources may render freedom of association pointless. Moreover, access to resources is not only important for the viability of a CSO, but also the other human rights to be benefited by the target audience of a CSO's works. Any unnecessary restrictions on the resources thus have a negative effect not only on freedom of association, but also the other human rights.
37. The official data published as open source is not sufficient to make a comprehensive assessment about the economic value created by the civil society area and the size of the sector in Türkiye. However, Ministry of Interior publishes the total income of associations. Based on the data, the income of associations was 15.1 billion Turkish liras in 2018 and 30.7 billion Turkish liras in 2021 and around 39.2 billion Turkish liras in 2022. The statistics published by the General Directorate of Foundations show the total income was 43.18 billion Turkish liras, the total expenditure was 20.6 billion Turkish liras and total assets were 117.5 billion Turkish liras in 2021. Based on the available official data, it can be concluded that the **total income** of the new foundations and associations was **around 73.9 billion Turkish liras in 2021**. Although this indicates that the income resources of CSOs tend to grow, this data shows that the income level in the last 5 years, if you look at the real figures or take it on a US dollar basis, has been considerably stable and even showed a downward trend.
38. Questions were asked to understand the financial status of the CSOs participating in the Field Research 2022. The findings of the Field Research 2022 include these:
- **3% of the organisations stated that they have no income at all.**
 - **The maximum income of one third of the CSOs participating in the Field Research 2022 is TRY 5,000.**

- Those with income between TRY 5,000-TRY 10,000 make up 15% of the sample.
- One out of every four organisations have income between TRY 10,000-TRY 100,000. **16% of the organisations stated that they have income above TRY 100,000.**
- As a result, **48.4% of the organisations participating in the Field Research 2022 have income below TRY 10,000.**

39. The rate of the CSOs that received in-kind or financial support from the national or local authorities in 2020 or 2021 is 6% among the CSOs participating in the Field Research 2022. 67% of the CSOs receiving fund state that they received grants and 28% of them state that they were awarded service provision contracts and 42% of them state that they received in-kind public support. How the public resources were used and access to these resources were also investigated within the scope of the research. Accordingly;

- **43% of CSOs believe that public resources are far from meeting the requirements of civil society.** 28% of them believe that public resources meet the requirements of civil society.
- One out of every three CSOs believes that CSOs play an important role in deciding how these resources are used.
- While more than half of CSOs think that application criteria are clear, less than half of them think that the documents required for application are simple and free of expenses (40%).
- **One out of every four CSOs think that the decisions made on the distribution of public resources are unfair. 33% of them think that the decisions are fair.** In general, the rate of answering this question as “don’t know” is higher.

40. It is worth stressing that there are significant problems with the resources provided to CSOs by public institutions in Türkiye. First of all, the total amount of the cash resources provided by the public institutions is not known. A significant part of this resource is provided by public institutions like the Ministry of Interior, the Ministry of Youth and Sports and the Development Agencies through open calls on project basis. However, that the selection process of CSOs using such resources is unclear, the organisations awarded grants are not published and the activities carried out through grant schemes are not known show that transparency and accountability principles are not adequately employed for the use of such resources. Another dimension of the issue is that the size of in-kind supports provided to CSOs is unclear. When direct and indirect funding by local governments are added to these, it can be said that there is a significant gap in determining the amount of public funds provided to the CSOs and understanding the effects of these funds and coordinating them in Türkiye. First, it is necessary to create transparent and regular mechanisms for sharing information with the public, all processes should be open to the monitoring and participation of civil society, and then public support for CSOs should be increased.

41. The Turkish Civil Code, the Law on Associations and the Law on Foundations do not provide for any restriction on fundraising by CSOs. However, **fundraising by CSOs is subjected to permission under the Law on Collection of Aid entered into force in 1983**. Aid collection process, one of the most important tools for fundraising by CSOs, poses serious challenges, considering the application and implementation processes. Also, the administration is given wide discretion in accepting applications. The vague distinction between an aid and a donation is tried to be removed to a certain extent through an amendment to the Regulation on the Principles and Procedures of Collection of Aid in 2021. With the amendment, an aid is defined as the one given on request and a donation is defined as the one given without request. However, as the amendment does not remove ambiguity in how the request is realised, whether the request is realised or not, and which actions will mean a “request”, it could not solve differences in practice and interpretation in this regard.
42. With the Law on the Prevention of Financing of Proliferation of Weapons of Mass Destruction, entered into force in 2021, the provisions of the Law on Collection of Aid that make fundraising difficult have been put into force. In this respect, the measures to be taken if unauthorised aid collection is conducted over the Internet have been expanded and a provision prescribing that auditors should be able to request information and documents from the institutions concerned has been introduced and the provisions regarding the administrative fines have been expanded.

RECOMMENDATIONS

43. The domestic law regulating freedom of association should be brought into line with international human rights standards. To this end, the recommendations of the UN Special Rapporteur on Freedom of Association and Assembly, the Council of Europe and the OSCE should be observed. The domestic law on participation methods and both associations and foundations should be reviewed. In particular, CSOs should be exempted from the law on fundraising. CSOs should be removed from the permit procedure and subjected only to the notification procedure. In addition, the procedure for associations to notify their membership should be abolished. Any legislation on volunteering should definitely be prepared after a wide consultation process with CSOs. The procedures required for establishing associations and foundations should be simplified in line with the recommendations of the UN Special Rapporteur on Freedom of Association and Assembly, the Council of Europe and the OSCE.
44. Türkiye must fulfill its obligation to protect all CSOs from verbal and physical attacks without discrimination. To this end, legislation should be strengthened and the administration should protect all CSOs that request protection without discrimination. Closing any CSO should be made more difficult and should be considered as a last resort. After audits, CSOs should be given a reasonable period for correction and penal action should be taken after this period. This process should be legally guaranteed.

The right to participate in public affairs, voting rights and the right of equal access to public service {Article 25a, 25b, HRC General Comment No. 25 (57), para 8}

- 45.** In Türkiye participation of civil society in decision-making processes in non-electoral context is a relatively new phenomenon. Apart from Article 13 of the Municipalities Law on Citizenship, which regulates citizens' participation in local authorities, participation in central administration decision-making processes was mainly limited to elections until the second half of the 1990s. The Habitat Conference in 1996 helped to put the issue on the agenda. Regulations allowing for civil society participation were also implemented as part of the EU reform process, symbolized by the official granting of candidate status to Türkiye at the Helsinki Summit in 1999 and the subsequently implemented "EU harmonization packages". However, due to the extensive deadlock in the EU negotiation process and the stagnation of EU reforms, there have been no significant changes in terms of civil society participation in decision-making processes.
- 46.** We are feeling the negative effects of this unrealized transformation more and more every day. As the findings of the monitoring report show, the participation of CSOs in decision-making processes remains largely limited, and this limitation sometimes leads civil society organisations to give up their efforts to influence decision-making processes. Although there are well-intentioned initiatives by public institutions from time to time, ensuring participation is often perceived as an unnecessary effort that increases the workload.
- 47.** These different approaches also make participation processes more difficult. The fact that participation processes are not regulated in a binding and mandatory manner and the processes are not sufficiently structured, that CSOs and public institutions do not receive capacity building support in this regard and that intermediary structures to facilitate participation processes are not established by public institutions and CSOs prevents the implementation of a meaningful participation process. Another key obstacle is the lack of will on this issue, especially in decision-making bodies.
- 48.** The monitoring results provide important indications of the shortcomings and errors that occur in participation.
- 49.** First of all, the results of the field research show that perception and reality in CSOs do not match. While most of the CSOs that participated in the research stated that they had not participated in the consultation processes, the perception of the participation processes by these same CSOs was overwhelmingly positive. This positive perception turns negative when it comes to CSOs with high capacity and a rights-based approach that are more involved in the participation processes. As a result, issues related to the right to participation are often not on the agenda of relatively low capacity CSOs that are not involved in the participation processes.
- 50.** Secondly, the participatory instruments developed in different eras form a legislative labyrinth, so to speak, as there is no framework regulation that regulates, structures and makes participation processes binding. In our review of legislation, we found that there are 203 regulations that govern participation in decision-making processes and that 309 participation mechanisms have been established. There is no coordination between these regulations and most of them leave a wide margin of initiative to the administration. In this complex labyrinth, municipalities are naturally somewhat insulated and civil society organisations can more easily build relationships with municipalities.

- 51.** Thirdly, the participation of CSOs in legislative procedures is only possible in exceptional cases. In the years 2021 - 2022, which we included in the monitoring, 163 laws were passed in the GNAT and came into force. 87 of these laws were passed in 2021 and 76 in 2022. If we look in detail at the 8 laws for 2021 and the 10 laws for 2022 that have a direct impact on CSOs, we can see that relatively effective participation of CSOs was only achieved in 2 laws (11.1%). If we assume that there is no participation of CSOs in the laws that we did not include in the sample, this rate will be even much lower (1.2%).
- 52.** Fourth, when examining secondary regulations, we found that public institutions and organizations published 411 regulations in 2021 and 2022. We included 71 of these regulations in our sample, as we assumed that CSO involvement could be possible. The information requests indicate that a study is being conducted for 19 of these regulations (26.7%) to ensure the participation of CSOs in the preparatory process. If it is assumed that other regulations were not open to consultation due to their technical content, this rate drops to 4.6%.
- 53.** There are significant differences between public bodies in terms of the principles and procedures for drafting legislation and that some ministries attempt to carry out consultation processes, albeit often inefficiently. In particular, participatory or lobbying processes are conducted more efficiently in areas where sectoral CSOs are active, have close relationships with the private sector, have sufficient financial capacity and the power to influence the bureaucracy and policy.
- 54.** The most important finding that supports this argument is hidden in the participation mechanisms created by public institutions. The Ministry of Science, Industry and Technology, the Ministry of Agriculture and Forestry and the Ministry of Trade stand out in conducting consultation processes and establishing participation mechanisms. In this context, we can say that the Provincial Coordination Committees for the Prevention of Violence against Women, the Provincial Child Rights Committee and the Provincial Coordination Committees for Child Protection, established under the Ministry of Family and Social Services allow the participation of CSOs, albeit at a limited level. At the same time, there are significant differences in approach depending on the province.
- 55.** If we add the structures that can be called participatory mechanisms, such as boards, committees, councils and summits, as well as the implementation of consultation processes within strategic plans and action plans, the layers of the labyrinth increase even more.
- 56.** This complex structure is compounded by the lack of objectivity in identifying CSOs to be included in the current participation processes. When the invitation process is used, rights-based CSOs that take a more critical position are often excluded. This exclusion sometimes manifests itself in the fact that only CSOs that are known to or work closely with public institutions are included, or that they are more selective from a political point of view.
- 57.** An average CSO cannot navigate this complex structure, set goals for its advocacy activities, contribute its opinions and proposals, or even be aware of the opportunities available. This situation makes it difficult to achieve positive results from well-intentioned initiatives carried out by public institutions.

58. In view of the above, the "Regulation on Procedures and Principles of Legislation Preparation", which allows the participation of CSOs in the drafting of laws by the administration, can be considered a positive achievement. However, it is thought-provoking that the opinion of CSOs was not even sought during the drafting of the regulation in question. Therefore, a framework regulation is needed that clearly expresses the participation of CSOs in policy making and implementation, including the drafting of laws by the administration.

RECOMMENDATIONS:

59. A framework regulation is needed that clearly expresses the participation of CSOs in policy making and implementation, including the drafting of laws by the administration. In particular, the legislation in question should clearly include the following:

- Framework legislation should first be prepared as a law, not a regulation.
- The preparation process of the law and secondary legislation related to its implementation should include CSO participation from the draft stage.
- Framework legislation should clearly state the principles and conditions of CSO participation.
- Framework legislation should include a coordinating mechanism within the administration for CSO participation.
- Framework legislation should be prepared considering CSO participation and diversity of CSOs and should be able to prevent a partisan or prejudiced attitude.

60. From the point of view of the Parliament, CSOs can participate more in the oversight function of the Parliament than in the legislative function. However, it is thought-provoking that there is almost no involvement of CSOs in the legislative function of the GNAT. At this point, the issue should be regulated in the rules of procedure of the GNAT, incorporating our above-mentioned proposals for the administration and taking into account the legal and technical aspects of the issue. A coordination mechanism on this issue should be established in the GNAT.

About STGM

Civil Society Development Center (Sivil Toplum Geliştirme Merkezi Derneği - STGM) was founded in the year 2004 by a group of opinion leaders and activists who believed in the importance of civil society for the development of participatory democracy in our country.

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