NONPROFIT LAW IN TURKEY

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by

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PREFACE

This is one in a series of working papers produced under the Johns Hopkins Comparative Nonprofit Sector Project (CNP), a collaborative effort by scholars around the world to understand the scope, structure, financing, and role of the nonprofit sector using a common framework and approach. Begun in 1991 in 13 countries, the project continues to expand, currently encompassing more than 40 countries.

The working papers provide a vehicle for the initial dissemination of the CNP work to an international audience of scholars, practitioners, and policy analysts interested in the social and economic role played by nonprofit organizations in different countries, and in the comparative analysis of these important, but often neglected, institutions.

Working papers are intermediary products, and they are released in the interest of timely distribution of project results to stimulate scholarly discussion and inform policy debates. All of these Working Papers are available at ccss.jhu.edu.

The production of these Working Papers owes much to the devoted efforts of our project staff. The present paper benefited greatly from the contributions of Senior Research Associate Wojciech Sokolowski and CNP Project Manager Megan Haddock. On behalf of the project’s core staff, I also want to express our deep gratitude to our project colleagues around the world and to the many sponsors of the project over its lifetime.

The views and opinions expressed in these papers are those of the authors and do not necessarily represent the views or opinions of the institutions with which they are affiliated, the Johns Hopkins University, its Institute for Health and Social Policy and Center for Civil Society Studies, or any of their officers or supporters, or the series’ editors.

We are delighted to be able to make the early results of this project available in this form and welcome comments and inquiries either about this paper or the project as a whole.

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NONPROFIT LAW IN TURKEY

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1. Overview of the Nonprofit Legal Environment in Turkey

The Turkish legal system is a part of the continental European legal tradition, or in other words, the Turkish legal system must be seen within the civil law tradition. There are a few distinguishing features of that tradition. First, it is codified; second, the legal sources are written (Aybay, 2011: 121); third, the precedents cannot be accepted as the primary source of the law; fourth, public/private law separation is strong; and finally, the jurisdiction is distributed among several judicial branches (Gözler, 2009, pp. 129-131).

The question of where to find the laws pertaining to nonprofit organizations (“NPOs”) is related to one of the features of the civil law tradition: the separation of the public and private law. The distinction between public law and private law comes from the Romans, who “categorized law in terms of relationships between person and person, person and a thing and person and the state, but that the common law system has taken on these distinctions at a formal level rather than a substantive level” (Deegan, 2001). According to Roman law, the public law engages in the state’s functions, while the private law is concerned with relations between individuals. Thus public law includes constitutional law, criminal law, tax law, and administrative law; while private law includes issues relating to contracts, torts, property, corporations, partnership, persons and legal entities, and remedies (Barnett, 1986, pp. 270-271).

Despite its Roman law roots, the modern public law and private law distinction may be seen as a consequence of the emergence of the market in the nineteenth century (Horwitz, 1982, p. 1424). The rationale behind this was a desire to free the market from politics and its interventions, thus securing a self-governed, voluntary, neutral, and apolitical private market. But still, a critic may assert that, due to current understanding of the relationship between the markets and the state, even in the continental European legal systems, the public/private distinction suffers from erosion.

In light of the foregoing, in Turkey, the main body of the basic laws related to NPOs is located within the private law realm.

Still it is hard to place the whole of NPO legislation directly in one of the legal spheres, since there several laws and regulations affecting non-profit sector institutions.

The accepted legal forms of the NPOs in Turkey are limited to associations; foundations; unions; chambers and professional organizations; and cooperatives, and the related legislation is
spread among both the public and private law spheres. Whilst the major types of organizations shall be presented below, the few instances highlighted must be regarded merely as examples for an overview.

With regard to associations, which are the most common legal type of NPOs in the system, there is a specific law: Associations Law No. 5253. However, pursuant to Article 36, situations for which there is no specific provision in Law No. 5253 are regulated by the Turkish Civil Code No. 4721.¹

The issue is much more problematic for other types of organizations, such as for chambers and professional organizations or cooperatives. According to Article 135 of the Constitution “Public professional organizations and their higher organizations are public corporate bodies established by law”. That is to say one has to consider the specific laws² established pertaining to each organization specifically, such as The Union of Turkish Bar Associations (TBB), Turkish Medical Association, Union of Chambers of Turkish Engineers and Architects, The Union of Turkish Chambers of Agriculture, Confederation of Tradesmen and Artisans of Agriculture, The Union of Chambers and Commodity Exchanges of Turkey (TOBB). Also, for cooperatives there are three different laws: Cooperative Law No. 1163, dated 1969; Law for Cooperatives of Agriculture and Credit No. 1581 dated 1972; and Law for Cooperatives of the Agricultural Sale No. 4572, dated 2001. According to Article 98 of the Cooperative Law No. 1163 “[i]n cases where there are no explanations on the contrary, the provisions concerning Joint Stock Companies in the Turkish Trade Law are applied.”

Consequently, not only are there many laws, regulations, and lower level norms regulating each major type of NPO in Turkey, but there are also much more specific regulations even within these major types. Thus, considering the whole scope of legal regulations for NPOs in Turkey is a challenging mission.

1.1. Constitutional Background
The Turkish state is accepted as an indivisible unity with its territory and nation by the Constitution of 1982 (“AY”). That is to say Turkey has a unitary state organization. Thence all the legal provisions are valid and effective for the whole of the country. No regional or local level provisions exist. However, it should be noted that:

“The administrative system in Turkey is composed of two main branches: the Central Administration and the Decentralized Administration. The Central Administration is the ‘core’ of the administrative organization, both in structural and functional aspects. The Decentralized Administration, which functions under the administrative tutelage of the former, is divided into two parts: local administration and the functionally decentralized organizations.” (Güran, 2006, p. 59.)

Still, the state power relies on the separation of the powers—the Legislature, the Executive, and the Judiciary branches—and the primary rule making power is exercised by the Parliament. Pursuant to Article 7 of the Constitution, titled Legislative Power, “Legislative power is

² Different types of legal sources in Turkish legal system are explained below.
vested in the Turkish Grand National Assembly on behalf of the Turkish Nation. This power cannot be delegated.” The legislative power of the Parliament is an exclusive authority.

There are secondary rule-making powers in the legal system depending on the location of the rule within the hierarchy of the norms. The hierarchy of the norms in Turkish legal system ranks as follows:

2. International treaties on fundamental rights and freedoms;
3. Laws (acts or codes)/ International treaties/ Statutory decrees (“Kanun Hükmünde Kararname”);
4. Regulations (“Tüzük”);
5. By-laws (“Yönetmelik”); and
6. Directives, etc.

The authorities entitled to enact each of these norm categories are different. According to Article 90/1 of the Constitution: “The ratification of treaties concluded with foreign states and international organizations on behalf of the Republic of Turkey, shall be subject to adoption by the Turkish Grand National Assembly by a law approving the ratification;” and Article 90/5: “In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”

Article 115 of the Constitution entitles the Council of Ministers to “issue regulations governing the mode of implementation of laws or designating matters ordered by law, provided that they do not conflict with existing laws and are examined by the Council of State.” According to Article 124 of the Constitution: “The Prime Ministry, the ministries, and public corporate bodies may issue by-laws in order to ensure the application of laws and regulations relating to their particular fields of operation, provided that they are not contrary to these laws and regulations.”

The legality of the low level regulations and constitutionality of the laws are controlled by the independent organs of the judiciary. The judicial control of the regulations is one of the remarkable characteristics of the concept of the “Rule of Law” or the supremacy of the law.

Rule of law is one of the principle features of the Republic of Turkey that are stated in Article 2 of the Constitution: “The Republic of Turkey is a democratic, secular and social state governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Atatürk, and based on the fundamental tenets set forth in the Preamble.” The elements that can be derived from this definition are nationalism, democratic state, human rights, secularism, social state, and the rule of law. With regard to constitutional guarantees that affect NPOs, human rights stand out of the others:

“The Constitution of 1982 recognizes all basic human rights commonly found in liberal democratic constitutions, such as freedom of speech, press, religion, association, assembly, travel, and communications; due process of law; right to privacy; freedom
These fundamental rights and freedoms are inherent, inviolable, and inalienable. The most debatable issue with human rights are restrictions placed on fundamental rights and freedoms. Pursuant to the 2001 amendment of Article 13 of the Constitution: “Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be in conflict with the letter and spirit of the Constitution and the requirements of the democratic order of the society and the secular Republic and the principle of proportionality.” In other words, each article on fundamental rights and freedoms has its own restriction circumstances in its own provision.

Article 33 of the Constitution regulates freedom of association and the provisions of this article are also applicable to foundations. This freedom comprises the right to form associations or become a member of an association, or withdraw from membership without prior permission. Freedom of association may only be restricted by an act, on the grounds of protecting national security and public order or prevention of crime commitment, or protecting public morals and public health. There is no distinction drawn by the Constitution between profit and nonprofit associations or between “public benefit associations” (described below) and others.

Associations may only be dissolved or suspended from activity by the decision of a judge, although there are exceptions for when delays endanger national security or public order and in cases where it is necessary to prevent the perpetration or the continuation of a crime or to allow the apprehension of offenders. At any rate, all the decisions of any authority suspending the association from activity shall be submitted to the approval of the judge.

Freedom of thought and opinion, and freedom of expression and dissemination of thought, are regulated as two different freedoms in the Constitution. According to Article 25: “Everyone has the right to freedom of thought and opinion. No one shall be compelled to reveal his thoughts and opinions for any reason or purpose, nor shall anyone be blamed or accused on account of his thoughts and opinions;” and Article 26: “Everyone has the right to express and disseminate his thoughts and opinion by speech, in writing or in pictures or through other media, individually or collectively. This right includes the freedom to receive and impart information and ideas without interference from official authorities.” While there is no restriction for the freedom of thought and opinion, the Constitution provides some restrictions for the freedom of expression and dissemination of thought: “The exercise of these freedoms may be restricted for the purposes of protecting national security, public order and public safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation and rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.”

1.2. Historical Background
The Turkish Republic is a secular (“lâik”) state of a Muslim society. As a model regime for Muslim countries, secularism has always been a serious matter in Turkey. While secularism means separation of the religion and the state “[t]he Kemalist conception of secularism, however, has
allowed for some measure of state control over religion.” (Özbudun, 2006, p. 31.) These measures do not include the state intervention in the religious beliefs of the citizens. Article 24 of the Constitution secures the freedom of religion and conscience:

- Everyone has the right to freedom of conscience, religious belief and conviction.
- Acts of worship, religious services, and ceremonies shall be conducted freely, provided that they do not violate the provisions of Article 14.
- No one shall be compelled to worship, or to participate in religious ceremonies and rites, to reveal religious beliefs and convictions, or be blamed or accused because of his religious beliefs and convictions.

But still, religious affairs are not totally left to individuals or communal organizations. For example, according to Article 24, “Education and instruction in religion and ethics shall be conducted under State supervision and control.” The Department of Religious Affairs has been established for this purpose, and is regulated by the Article 136: “The Department of Religious Affairs, which is within the general administration, shall exercise its duties prescribed in its particular law, in accordance with the principles of secularism, removed from all political views and ideas, and aiming at national solidarity and integrity.”

The secular notion of the Constitution is in somuch powerful as that, according to Article 174: “No provision of the Constitution shall be construed or interpreted as rendering unconstitutional the Reform Laws indicated below, which aim to raise Turkish society above the level of contemporary civilization and to safeguard the secular character of the Republic, and which were in force on the date of the adoption by referendum of the Constitution of Turkey.

- Act No. 430 of 3 March 1340 (1924) on the Unification of the Educational System;
- Act No. 671 of 25 November 1341 (1925) on the Wearing of Hats;
- Act No. 677 of 30 November 1341 (1925) on the Closure of Dervish Convents and Tombs, the Abolition of the Office of Keeper of Tombs and the Abolition and Prohibition of Certain Titles;
- The principle of civil marriage according to which the marriage act shall be concluded in the presence of the competent official, adopted with the Turkish Civil Code No. 743 of 17 February 1926, and Article 110 of the Code;
- Act No. 1288 of 20 May 1928 on the Adoption of International Numerals;
- Act No. 1353 of 1 November 1928 on the Adoption and Application of the Turkish Alphabet;
- Act No 2590 of 26 November 1934 on the Abolition of Titles and Appellations such as Efendi, Bey or Pasa; and
- Act No. 2596 of 3 December 1934 on the Prohibition of the Wearing of Certain Garments.”

The strong secularist conception of the founders of the Republic was the product of the idea that the power of the clergy over the Muslim communities in Turkey shall be superseded by that of secular authorities:
This was done by removing the last realm under the control of the religious clergy, their legal authority in the realm of family law and the civil code (“mecelle”) of the country. The Swiss civil code was translated with minor modifications and adopted as the civil code of the Turkish Republic as of February 17, 1926. The legal system of the Turkish Republic was thus based on completely secular principles. All linkages between religion and law were severed. The clergy was left devoid of any legal authority to exercise over any realm of life. The legal and religious authority of the religious institutions of the ancient regime was thus completely eradicated. Hence, the adoption of the Swiss civil code as the civil code of the country completed the first radical step in erecting a secular political and legal regime in Republican Turkey. From then on, all other steps taken by the government and the Turkish Great National Assembly were adaptation of the rest of the system to the core necessities of the new secular order. (Kalaycıoğlu, 2005, p. 80.)

The only exception for not being a legally accepted community is the concept of “minority” described by the Treaty of Lausanne. Christian and Jewish clergy are the only groups that hold their autonomous status with regard to Treaty of Lausanne. Their congregations are considered legal “minorities” in Turkey (Kalaycıoğlu, 2005, p. 81). The Treaty provides some extra rights for these minorities, or as characterized in the treaty, “Turkish nationals belonging to non-Moslem minorities.” According to Article 40 of the Treaty, Turkish nationals belonging to non-Muslim minorities “shall have an equal right to establish, manage, and control at their own expense, any charitable, religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.”

Within that perspective, except the minorities described by the Treaty of Lausanne, faith-based civil society organizations cannot take a role in public services or any other charity work. Organizations established by faith communities must comply with strict secular provisions. In the case of education, for example, “Turkey has a highly centralized governance structure where education policy is steered by the Ministry of National Education.”¹ Private institutions may establish schools, but these are subject to strict supervision of the ministry and it is impossible for these institutions to establish schools with overtly religious policies.

The presence of unofficial religious organizations has to be accepted as a subject for a sociological research but not a legal one.

¹ http://www.oecd.org/edu/EDUCATION%20POLICY%20OUTLOOK%20TURKEY_EN.pdf
2. Main Nonprofit Legal Forms in Turkey

For the purposes of the Johns Hopkins Comparative Nonprofit Sector Project, of which this working paper is a part, the main eligible legal forms for nonprofit organizations in Turkey are associations, foundations, unions, chambers and professional organizations, and possibly some cooperatives. A brief overview of each is provided below.

2.1. Associations

2.1.1. Term and definition

As mentioned above, Article 33 of the Constitution regulates freedom of association. This freedom comprises the right to 1) form associations; 2) become a member of an association; and 3) withdraw from membership without prior permission. Freedom of association may only be restricted by an act, on the grounds of protecting national security and public order or prevention of crime commitment, or protecting public morals and public health.

The act or law that regulates the exercise of the freedom of association is Association Law No. 5253 (dated November 4, 2004). Still it has to be kept in mind that pursuant to Article 36 of that Law, the situations, for which there is no specific provision in Law No. 5253, are regulated by the Turkish Civil Code No. 4721. There is also a by-law called By-law of Associations (dated 31 March, 2005), which regulates the proceedings related with the associations in a more concrete manner.

Article 56 of the Turkish Civil Code defines the associations as “a society formed by unity of at least seven real persons or legal entities for realization of a common object other than sharing of profit by collecting information and performing studies for such purpose.” Similarly, according to the Article 2/a associations are “[t]he societies founded in the status of legal entity by at least seven real persons or legal entities by pooling continuously their knowledge and efforts in order to realize a given and common objective not prohibited by the laws excluding those at profit sharing purposes.”

Both definitions have some common elements. These may be summarized as follows: 1) there must be at least seven persons; 2) these persons may be real persons or legal entities; 3) there must be a common purpose or objective; and 4) profit-sharing cannot be the common objective. Law No. 5253 has an additional feature, which is not regulated by the Civil Code. It mentions the legal entity of the association. That is to say, each association has a legal entity. Another feature need to be derived from the definitions is that associations are groups of persons but not the properties.

2.1.2. Purpose

One may already notice that associations are organizations, which do not share profit among their members. In other words, associations are not formed to earn profits for their members. But still the concept of “earning or sharing profit” is debatable. It is certain that the members of an association pool their knowledge and performance in order to achieve a common goal:
"Non-profit-sharing purposes include charitable, political, scientific, artistic purposes and others. Seven or more musicians may form a society to improve musical education in the country, or a society may be formed for the purpose of giving aid to poor students or for medical purposes, such as an aid for cancer society.

Although societies are non-profit-sharing ... they may operate commercial enterprises. A society of vegetarians may open a restaurant for its members, where non-members may also come and eat. Societies, which operate a commercial enterprise, are subject to the laws governing merchants. They must fulfill the obligations of a merchant and register their enterprises in the commercial register. If, eventually, the economic profit-making purpose becomes predominant, then the laws governing ordinary partnerships will be applied to them." (Ansay, 2011, p. 107)

Opening of dormitories, lodgings by the associations to carry out educational and training activities within the scope of their objective; and the foundation of clubhouses for members and use of alcoholic drinks in these clubs, as well as operation of these facilities are subject to the permission of the local administrative authority (Article 26 of Law No. 5253). Article 30 of Law No. 5253 lists restrictions or prohibitions for the activities of the associations:

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

There is also a specific type of association called “public benefit associations.” Public benefit associations are defined as “associations serving for public benefit” by Article 27 of Law No. 5253. The requirements to be accepted as a public benefit association are listed within the Article 49 of the By-Law of Associations: 1) the association shall carry on its activities at least for one year; 2) follow the rules of competition for its commerce activities that exceed 50,000 TRY (the amount is for the year 2005) in last one year; 3) have a purpose and operate activities that is convenient not only for its members but also for the local or national society’s needs and solutions of their problems and for the contribution to the social development; 4) spend at least half of its incomes for that purpose; and 5) have adequate assets and annual income in order to realize the purposes stated within its charter. Granting public benefit association status is the decision of the Council of Ministers upon the basis of a proposal by the Ministry of Interior, in consultation with the concerned ministries and the Ministry of Finance.

Being a public benefit association provides some privileges to the association. These privileges are not listed within a specific law or by-law but regulated by different laws and they are mostly related with some fiscal relief. There are a few privileges related to collecting contributions. There is also a symbolic privilege for the presidents of the public benefit associations, who are given a place in the order of state ceremonies.

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4 Relevant commercial enterprise may or may not be treated as a separate establishment subject to the Turkish Commercial Code.
There are approximately 90,000 associations in Turkey and only 406 of them are accepted as public benefit associations. The most known public benefit association is Turkish Red Crescent ("Türk Kızılayı"). The purpose of the Red Crescent is summarized as 1) the performance of the duties given to it by the Geneva Conventions of August 12, 1949, which protect the victims of war, and by the stipulations of the international agreements, to which the Republic of Turkey is party; 2) assisting in the execution of these duties; 3) in peacetime, to carry out services in conformity with the Statutes in all kinds of disasters within the country and abroad; 4) to be loyal to the principles of humanitarian law, support health and social solidarity, and assist in the development of social welfare; 5) to maintain unification of purpose and cooperation with the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, and the national societies that constitute parts of this federation.

2.1.3. Formation
Associations are formed upon the presentation of a formation declaration, signed by at least seven founding members, to the head of the civilian authorities (Article 5 of the By-Law of Associations). The declaration shall include a) the charter of the association; and b) some acknowledgments about the founders (e.g. if one of the members is a legal entity, the decision of this entity about being a member of the newly formed association, etc.). Associations are regarded as legal entities from the very moment they present the declaration of incorporation, by-laws, and other documents required for incorporation to the highest administrative authority in their home locality (Article 59 of the Civil Code).

The highest administrative authority then examines the correctness of the file comprising incorporation declaration, required documents, and by-laws of the association within sixty days. In case it is determined that some aspect of the incorporation package runs counter to the governing laws, the founders are asked to correct or complete the file in accordance with the relevant laws. If they fail to correct the errors or oversights within thirty days as of the notification date, the highest administrative authority informs the Public Prosecution Office about the need to file an action in the competent court of first instance for the abolition of the association. The Public Prosecutor may claim from the court to give judgment for the suspension of activities of the association.

When the incorporation declaration, by-laws, and information about the status of the founders are found to be accurate and complete, or any oversights or errors in the files are corrected within the specified period, the association is notified in writing and is registered in the log reserved for associations (Article 60 of the Civil Code and Article 6 of the By-Law of Associations). Each association and union has a special file within the records of the Department of the Associations.

2.1.4. Organization
The statutory organs of the association are: 1) the general assembly; 2) the board of directors; and 3) the auditors’ board. Associations may construct additional bodies as needed besides these statutory organs. However, these organs may not be assigned with the functions, authorization, and responsibilities conferred to statutory organs (Article 72 of the Civil Code).

The meeting of the members is called the general assembly and it is the highest authorization organ of the association (Article 73 of the Civil Code). There are two types of meetings of the general assembly: ordinary meetings and extra-ordinary meetings. The general assembly meetings that are held at times indicated in the by-laws of the association upon call of the
board of directors are called "ordinary" meetings and should be held at least once every three years. The general assembly may be called for an "extra-ordinary" meeting by the board of directors whenever deemed necessary by the board of directors or auditors’ board, or by written request of one fifth of the members. Where the board of directors for convening the general assembly meeting makes no call, the judge of common court assigns three members to call for general assembly meeting upon application of one of the members (Articles 74 and 75 of the Civil Code).

The general assembly is the authority that passes the final resolution for acceptance of membership and discharge of members from the association. The general assembly supervises the other organs of the association and is entitled to dismiss them from office at any time on justified grounds. The association designates the required organs and performs the duties that are not conferred to any other organ of the association (Article 80 of the Civil Code).

The number of members on the board of directors is indicated in the by-laws of the association. It is always provided that such number of members may not be less than five principal and five alternative members. Where the number of members in the board of directors becomes less than one half of the total number of the directors due to vacancies, the board of directors or auditors’ board must call the general assembly for a meeting within one month. If no call is made, then a judge of the common court may assign three members to make the call upon request of any one of the members. The board of directors is the authorized organ of the association assigned to administer and represent the association, and performs the duties undertaken in conformity with the relevant legislation and by-laws of the association. The representation power may be delegated to one of the members or to a third person by the board of directors (Articles 84 and 85 of the Civil Code).

Similarly, the number of members of the auditors’ board is indicated in the by-laws of the association; such number may not be less than three principal and three alternative members. The auditors’ board performs the auditing duty according to the principles and procedures set out in the by-laws of the association; the results of the auditing are submitted to the board of directors and general assembly in a report (Article 86 of the Civil Code).

### 2.1.5. Membership

No person may be forced to become a member of an association nor may an association be forced to accept members. Every real person and legal entities possessing the capacity to act has the right to apply for membership in an association.

The membership of a person automatically terminates if he/she later loses the qualifications required by the law or by-laws of the association. No person may be forced to continue his or her membership in the association. Every member has the right to leave the association provided that he/she presents written notification. The reasons for discharge from the association may be indicated in the by-laws. If the reasons for discharge are clearly indicated in the by-laws, no objection may be made to such decision asserting that these reasons may not be accepted as justifiable. If the reasons of discharge are not clearly indicated in the by-laws, a member may only be discharged on justified grounds. An objection may be made to this discharge decision stating that it is not based on justified grounds (Articles 63-67 of the Civil Code).
2.1.6. Dissolution and merger
There are three ways for associations to be dissolved: Dissolution ipso facto; dissolution under resolution of the general assembly; and dissolution by court.

Per Article 87, dissolution ipso facto may occur under the following circumstances:

1. If the objectives of the association are not realized, or it becomes impossible to reach the goals and objects of the association, or in the event of expiry of lawful period;
2. If the association fails to convene the general assembly meeting within the lawful period and one of the legal organs of the association is not constituted;
3. If the association is declared insolvent;
4. If the board of directors is not elected during the period specified in the by-laws;
5. If the association fails to convene the general assembly meeting repeatedly two times; or
6. Any concerned person may request verification of dissolution ipso facto from the judge of the common court.

Per Article 88, an association may be dissolved at any time under the resolution of the general assembly.

Per Article 89, if the objectives of the association are not compatible with legislation and ethics, the court may give judgment for the dissolution of the association upon request of the Public Prosecutor or any other concerned person. The court takes all the necessary measures during the proceeding of the case, including suspension of activity.

2.2. Foundations

2.2.1. Term and definition
Foundations are assets in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use (Article 101 of the Civil Code). Foundations may be explained as a “fund” dedicated to a special purpose. Although real persons or legal entities dedicate their private properties or rights, foundations do not have members, partners, or shareholders.

Two basic elements form the definition of a foundation: a) dedicated assets; and b) the purpose to which those assets are dedicated.

Since the existence of foundations is older than the Turkish Republic itself, within the Turkish legal system, there are two major types of foundations: a) foundations established prior to the Turkish Civil Code; and b) foundations established as per Turkish Civil Code. Therefore, the definition and regulation of the Civil Code may not be appropriate to understand all of the issues related to foundations in Turkish law.
Even though the foundations that were established prior to the Turkish Civil Code may be classified according to several criteria, the most common classification of these kinds of foundations is made upon the criterion of management. Due to that, foundations established prior to the Turkish Civil Code may be named as follows: a) fused foundations; b) annexed foundations; and c) community or trade foundations.

a) Fused (“Mazbut”) Foundations: These are foundations that were established before the Turkish Civil Code (dated 1926). According to Article 6 of Foundations Law no 5737: “Fused Foundations shall be managed and represented by the Directorate General.” According to an official response of the Directorate General of the Foundations, there are 41,550 fused foundations in Turkey.

b) Annexed (“Mülhak”) Foundations: Though also established before the Turkish Civil Code (dated 1926), the difference is that the management of these foundations is assigned to the founders’ descendants. But still, if an annexed foundation cannot appoint a director for a period of ten years or cannot establish a Foundations Council, they will be managed and represented by Directorate General of Foundations based on decision of the court. There were 277 annexed foundations in Turkey as of February 2013.

c) Community (“Cemaat”) Foundations: Community foundations are charitable organizations established by non-Muslim Turkish citizens before the founding of the Republic. There were 165 community foundations as of February 2013.

To sum up, there are four general types of foundations – fused, annexed, community, and new foundations formed after the 1926 adoption of the Turkish Civil Code. The number of these “new foundations” is approximately 5,000. Unless stated as an exception, the explanations within this paper are predicated on the new foundations.

2.2.2. Purpose
The may be several purposes of foundations stated within the deed of trust. The list of the numbers of the foundations according to their stated purposes is presented on the following page.

2.2.3. Formation
According to Article 4 of the Regulations for Foundations (RfF), dated 27th September 2008: “[A]n intention to establish a new foundation shall be declared through a notarized formal deed or a testamentary disposition. A foundation shall gain the status of legal entity with registration in the register maintained with the court of the home settlement.”

According to that provision, there are three stages for the establishment of the foundation: 1) declaration of the intention to establish a new foundation; 2) the court’s decision; and 3) registration by the Directorate General.

2.2.3.1. Declaration of intention

2.2.3.1.1. Establishment through formal deed. Per Article 5 of RfF: 1) An intention to establish a foundation by a real or legal person shall be declared by a notarized formal deed. The notary will send a copy of the formal deed to the Directorate General within seven days. 2) Applica-
tion to the court shall be made by the endower after the execution of the formal deed. If the establishment of a foundation through a formal deed is to be done by a representative, the authority to represent shall have to be granted through a notarized certificate of representation and such certificate shall have to specify the foundation's objective and the goods and rights to be allocated therefor. If the founders include a legal person, the articles of association thereof incorporating provisions to the effect that such legal entity can establish a foundation and allocate assets thereto or a resolution by an authorized organ to the same

Allowable purposes for foundations in Turkey

<table>
<thead>
<tr>
<th>PURPOSE</th>
<th>NUMBER OF FOUNDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social Welfare</td>
<td>2,561</td>
</tr>
<tr>
<td>Education</td>
<td>2,306</td>
</tr>
<tr>
<td>Healthy</td>
<td>1,067</td>
</tr>
<tr>
<td>Culture</td>
<td>1,026</td>
</tr>
<tr>
<td>Religion-Religious Education</td>
<td>750</td>
</tr>
<tr>
<td>Art</td>
<td>382</td>
</tr>
<tr>
<td>Local development</td>
<td>371</td>
</tr>
<tr>
<td>Sports</td>
<td>362</td>
</tr>
<tr>
<td>Social service</td>
<td>336</td>
</tr>
<tr>
<td>Economics</td>
<td>251</td>
</tr>
<tr>
<td>Science-technology</td>
<td>248</td>
</tr>
<tr>
<td>Socio-historical and cultural</td>
<td>213</td>
</tr>
<tr>
<td>Environment</td>
<td>188</td>
</tr>
<tr>
<td>Welfare of its own personnel</td>
<td>149</td>
</tr>
<tr>
<td>Tourism</td>
<td>98</td>
</tr>
<tr>
<td>Democracy-Law-Human Rights</td>
<td>58</td>
</tr>
<tr>
<td>Handicapped</td>
<td>49</td>
</tr>
<tr>
<td>Agriculture-Cattle breeding-Veterinary</td>
<td>42</td>
</tr>
<tr>
<td>Child-care</td>
<td>38</td>
</tr>
<tr>
<td>Family-care</td>
<td>33</td>
</tr>
<tr>
<td>Ataturk and his principles and revolutions</td>
<td>26</td>
</tr>
<tr>
<td>Press-journalism</td>
<td>24</td>
</tr>
<tr>
<td>Woman-care</td>
<td>14</td>
</tr>
<tr>
<td>Maritime</td>
<td>12</td>
</tr>
<tr>
<td>Support for the related establishment</td>
<td>12</td>
</tr>
<tr>
<td>Architecture-engineering</td>
<td>9</td>
</tr>
<tr>
<td>Traffic</td>
<td>9</td>
</tr>
<tr>
<td>Martyr-War veteran</td>
<td>8</td>
</tr>
<tr>
<td>Librarianship</td>
<td>6</td>
</tr>
<tr>
<td>Hunting</td>
<td>3</td>
</tr>
<tr>
<td>Mining</td>
<td>3</td>
</tr>
<tr>
<td>Consumer protection</td>
<td>2</td>
</tr>
<tr>
<td>Aviation</td>
<td>1</td>
</tr>
</tbody>
</table>

Source: Directorate General of Foundations
effect shall also be furnished to the court with the deed of trust. 3) If, in a foundation established through a formal deed, the endower dies, one of the heirs thereof can request registration. If no request of registration has been made by the endower within three months of the execution of the deed of trust or by one of the heirs in the case if the endower has died or if the endower was a legal entity and such legal entity has terminated within such period of time, application for the registration of the foundation shall be made by the Directorate General. Expenses to be made upon application to the competent court shall be borne by the Directorate General for the recovery thereof from the respective foundation thereafter.

2.2.3.1.2. Establishment through testamentary disposition. Per Article 6 of the RfF: 1) A foundation can be established for registration after the death of the endower through testamentary disposition. In relation to foundations established this way, the justice of the peace will send a copy of the document for the establishment of the foundation to the Directorate General within seven days. 2) For foundations established through testamentary disposition, application to the court shall be made upon statement by the respective person or the justice of the peace or by the Directorate General of its own motion. Expenses to be made upon application to the competent court shall be borne by the Directorate General for the recovery thereof from the respective foundation thereafter. 3) Liability of a foundation established by testamentary disposition for the inheritor’s debts shall be limited to the goods and rights allocated. The rights of litigation of the heirs and creditors of the endower shall be reserved in accordance with the provisions for donation and testamentary dispositions.

2.2.3.2. Court procedures. Per Article 7 of the RfF: 1) The court will decide on the registration of a foundation by obtaining the Directorate General’s opinion on the file, hearing the endower if necessary, and having an expert’s examination made. 2) The court will take necessary measures for the protection of goods and rights of its own motion. 3) The Court will serve its decision for registration or rejection of registration to the Directorate General with the formal deed of its own motion. 4) A foundation acquiring the status of legal entity shall be registered in the register maintained with the court of the home settlement, which register shall show the name of the endower and the endowment, the foundation’s settlement, organs, objective and the goods and rights allocated for that objective. 5) If the decision for registration has been made by another court, it shall be sent to the court of the foundation’s home settlement for registration, with relevant documents.

2.2.3.3. Registration. Per Article 9 of the RfF: 1) Upon a statement by the court of the home settlement, the foundation shall be registered in the central register maintained by the Directorate General. 2) Registration of the foundation in the central register shall be announced in the Official Gazette. Such announcements shall indicate the name of the endower and the foundation, the foundation’s home settlement, objective, goods and rights, the title deed information of real estate it may own, if any, and the foundation’s organs and the number and date of the deed of trust as well as the number and date and the issuing court of the decision for registration. Any expenses to be made for such announcement shall be borne by the Directorate General for the recovery thereof from the foundation thereafter.

2.2.4. Organization
As the foundations are funds, that is to say they have no members, partners, or shareholders, the organizational structure only includes the management and audit organs.
2.2.4.1. Management. Per Article 13 of the RfF: 1) The management organ of new foundations shall be composed according to the deed of trust. A majority of the managers shall be residents in Turkey. 2) If any vacancy occurs in any organ of a foundation due to death, resignation or any other reason, such vacancy shall be filled according to the provisions of the deed of trust. If no applicable provision exists in the deed of trust, such vacancy shall be removed firstly by making a change of the deed of trust. If, however, a) the quorum for decision-making is not provided for a change of the deed of trust due to vacancies in the organ authorized for such change; or b) no organ authorized for a change of the deed of trust exists or no member thereof has remained; or c) the quorum for decision-making is not provided due to vacancies in the organ authorized for execution, then application shall be filed with the court with a) the decision made by the organ authorized for a change of the deed of trust without regard to the quorum for decision making; or b) the decision made by the organ authorized for execution; or c) the decision made without regard to the quorum for decision making, respectively as above. 3) Subsequent to a decision by the court, necessary changes will be made to the deed of trust for the filling of vacancies in the respective organ.

Exceptions are made to the above with regard to the management and representation of the fused, annexed, or community foundations, and are regulated by the Foundations Law Number 5737, Article 6. According to that Article: “Fused Foundations shall be managed and represented by the Directorate General. Annexed (mülhak) foundations shall be managed and represented by those managers to be appointed by the Council in accordance with the terms laid down in the charter provided that they do not contradict with the Constitution. The foundation managers may appoint assistants to help them. Qualifications sought for the managers of annexed (mülhak) foundations and their assistants shall be laid down in a regulation. Charity works shall be conducted and performed by the Directorate General per pro until the person who is not eligible for the manager position because they fail to meet terms laid down in the charter become eligible; the minors or those under the care of a guardian acquire their legal capacity and the vacant manager position is filled. Managers for the Non-Muslim community foundations shall be appointed by their members. The rules and procedures for appointing foundation managers shall be laid down in a regulation”. Additionally, “[A]nnexed (mülhak) foundations for which managers could not be appointed or whose administrative bodies could not be set up for a term of ten years shall be managed and represented by the Directorate General under a court decision. No further manager shall be appointed to or elected for those foundations that are embodied in the fused (mazbут) foundations prior to the effectiveness of this Law as well as those that are embodied in the fused (mazbут) foundations under the law hereof:” (Detailed version may be found within the Regulations for Foundations).

2.2.4.2. Audit. An auditing organ is not compulsory for all foundations. Nevertheless, all foundations are obliged to have an internal audit procedure. This procedure is held by the annual reports given by the managers to the regional directorate of the foundations. In foundations whose deed of trust includes an auditing organ, such an organ can directly conduct internal audits, or alternatively an independent auditing organization can be engaged for that purpose. The authorized organ of the foundation or an independent auditing organization can only conduct or have conducted such audit by means of persons who have the auditor’s certificate.

2.2.5. Membership

According to Article 101 of the Turkish Civil Code, foundations do not have members. But yet, due to the decision of the Constitutional Court (case no. 2005/14, decision no. 2008/92, dated
17.04.2008) this provision of the civil code is annulled; if the deed of trust has a provision for membership, then foundations may accept members.

2.2.6. Dissolution and merger
There are two different ways for foundations to dissolve: through termination, or through dissolution.

According to the Article 19 of the RfF: “If the objective of a foundation becomes impossible to attain and if it is not possible to make a change to the same, then such foundation shall spontaneously terminate. If in the management organ's or the Directorate General's opinion, the foundation's objective has become impossible to accomplish, either body shall file an application with the court for the registration of the situation in the court register as such. The court will decide on the request for the dissolution of the foundation or the composition of a liquidation board, after taking the Directorate General's opinion or the management organ's opinion, as the case may be, and will register the decision for dissolution in the register. The terminated foundation's entity and capacity shall continue during liquidation, though limited to liquidation.” Article 20 states that: “If the objective of a foundation is included under the last paragraph of Article 101 of the Turkish Civil Code, an application shall be made to the competent basic civil court by the Directorate General for the dissolution of the foundation.”

Termination of a foundation shall be registered in the central register and announced in the Official Gazette by the Directorate General. Any goods and rights remaining after the liquidation of the debts of a terminated new foundation shall be transferred to a foundation having a similar objective subject to a court decision according to the provisions of the deed of trust, or if no specific provision exists in the deed of trust, by taking the Directorate General's opinion and the opinion of the foundation to which such transfer is to be made, and any goods and rights remaining after the liquidation of the debts of a dissolved new foundation shall be transferred to the Directorate General (Art. 21 and 22).

2.3. Unions

2.3.1. Term and definition
In general, unions are the organizations of working classes. The right to form unions has a constitutional guarantee. According to the Article 51 of the 1982 Constitution:

"Employees and employers have the right to form unions and higher organizations, without obtaining permission, and they also possess the right to become a member of a union and to freely withdraw from membership, in order to safeguard and develop their economic and social rights and the interests of their members in their labor relations. No one shall be forced to become a member of a union or to withdraw from membership.

The right to form a union shall be solely be restricted by law and with the purposes of safeguarding national security and public order and to prevention of crime commitment, protection of public health and public morals and the rights and freedoms of others."
Law shall prescribe the formalities, conditions and procedures to be applied in exercising the right to form union.

Law in line with the characteristics of their job prescribes the scope, exceptions and limits of the rights of civil servants who do not have a worker status.

The regulations, administration and functioning of labor unions and their higher bodies should not be inconsistent with the fundamental characteristics of the Republic and principles of democracy.

There are a few issues to be explained about the regulation:

- The ability to establish unions is protected by the Constitution;
- Article 51 regulates not only unions but also the higher union organizations;
- Unions are not limited to labor unions—employers may also organize unions;
- Being a member of a union is based on free will;
- Unions are established to secure economic and social rights; and
- Civil servants may have unions, as well.

The concept of an “employee” has an essential meaning within the regulation. Since the provision does not use the concept “worker,” we may conclude that any kind of employees may establish unions. That is to say, as it is independently regulated, civil servants also may have unions. Indeed there is a special act, named the Law on Unions and Collective Bargaining of Civil Servants No. 4688, which regulates the issue.

2.3.2. Purpose
The purpose of each union is stated within its own act and regulations. But the general purpose of unions can be said to safeguard and develop economic and social rights and the interests of their members in their labor relations.

2.3.3. Formation
The procedure for establishing a union is parallel to that for establishing an association. According to Article 3 of the Law on Trade Unions and Collective Labor Agreements, No. 6356, “[O]rganizations shall be established without prior authorization in compliance with the procedures and principles of establishment in this Law. Unions shall carry out their activities in the branch of activity of their establishment.” The organizations shall acquire legal personality as soon as the statute of the organization attached to a petition has been submitted to the Governorate of the province of their headquarters.

2.3.4. Organization
Unions have “mandatory” and “arbitrary” organs. The mandatory organs of the organization and its branches are the general assembly, the executive board, the board of auditors, and the disciplinary board. Organizations may set up other organs, as needed. However, the functions and powers of the general assembly, the executive board, the board of auditors, and the disciplinary board shall not be transferred to these organs.

2.3.5. Membership
With regard to their membership; according to the Article 17 of Law no. 6356:
1) Any person who completes 15 years of age and who is considered as a worker in accordance with the provisions of this Law may join a workers’ trade union.

2) Any person who is considered as an employer within the meaning of this Act may join an employer’s trade union.

3) Acquisition of membership in a trade union shall be optional. No one shall be forced to be a member or not to be a member of a trade union. No worker or employer shall be a member of more than one trade union in the same branch of activity and at the same time. However, workers who are employed in the same branch of activity but in the workplaces of different employers may be members of more than one trade union. Where a worker or an employer is a member of more than one trade union as a violation to this provision, their subsequent membership shall be void.

4) Workers employed in auxiliary works may join the trade union established in the branch of activity covering that workplace.

5) Trade union membership shall be acquired via e-State, the electronic application system of the Ministry, provided that an application for a membership has been filed on e-State and the authorized organ specified in the statute of the union has approved. The application for membership shall be considered approved if it is not refused by the trade union within 30 days. Any worker whose application is refused without a valid reason shall have the right to apply to the local court having jurisdiction in labor matters within 30 days of receipt of the notification. The decision of the court shall be final. Where the court decides in favor of the petitioner, membership shall be considered acquired on the date the decision of the court has become final.

2.3.6. Dissolution and merger

With regard to the dissolution of unions, according to the Article 31 of Law no. 6356:

1) Organizations carrying out activities contrary to the characteristics of the Republic enshrined in the Constitution and the democratic principles shall be dissolved by a Court decision, upon the request of the Chief Public Prosecutor of the Republic of the place where their headquarters are located. Where the acts of violation are committed individually by union officials, the court shall decide to remove only those union officials from office.

2) Pursuant to the provision above, competent courts may, upon request or ex-officio, order the cessation of the activities of the organizations and the temporary removal of union officials from office at any time of the judicial proceedings.

3) In cases of cessation of the activities under the provisions above or others stipulated in this Law, the administration of the property of organizations and the protection of interests and the convening of a general assembly to resume activities at the end of the period of suspension shall be ensured by one or three trustees to be appointed pursuant to the provisions of the law No. 4721.
2.4. Chambers and Professional Organizations

There is a general provision within the Constitution about professional organizations, stating that: “[P]ublic professional organizations and their higher organizations are public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public; their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision.” (Article 135.)

There are 17 professional organizations that are accepted as public corporate bodies:

1. Turkish Dental Association
2. Turkish Pharmacists’ Association
3. Confederation of Turkish Tradesmen and Craftsmen
4. Union of Chambers of Turkish Engineers and Architects
5. Turkish Medical Association
6. Turkish Veterinary Medical Association
7. Turkey Seed Growers’ Association
8. The Banks Association of Turkey
9. Union of Turkish Bar Associations
10. Appraisers Association of Turkey
11. The Participation Banks Association of Turkey
12. Notaries Union of Turkey
13. Certified Public Accountants’ and Chartered Accountants’ Chambers’ Union of Turkey
14. The Association of Capital Market Intermediary Institutions of Turkey
15. Insurance Association of Turkey
16. The Union of Chambers and Commodity Exchanges of Turkey
17. Agricultural Chambers’ Union of Turkey

As regulated in the constitution, they all have their own laws. Investigating each corporate body is beyond the scope of present paper, however. Still, a few general points shall be made:

- A specific law establishes all such organizations.
- Each organization comprises a certain profession.
- The management of the organizations is based on the free will of the members and the judiciary monitors the election process.
- Political parties may not nominate candidates in elections for the organs and higher bodies of these professional organizations.
- The organizations only act within their own legal framework.
- The organizations may be dissolved by the decision of an entitled authority on the basis of national security, public order, and criminal affairs. In any case, this decision has to be presented to the judge for approval.
- These organizations may carry out some public services. While performing the public services they may use public power.
They have their own budgets, which mainly consist of members’ fees and payments made for the services of the organization.

They are subject to predicted administrative and financial control. In some cases, the central administrative bodies may have tutelage on these organizations.

2.5. Cooperatives
While cooperatives are generally considered to be part of the “Third Sector”—i.e., not part of government and not part of the business sector—they are not considered part of the non-profit sector as defined by the Comparative Nonprofit Sector Project. This is so because most cooperatives distribute profits to members and shareholders, thus violating the “non-profit distributing” criterion outlined in the definition used by the CNP Project. For this reason, the legal parameters of cooperatives shall not be discussed within this paper.
3. Tax Treatment of Nonprofit Organizations in Turkey

According to Article 73 of the 1982 Constitution: “Everyone is under the obligation to pay taxes according to his financial resources, in order to meet public expenditures. An equitable and balanced distribution of the tax burden is the social objective of fiscal policy. Taxes, fees, duties, and other such financial impositions shall be imposed, amended, or revoked by law. The Council of Ministers may be empowered to amend the percentages of exemption, exceptions and reductions in taxes, fees, duties and other such financial impositions, within the minimum and maximum limits prescribed by law.”

The term “everyone” not only points to real persons but also to corporate bodies, that is to say the formal civil society organizations. According to the constitution, paying taxes is an obligation and only the law can regulate that obligation. Still, the Council of Ministers may amend the percentages of taxes and other financial duties.

The subjects of the tax liability (“the assessee”) are real and legal persons. In being the assessee, they are also the principal debtors. There is a distinction between “the person who is liable for the tax” and “the person who is responsible for paying the tax.” In dealing with the tax liability of civil society organizations, we are actually referring to these organizations as the persons who are liable for the taxes. Legal capacity is not sought for being liable for the taxes. And even illegal activities may be taxable.

There are two other conceptions to be defined: tax exemption and tax exception. The tax exemption is the exemption of the real or legal persons’ obligation, which can be due to several reasons. As such, tax exemption is the annihilation of the tax obligation. With economic, cultural, or social purposes, there are various tax exemptions in Turkish laws. Tax exception, on the other hand, means a partial or total reduction of the tax obligation. In case of the exception, the tax obligation is maintained, but the state partly or totally remises its claim.

There are three main groups of taxes in Turkey: income taxes, expenditure taxes, and property taxes.

3.1. Income Taxes
Income taxes may be categorized according to the obligator of the tax. If the principal debtor is a real person it is called “income tax.” If the principal debtor is a legal entity it is called the “tax of institutions.”

The object of the tax of institutions is the income of a legal entity. The taxing period is a year. That is to say, the total income of a legal entity in a year is called the gaining of the institution and the total net of this income forms the tax base.

As a rule, civil society organizations are subject to tax with the sole exception of income taxes. Still, Article 94 of the Income Tax Act No. 193 speaks about certain income taxes. These incomes are listed within the law. But the Council of Ministers’ regulated tax rate for these incomes is 0%. So, practically speaking, civil society organizations do not pay any income taxes but still have other procedural obligations, such as keeping books and documents.
The Article 1 of the Corporation Tax Law No. 5422 lists the subjects of the tax of institutions as follows: corporations, cooperatives, state-owned enterprises, the enterprises of associations and foundations, and business partnerships.

It can be noticed from the provision that associations and foundations are not themselves liable for the tax but the enterprises owned by them are subject to the tax of institutions. The main notion is obvious: Associations and foundations are not profit-oriented organizations. But still they may have some profit-oriented enterprises; therefore they may be “the person who is responsible for paying the tax.” In such cases, “the person who is liable for the tax” is the enterprise itself.

Article 7 of Act No. 5422 regulates various exemptions for nonprofit organizations. This provision does not make any distinction between mission-related or unrelated incomes. These exemptions are to be decided by the Council of Ministers.

There are not only exemptions for nonprofit organizations, but also for the endowments entrusted to foundations and associations which are also regulated within Act No. 5422. In other words, according to this law, all the endowments, whether liquid or non-liquid, are treated as the “income.” Accordingly, the endowments (max. 20,000 TRY) to un-exempted foundations and associations and the endowments (max. 5% and 10% for the regions which have priority for development of the tax base) to exempted foundations and associations may be reduced from the tax base. Finally, one should recall that charitable contributions to public beneficial associations or foundations are deducted from the donor’s income tax base. However, there is a limit of 5% of donor’s yearly income. Amounts exceeding this limitation are not deducted from the tax base.5

3.2. Expenditure Taxes
While NPOs are liable for many taxes, the practical outcome is that most NPOs do not end up paying these taxes because they are exempted or excepted from the regulation.

Expenditure taxes are the taxes that are paid on expenses. The Law on Expense Tax, no 6802 provides taxes for certain types of expenses such as telecommunications (including mobile and fixed phones, internet, paid radio and television services) and the lottery.6

There is also the value added tax (VAT) for which taxpayers are responsible whenever they receive certain goods and services. The following transactions are subject to the VAT according to Article 1 of the VAT Act No. 3065: deliveries or services operated within the commercial, industrial, or agricultural fields, or self-employment activities; all kinds of imports; and deliveries or services operated within any other activities.

If a nonprofit organization performs such activities, they will be liable for the VAT. There are three exceptions for NPOs: 1) exceptions for cultural and educational activities; 2) exceptions for social activities; and 3) “the others,” which includes leasing of real estate by NPOs.

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6 [http://www.mevzuat.gov.tr/MevzuatMetin/1.3.6802.pdf](http://www.mevzuat.gov.tr/MevzuatMetin/1.3.6802.pdf)
Another kind of the expenditure tax is the stamp tax. In fact, the stamp tax may be considered a fee for any kind of official certification or attestation of documents by state authorities. NPOs are liable for the stamp taxes. There are three exceptions within the Stamp Act No. 488: 1) documents of public beneficial associations; 2) documents of exempted foundations; and 3) documents of foundations which aim to strengthen Turkish Armed Forces.

The charges are also accepted as a kind of expenditure tax. With regard to the charges there is an exemption and separately an exception for the NPOs. The exempted foundations’ establishment documents and the endowments for these foundations are exempted from the charges (Article 38 of the Charges Act, No. 492). Public benefit associations and exempted foundations are excused from charges for land registry and cadaster.

### 3.3. Property Taxes

Property taxes are taxes on the assets of real or legal persons. There are three types of property taxes: motor-vehicle tax, inheritance tax, and real-estate tax.

NPOs do not have any exemption or exception for motor-vehicle taxes.

Public benefit associations and foundations for science, research, culture, art, health, education, religion, charity, and sports have are exempt from inheritance taxes. The exempted foundations also have an exception. The real-estate tax exemptions are also parallel this regulation.
4. Recent Transformations in Turkey’s Nonprofit Law

Is Turkey’s Nonprofit Law undergoing a transformation process? Are there essential developments with regard to the legal dimensions of nonprofit organizations?

Indeed, the whole legal system of Turkey has been “under construction” for the last 10 years. Just to have an idea, between 2003 and 2006 the Parliament enacted 794 new laws, amended 798 laws, and accepted 309 international agreements or conventions. Within the same period, the Constitution was amended three times. Some of the enacted or amended laws were major laws, which may be accepted as “codes”, such as the Civil Code, the Code of Obligations, the Criminal Code, or the Commercial Code (Özcan, 2008: 351).

It is difficult to follow the amendments made in laws, since the government prefers a special kind of legislation, called a “bag or omnibus bill” (“torba kanun”). These “bag bills” are acts, which amends different articles of different acts, often by only referring to a specific word of the mentioned regulation. It is a common complaint, even by lawyers, that they cannot follow the changes to the laws.

There have been three major changes to laws affecting nonprofits: first, the Constitutional Amendment of 2010, which includes new regulations about labor unions; second, the new Association Law No. 5253, dated November 4, 2004 (the previous law was dated 1983); third, the adaptation of a Foundations Law in 2008, which further improved the legal environment. These are described in further detail below.

There are also some partially related regulations such as “the new package of democracy,”7 which provides some liberties for political parties and some new debilitative developments regarding professional organizations.8

“In the period of 2011-12, the only amendment to the legislation directly concerning CSOs has been the addition of temporary Clause 11 of the Foundation Law. ... The regulations define the application requirements for the registration of immovable properties, and the compensation conditions for compensation payments of the non-Muslim community foundations.” (TUSEV, 2012: 9).

Another indicator of the recent changes in NPO policies may be the number of tax-exempted foundations, public benefit associations, and organizations that are able to collect donations without prior permission: By 2014 there were only 256 tax-exempted foundations9 (less than 0.5% of all foundations), 404 public benefit associations10 (less than 0.05% of all associations), and 20 organizations that were able to collect donations without prior permission11 (less than 0.01% of all organizations) in Turkey.

7 http://www.bianet.org/bianet/siyaset/153427-demokratiklesme-paketi-komisyondan-gecti
8 http://www.sendika.org/2013/07/tmmobyeye-iliskin-duzenleme-ne-getiriyor/
10 http://www.asmmmo.org.tr/asmmmo/content.php?content_id=405
4.1. Constitutional Amendment of 2010
A constitutional amendment was accepted by a referendum on September 12th, 2010. Amendments to the new regulations were introduced to the Turkish legal system. The scope of the amendments is wide. Here we will mention the new regulations affecting labor unions specifically.

Amendment Subclause 4 of Article 51 of the Constitution repeals the requirement that “workers and employers cannot hold concurrent memberships in more than one labor union or employers’ association.” Similarly, Subclauses 3 and 7 of Article 54 repeals the requirements that “during a strike, the labor union is liable for any material damage caused in a workplace where the strike is being held, as a result of deliberate negligent behavior by the workers and the labor union” and “politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labor go-slows, production decreasing, and other forms of obstruction are prohibited.”

The amendment also added “public servants and other public employees have the right to conclude collective agreements.”

Some analysts welcome the amendments since they accept that the regulations broaden the freedom of organizations. But still some criticize them by emphasizing that the amendments do not meet the regulations of the European Union and other contemporary legal systems. As a matter of fact, the Turkey 2012 Progress Report of European Commission states: “Legislation on civil servants’ trade unions and collective bargaining was amended. However, the new legislation is not fully in line with EU standards and International Labour Organisation conventions, especially with regard to collective bargaining, dispute settlement, and the right to strike, in relation to public servants.” (EC, 2012: 73.)

4.2. Associations Law No. 5253
In 2004, a new Associations Law was introduced into the legal system. The previous association law had been introduced in 1983 and was a product of the military coup in 1980.

Some features of the new law may be listed as follows (Gökalp, 2005: 209-210):

- It is more liberal and aimed to harmonize with European Union standards.
- The details are left for the bylaws of the associations themselves. That is to say, the law is a frame for the associations.
- Some details are left for the provisions of the new regulations.
- The tutorship of the state on the associations is removed. The interior control is essential.
- The main philosophy of the new law allows the associations control of their own independent activities.

These main features can be observed in the new regulations of the law. The International Center for Not-for-Profit Law (ICNL) states: “Up until 2004, when a new Associations Law was enacted in Turkey, the autonomy of Turkish CSOs was fairly restricted. The new Law was viewed
positively by both civil society and the EU. It lifted some of the limitations on civil society.” (ICNL, 2014.) According to ICNL:

- Associations are no longer required to obtain prior authorization for foreign funding, partnerships, or activities.
- Associations are no longer required to inform local government officials of the day/time/location of general assembly meetings and no longer required to invite a government official/commissary to general assembly meetings.
- Audit officials must give 24 hour prior notice and just cause for random audits.
- Associations are permitted to open representative offices in other countries.
- Security forces are no longer allowed on the premises of associations without a court order.
- Specific provisions and restrictions for student associations have been entirely removed.
- Children from the age of 15 can form children’s associations.
- Standards relating to internal audits have been improved to ensure accountability of members and management.
- Associations are able to form temporary platforms/initiatives to pursue common objectives.

In addition to the new Associations Law, a new By-law of Associations was introduced into the legal system on 31 March 2005, following the new law. Since the philosophy and regulations of the new by-law is parallel to the law, there is no need to analyze it in detail. What we would like to mention is that in 2013, twenty-five articles of the new by-law were amended.

The 2013 amendments aim to eliminate some bureaucratic barriers for associations. For instance, some requirements of keeping financial records or requiring that government approve the financial books were abolished by the amendment. Also, the amendments simplify the process of recording or proving the organization’s income and expenses, e.g., bank receipts will now be accepted as an expense voucher. There are also some austerities for expenditures. For example, the administrative body of the associations does not need a particular certificate of authorization anymore.

4.3. Foundation Law No. 5737

The new Law on Foundations aims to eliminate restrictions on foundations. It can be observed that the law tries to abolish the tutorship of the General Directorate of Foundations on the foundations. For example, foundations no longer need to ask the general directorate for permission in order to acquire property. Similarly, they do not need the permission of the general directorate for their activities abroad. Moreover, the foundations may have branch offices or agencies without the approval of the general directorate, though the general directorate must be informed of these developments.

Another key element of the new law is the elimination of restrictions for foreigners. Before the new law, foreigners were not permitted to establish foundations in Turkey. However now, according to Article 5 of the Law, due to the reciprocity principle, foreigners may establish foundations or take part in the administrative body of the foundation. Furthermore, foundations founded by the foreigners may now also acquire real estate. But still, the majority of the management body must be legally residing in Turkey.
5. Overview of Deviations from the General Pattern

Turkey is in the process of accession to the EU and is trying to harmonize its laws accordingly: “The European Council of December 1999 granted Turkey the status of candidate country. Accession negotiations with Turkey were opened in October 2005. The Association Agreement between Turkey and the then EEC entered into force in December 1964. Turkey and the EU formed a Customs Union in 1995.” (EC, 2012:3.) “Since officially becoming an EU candidate country in 2003, Turkey has implemented a series of reforms that promote democratization, including reforms to its basic framework laws affecting civil society.” (ICNL, 2014.)

Deviations from the general pattern towards a more open civil society can be seen as the result of strong state tradition. Although some steps have been taken during the democratization period to lessen state control over civil society, both state officials and even many citizens remain suspicious of civil society organizations.

This fact enlightens the resistance of the government to free up civil society from state domination. This domination is not only reflected in the provisions of the regulations affecting the sector, but can also be seen in the avoidance of public institutions in considering NPOs as legitimate stakeholders. As a European Commission Report points out, “consultation of civil society remains the exception rather than the rule.” (EC, 2012: 10.)

Citizens are also doubtful of civil society organizations: “There is one NGO for every 866 individuals, less than in most of EU member states. In Germany, there are nearly 2.1 million NGOs and nearly 1.47 million in France. There is one NGO for every 40 individuals in Germany, while four out of 10 citizens attend at least one NGO in France, where one-fifth of the population is registered in at least two civil society organizations. The U.S. has 1.2 million civil society organizations and one out of every 15 citizens is a member of these institutions.”12 Additionally, 20 percent of Turkish associations are based in Istanbul, making the rural-urban divide pronounced.13 As the chart below indicates, not only are men in Turkey much more likely to be members of a civil society organization, most Turkish citizens are not members of an organization at all:

(Female: 2.15%; Male: 9.7%; Non-members: 88.15%)

Another important deviation arises from the history of Turkey. As explained above, the imperial history of the country includes different minorities on its territories. The Treaty of Lausanne accepts merely the non-Muslim minorities as “legal minorities”. This causes a problem of the properties of foundations of the minority groups.

“No-Muslim communities — as organised structures of religious groups — continued to face problems due to their lack of legal personality, with adverse effects on property rights, access to justice, the ability to obtain work, residence permits for foreign clergy and fundraising. The relevant 2010 Council of Europe Venice Commission recommendations have yet to be implemented.” (EC, 2012: 24)

The State’s also directs punitive actions to rights-based NPOs. There are considerable numbers of examples, but one of the very recent cases involved LGBT organizations. Some LGBT organizations were sued, with the plaintiffs claiming that these organizations violated the “public morality” and “Turkish family structure” requirements clauses in the law. They demanded these organizations be closed. Even though the judgments were to not close the associations, the cases had a negative effect on the membership and financial support of these organizations. (TUSEV, 2012: 16.)

“Another type of practice that can pose an obstacle to the freedom of association is violations of human-rights defenders’ rights and the CSOs they work with. Although such violations do not always originate directly from the legislation regarding associations and foundations, they can still substantially limit the freedom of expression and association. These types of violations generally occur due to the broad interpretations of legal texts such as the Anti-Terror Law (Terörle Mücadele Kanunu- TMK), Misdemeanor Law (Kabahatler Kanunu), and the Law on Meetings and Demonstrations (Toplantı ve Gösteri Yürüyüşleri Kanunu). In his article “The Anti-Terror Law: The Obstacles Before the Freedom of Association”, Attorney Danış, puts forth the point that the obstruction of “the civil freedom’s right to exist” by silencing the “peaceful activities and legitimate oppositions” of CSOs and civil initiatives “on the pretext of the activities of armed groups” (TUSEV, 2012: 18).
Bibliography


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