

# Promoting the Enabling Environment for functioning Civil Society: Analysis of Civil Society Environment in Turkey

Sezin DEREÇI<sup>1</sup>

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## Abstract

An increasing amount of attention has been devoted to understanding the role of civil society in the global politics, although little has been done to identify and analyze conditions under which civil society can function as agents of democratization and development. This article reviews this changing discourse that acknowledges civil society as an independent actor and the approaches to define “the enabling environment” for civil society development. The main part of the contribution presents the findings of an empirical investigation demonstrating the situation of enabling environment for civil society in Turkey in the EU accession process. Three major tenets of enabling environment are assessed: (1) Operational activity (law on associations and foundations, problems in registration, disproportionate audit, lack of statistical data/ consistent policy towards CSOs); (2) Speech and advocacy (freedom of expression, internet regulation and pressure on social networks); (3) Freedom of Assembly (constitutional rights, law on meeting and demonstrations, responses to Gezi protests). The empirical data is drawn from Third Sector Foundation of Turkey (TUSEV) publications<sup>2</sup> on these dimensions and Monitoring Reports drafted by TUSEV within project entitled Monitoring Matrix on Enabling Environment for Civil Society Development Project funded by the European Union.<sup>3</sup>

## Introduction

The democratic deficit and inefficiency of public policy making are common issues in the global level, which has been widely addressed over time, and that the participation of civil society in policy processes represents the solution to overcome such problems. This article reviews several initiatives in the global level which mainly indicates that civil society is no longer considered as the beneficiaries of policies and there are different policy mechanisms to ensure

their participation in every phase of policy-making, from policy design to implementation. The following part of the contribution presents the findings of an empirical investigation reviews the policy responses from United Nations (UN) and the European Union (EU) to determine conditions under which civil society can fully function as objects of democratization and development in the global level. Based on the conditions define the political minimum for enabling environment for civil society, The main part of the contribution presents the findings of an empirical investigation demonstrating the situation of enabling environment for civil society in Turkey in the EU accession process. Three major tenets of enabling environment are assessed: (1) Operational activity (law on associations and foundations, problems in registration, disproportionate audit, lack of statistical data/ consistent policy towards CSOs); (2) Speech and advocacy (freedom of expression, internet regulation and pressure on social networks); (3) Freedom of Assembly (constitutional rights, law on meeting and demonstrations, responses to Gezi protests).

## **Addressing the democracy and inefficiency challenge: The Civil Society Solution**

The failures of the process of democratic political decision-making are configured by Müller (2006). In respect of this model, in modern societies there is an apparent loss of legitimacy of political institutions since there is apparent decline in political participation, uncontrolled growth of state surveillance, the threat of social fragmentation and finally there are causal interconnections between these risks. The main challenge of the modern societies that pose threat to democratic process is that the danger of excessive centralization and concentration of political power (Cohen 1999, p.77; Putnam 2000, p.78).

The relationship between citizen participation and solving alleged democratic deficit problem has become recently a key political research. Theorists have provided several accounts to solve this democracy challenge. According to Scharpf's (1997; 1999) input-oriented democratic legitimization theory, political choices are legitimate if they reflect the "will of the people". Institutions can be perceived legitimate in the eyes of citizens because "they result from decisions made according to procedures that include rule of law, democracy or political and economic competition" (Van Kersbergen & Van Waarden, 2004, p.156). Introducing interactive modes of

governance to increase direct participation of citizens in political decision-making is to be seen as an attempt to improve input legitimacy. In this theory, deliberation of citizens is appeared as a significant mechanism, for actualization of input legitimacy. If those mechanisms are perceived by the people as 'democratic' or 'good', then there is input legitimacy. Deliberation enables to reach an increased match between preferences of citizens with the content of policy and for social cohesiveness within society.

Parallel to theoretical discussion, during the last decade, policy practitioners addressed these issues and apparently the scope of civil society and their attributed roles in policy making have extended through various policy initiatives. As an example, the participation and wider representation of civil society in setting up the development agenda and contributing to assist states and international actors to achieve development goals have been highlighted by initiatives of UN. United Nations Millennium Declaration stressed that individual states have a collective responsibility to promote human rights, democracy and good governance as part of development efforts and show a commitment "to develop strong partnerships with the private sector and with civil society organizations in pursuit of development and poverty eradication"<sup>4</sup>. UN resolution adopted by the General Assembly on 27 July 2012 entitled "The future we want" declared that "sustainable development requires concrete and urgent action and [sustainable development] can only be achieved with a broad alliance of people, governments, civil society and the private sector, all working together to secure the future we want for present and future generations"<sup>5</sup>. Accra Agenda for Action (AAA)<sup>6</sup> recognized the significance of CSOs as "independent development actors".

Civil society as a concept constitutes an important place in the European political and normative debate as well. In the development of European social and political order and democratization of EU polity, civil society has attributed potential roles. Despite practical measures remaining problematic, scholars agree that legitimacy of European governance is in danger and there is democratic deficit in the EU (Lord and Beetham 2001; Horeth 1999). Saurugger (2007c: 386- 387) highlights that the democratic deficit rhetoric has prevailed in accounts of political and scholars, since the EC maintains dominance in decision-making and public opinion research has shown that citizens do not show attachments to the institutions – especially the EP - that are supposed to represent them. The role of civil society organizations has come to the forefront of this debate,

signified as a remedy to solve the democratic deficit issue (Magnette 2006; Warleigh 2006; Armstrong 2006).

In this debate, it has been argued that the debate on the legitimacy of European governance should value the role of civil society organizations. Community institutions use the civil society discourse to further their interests and multiple claims on democratic credentials on civil society may be contradictory (Smismans, 2003; Kohler-Koch, 2009). As Cohen and Arato (1992) put “divergent roles are attributed to civil society by different normative theories of democracy” and roles of civil society is linked to different images of the natures of the European polity (Kohler-Koch, 2009). Liebert and Trenz (2009) touch upon two strands of research namely “governance approach” and “social system approach”. In the governance approach, civil society is given potential role to improve output legitimacy by efficient problem solving and enhance input legitimacy via plural interest representation and mediation. In this perspective, “civil society” is conceptualized as the “organized” form of civil society and emphasis is given to consolidation of European civil society in Brussels and organizational structures, strategies and resources of European networks and umbrellas. The debate on civil society is merely connected to enhancing the effectiveness and problem-solving capacity of the EU machinery through facilitating societal participation (Finke 2007). The literature on EU lobbying and interest groups in EU policy-making has already developed (Smismans 2003: 483). The representations of business interests in European governance have been widely discussed since the formation of European Economic Community (EEC), and the number of business interests has rapidly increased after Single European Act (SEA). However, the normative discussion on the role of intermediary organizations and legitimate European governance has not taken place.

In the social sphere approach, focus is on “ever evolving European social space”. In this approach, civil society is expected to have the function of forming and controlling the political authority along with counterbalancing socially disembedded market forces. In the development of European social and political order and democratization of EU polity, civil society has attributed potential and roles. This conception perceives EU an emergent polity in its own right and embracing a political community within deep *constitutionalisation* process. In respect of this approach, this process’ success relies on building a political constituency with wider and encompassing a transnational civil society within the EU. In other words, civil society is associated

with necessity for European political community in which public communication and deliberation are possible.

The European Commission (EC) addressed democratic deficit issue widely, and that the participation of civil society in policy processes represents the solution to overcome such problems. First, the civil society definition and its attributed scope and roles have extended over time through various policy initiatives. Since the formation of the European Community, interest groups have been partnered to European institutions, pooling their information and expertise for the Union's decision-making. The Union primarily refers to the potential that civil society offers to contribute to the effectiveness and efficiency criterion in European governance. However, by the time the democratic deficit of the Union was raised and extensively discussed by the European integration scholars and Eurocrats, civil society contributions had been extended from enhancing policy-making efficiency (output legitimization) to securing citizen participation (input legitimacy).

On the other hand, to fulfill full potential of deliberation of citizens, which is essential for actualization of input legitimacy, providing *procedural fairness* at first place is given as the prerequisite. Cohen describes an ideal procedure that is conditions of democratic deliberation in democratic institutions. This ideal procedure is "a place for many of the rights, opportunities, and institutions covered by liberal conceptions of justice" According to his conceptualization of "ideal deliberative procedure", ideal deliberation is free and equal if procedures ensure that parties are both formally and substantively equal, to the degree that distribution of resources does not play a causal role affecting deliberation. As a condition of deliberation citizens have to have access to resources "that are adequate to render each citizen politically independent of the influence of power-relations". This refers to a "political minimum," or sufficient income to enable citizens to be independent in effective exercise of political participation (Freeman, 2000. pp.390-392).

In the search political minimum to sustain civil society participation in public policy making, there has been growing emphasis upon the securing the "enabling environment" for civil society development to address these issues. Different initiatives set out conditions under which CSOs can function as "independent development actors", "object of democratization and efficient policy making" and specifically referred to "the enabling environment" concept that defines minimum set of requirements to be met. According to the CIVICUS State of Civil Society Report published in April 2013, the enabling environment for CSOs is described as "the conditions within which civil

society works". These conditions refer to the combinations of the laws, policies, regulations and practices by government and donors create under which CSOs can maximize their contributions to development and public policy making. In the next section, the political minimum for enabling environment for civil society determined by different initiatives will be discussed.

### **The political minimum for enabling environment for civil society**

In general terms, the initiatives to sustain international development define the enabling environment for civil society as the policy, political and governance context within which CSOs can fully function as agents of development and democratization. Donor and governments of developing countries that took part in AAA undertook to engage with CSOs to enhance an enabling environment in developing countries maximizes their contributions to development. The core of the Busan Partnership agreement is the "inclusiveness" since it recognizes that all actors including private sector and civil society have a different but complementary role to play in achieving development goals. Countries and territories that endorsed the Busan Partnership for Effective Development Co-operation in 2011, committed to implement their respective commitments to enable CSOs to exercise their roles as independent development actors, with a particular focus on an enabling environment.<sup>7</sup>

The Task Team on Civil Society Development Effectiveness and Enabling Environment which launched to facilitate and monitor implementation of the civil society-related commitments in the 2008 Accra Agenda for Action (AAA).<sup>8</sup> Their 2011 report cites core civil society freedoms of expression, association and assembly protecting civil society environment which are grounded in international and regional human rights law. Based on the core freedoms grounded in the international law, the components of the enabling environment are highlighted accordingly<sup>9</sup>:

- a) *The right of CSOs to entry (i.e. the right to form and join CSOs, freedom of association)*
- b) *The right to operate free from unwarranted state interference*
- c) *The right to free expression*
- d) *The right to communicate and cooperate*
- e) *The right to seek and secure funding and other resources*
- f) *State duty to protect*

In different platforms CSOs urge for international actors to intervene in enhancing enabling environment for civil society and formed different initiatives to monitor enabling environment and Busan commitments to civil society. The CSO Partnership for Development Effectiveness (CPDE) that is an open platform that unites CSOs from around the world on strengthening CSO accountability frameworks at the country level was developed in 2012.<sup>10</sup> Country level processes supported by the CPDE's Working Group on Enabling Environment (In 2014: Ivory Coast, Mozambique, Vietnam, Mongolia, Brazil, Colombia, Jamaica, Europe TBC).

In 2013, The Consortium Members of the Civic Space Initiative<sup>11</sup> have submitted their declaration on the current situation on civil society enabling environment with emphasizing rising tide of restrictions and threats to civic space and they urged the UN High Level Panel on the Post 2015 Development Agenda Panel to prioritize an “enabling environment” for civil society in the post 2015 development agenda with due focus on governance and legal frameworks.<sup>12</sup> For example, in September 2013 the 24th UN Human Rights Council Session passed the “Civil Society Space” resolution which urges “States to create and maintain, in law and in practice, a safe and enabling environment in which civil society can operate free from hindrance and insecurity” (United Nations General Assembly, 2013).

With time, the EU has shown increasing interest in civil society; in 2005- 2006, the EU referred to civil society in respect of the dialogue between societies of enlargement countries and European societies and institutions, enhancing enthusiasm and support for the EU membership in respective states. By 2008, when the Civil Society Facility was launched, the EU had directed its attention to ‘build civil societies’ in enlargement countries, raising their engagement in the intensive reform process. Within this approach, civil society was given the role of strengthening the democratization processes in their states, transformed by the rules, norms and ideas produced at the EU level. As a result, civil society area is being evaluated within the political criteria and monitored through the annual country progress reports for enlargement countries.

It is also evident that the EU has increasingly pursued sophisticated approaches to activate participation of the civil societies of enlargement countries. In 2012, the EC introduced the term of enabling environment for civil society in with its Communication “The Roots of Democracy and Sustainable Development: Europe's Engagement with Civil Society in External Relations” which cites set of indications for functioning civil society within states. DG Enlargement issued - the

Guidelines for EU Support to which sets the agenda for achieving enabling environment for civil society development in enlargement countries for 2014- 2020. This document primarily highlights that accession states should achieve *appropriate legal, judicial and administrative environment* for exercising the freedoms of expression, assembly and association in order to become full member of the EU. Conducive environment includes indicators, methods of verifications for the objective of achieving “an enabling legal and policy environment, for the exercise of the rights of freedom, expression, assembly and association.” along with “an enabling financial environment which supports sustainability of CSOs.”<sup>13</sup>

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### **CONDUCTIVE ENVIRONMENT**

**Objective: An enabling legal and policy environment, for the exercise of the rights of freedom, expression, assembly and association.**

**1.1 Results: All individuals and legal entities can express themselves freely, assemble peacefully and establish, join and participate in non-formal and/or registered organizations.**

#### **Indicators**

**1.1. a. Number of cases of infringement of basic constitutional rights cases of infringement of basic constitutional rights of individuals and legal entities to express freely, to assemble, to join and/or participate in non-formal and/or registered organization, and of these, the number of cases duly investigated and sanctioned (disaggregated to show human rights defender cases).**

**1.1.b. Quality assessment of existing legislation and policy framework**

**1.1.c. Progress with the adoption and implementation of relevant legislation**

#### **Methods of Verification**

**1.1.a. ACMIS court data base and/or ECtHR case law Court Case management Systems, Yearly Reports of Ombudsman, Reports from State Commission against Discrimination.**

**1.1.b. Through independent assessment**

**1.1.c. Assessment through DG Enlargement's annual Progress Report**

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The EU's focus on development of civil society and to EU *acquis* manifest itself in the funded projects in the regional level. The EU supports a project entitled 'Balkan Civil Society *Acquis* – Monitoring Enabling Environment for Civil Society Development Project' for the years between 2012- 2016 to strengthen integration and participation of CSOs of Western Balkan countries, including Turkey, in EU policy and accession processes at European and country level. The project has an objective to create a monitoring mechanism for tracking of development of civil society, to facilitate the inclusion of related matters in the EU Progress Report and to support the participation of CSOs in the decision making processes at the national and EU level. More recently, 7th edition of the Black Sea NGO Forum which took place in December 2014 with support of European Commission has focused specifically on the improvement of enabling environment for civil society and facilitated discussion to create multi-stakeholder spaces to support country/regional level monitoring and multi-stakeholder engagement on CSO enabling environment.<sup>14</sup>

Following these initiatives discussing the independent roles of CSOs, there has been proliferation of research to measure and assess the enabling environment on civil society. To illustrate, International Center for Non Profit Law (ICNL) have examined a sample of eight assessment tools that measure the state of the enabling environment for civil society in different regions and states and compared their key dimensions and indicators, and sources of data<sup>15</sup>. ICNL, Article 19, CIVICUS, and the World Movement for Democracy (WMD) are jointly implementing the Civic Space Initiative (CSI)<sup>16</sup>. In the post-2015, as a new measurement framework, CIVICUS promotes Big Development DataShift to facilitate citizen reporting data to meaningfully support accountability within countries, and cross country comparable new data<sup>17</sup>.

There are some other initiatives to monitor different aspects of enabling environment for civil society with their own framework and special focus including annual and special reports of Amnesty, Human Rights Watch, and Transparency International, UN Special Rapporteur Report on the rights to freedom of peaceful assembly and of association. There are also various indexes provide extensive data on different issues when assessing enabling environment for civil society such as; Bertelsmann Transformation Index; Cingranelli-Richards Human Rights Dataset; USAID CSO Sustainability Index; Open Budget Survey Index; Economic Intelligence Democracy Index;

Press Freedom Index; Media Sustainability Index; Freedom House Freedom of the Net Index; Reporters without Borders.

## **The EU Anchor and changing enabling environment for civil society in Turkey**

The EU conditionality towards Turkey has been the core strategy to induce its meeting with community rules. At the Copenhagen Summit in 1993, the political condition of accession to the EU was defined, referring to the “stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities” (European Council 1993). Within history of EU-Turkey relations, the EU’s special interest in CSOs can be traced back to 1998, when the EC prepared its first progress report on Turkey’s accession to the EU. During that period of time, the EU has started to promote cooperation among Turkish authorities and NGOs to support Turkish authorities' efforts to increase respect for human rights and the rule of law (European Commission 1998: 6).

As part of this broader agenda, the primary focus in the earlier periods of EU-Turkey relations was on improving the political environment in favor of civil society. The EU placed the demand on the Turkish government to meet the minimum requirements for civil society development, with progress assessed through the situation of civil society context particularly in respect of the Copenhagen criteria. In general, the EU claimed freedom of assembly, freedom of association and freedom of expression are not assured in Turkey, and there have been negative consequences on the working of NGOs and trade unions.

The section below will review the enabling environment for civil society development in Turkey with respect of achieving Objective of sustaining an enabling legal and policy environment, for the exercise of the rights of freedom, expression, assembly and association. The assessment of the regulatory environment and its practical implications covered extensively in the Monitoring Matrix Turkey 2013<sup>18</sup> and 2014 Report and this analysis mostly refer to these reports.

### **1. Freedom of operational activity**

The European Council in Helsinki granted Turkey the EU candidacy and accession partnership (2001), presenting the priority areas to be supported and the single framework providing the financial means available through towards Turkey's membership. The accession partnership also touched upon the unfavorable conditions blocking the mobilization of civil society, with references to the former regular reports and objectives concerning its development in Turkey. The Council undertook to "strengthen legal and constitutional guarantees of the right to freedom of association and peaceful assembly and encourage development of civil society", under the title of "enhanced political dialogue and political criteria" (p.16).

The declaration of Turkey's candidacy in 1999 boosted reforms regarding the democratic political environment for civil society. The accession partnership facilitated various reforms, with the 2001 regular report indicating improvements with regard to civil society development and their participation in the accession process. During this period of time, various laws and regulations were updated for the improvement of the political environment of civil society in Turkey under the EU's impact.

The EU political conditionality has enforced the Turkish state to liberalize NGO and associations law. For instance, Turkey was able to restructure the associational system by passing reform packages to meet the economic and political criteria for accession in the phase of accession period. The EU candidacy status and thus democratic conditionality has changed the characteristics of civil society, in which Turkish public and private interest groups operate. The Turkish government pushed reforms in sensitive areas to meet the political aspects of the Copenhagen criteria. The government passed various laws under the National Programme to align with EU acquis, aiming to create legal foundation for the full protection of the individual rights and freedoms, the freedom of thought and expression, the freedom of association and peaceful assembly and the enlargement of the space of civil society in Turkey. Within the scope of the European Union accession process, Turkey has implemented a series of reforms to meet the EU acquis including amendments to the legislation affecting the enabling environment for civil society. Especially in the period between 2004 and 2008, there has been institutional convergence towards the standards set out by the EU and furthered freedom of association; law on foundations and associations have been reformed accordingly.

Concerning ensuring freedom of association, various reforms lifting the pressure on civil society made including establishment of Department of Associations within the Ministry of the Interior to take over the duty from the Director General of Security. With regard to freedom of association the amendment of article 33 of the constitution eased the restriction on forming associations, and the abolishment of difficulties regarding NGOs forming international linkages was expected accordingly. There have also been some changes in the Regulation on Law on Associations No. 28537 to reduce the bureaucratic burden on associations.

The major problem is that, the relevant legislation in Turkey does not bring a definition of civil society and CSOs. The legal framework only recognizes associations and foundations as legal entities of civil society, having separate public institutions as regulators: the Department of Associations (DoA) within the Ministry of Interior and the General Directorate of Foundations (DGoF) under the Prime Ministry respectively. The legal framework does not recognize and regulate other forms of CSOs including initiatives, social enterprises and grant-making foundations. In addition to associations and foundations, platforms<sup>19</sup> are also recognized by law but not accepted as legal entities. These types of CSOs which organize on ad hoc basis according to needs of society and their members with less hierarchical structures are compelled to register as foundations or associations to be able to gain legal entity and be eligible to receive public funding or apply for other grant programs.

Despite substantial changes made in the legal framework, since formal changes were not implemented, and there have been obvious cases in which CSOs have been subjected to harassment and intimidation, disproportional audits. DoA and DGoF are in charge of auditing associations and foundations given by the legislation. The legislation does not bring detailed explanations and limits of interferences of auditors. There are inconsistencies in the duration and scope of audit practices reported that pose challenge to freedom of association of CSOs. The EU progress report 2011 assess the legislation regarding freedom of association is largely in-line with the EU standards, however highlights that there are disproportionate audits and the restrictive interpretation of the law.

Based on the article 33 of the Constitution, freedom of association may be restricted for national security, public order, and prevention of crime, public health, public morality and the protection of the freedom of others. Here, there is an overlap with the grounds of restriction listed

in article 11 of ECHR. Yet, Civil Code brings further restrictions by referring to morality that is vague term and may be subject to broad interpretation by the judiciary and administration. Article 56 of the Civil Code abolishes formation associations contrary to the laws and ethics. Article 101 of the Civil Code also states that “Formation of a foundation contrary to the characteristics of the Republic defined by the Constitution, Constitutional rules, laws, ethics, national integrity and national interest, or with the aim of supporting a distinctive race or community, is restricted.” There have been several court cases to terminate activities of associations work on LGBTI rights in Turkey. TUSEV Civil Society Monitoring Report 2011 indicated unequal practices occurred in organizations performing right-based activities such as LGBT organizations. According to Bertelsmann Stiftung’s Transformation Index 2014 Turkey report, CSOs that oppose state’s policies often face legal and financial obstacles. The 2014 EU Progress Report states that examples of restrictive interpretation of legislation vis-à-vis associations and harassment of their leaders still exist.

Despite majority of CSOs claim the registration process is being regulated according to the law, they still find this process slow and cumbersome at times. Associations are obliged to form a general assembly, an executive board consisting of five individuals, and an auditing committee of three persons. The number of founding members sought by the state is quite high (7) compared with international and European standards (2-3 people). Foundations are registered through a court decree. DGoF has the authority to review applications. Foundations are obliged to form and administrative body and must maintain a minimum capital of 50.000 TRY (approximately 17,500 EUR).

The Constitution safeguards that every individual and legal person with legal capacity has the right to establish a CSO without having to obtain any prior approval. However, secondary law in Turkey brings several restrictions for some individuals to become founding member of CSOs. Foreigners with residence permit can found or join an association in Turkey yet; the executive board must still have a Turkish majority. There are some other restrictions apply to military and security personnel, judges and attorneys work for Ministry of Justice and some other public officials work for Ministries. Minors between 15-18 are allowed found child associations or become member of associations to enhance their “psychical, mental and moral capabilities, to preserve their rights of sport, education and training, social and cultural existence, structure of

their families and their private lives.” with permission of their legal guardians. Minors between 12-15 years of age are only allowed to be member of children’s associations with the permission of their legal guardians.

The legal framework is highly restrictive towards activities of foreign CSOs operating in Turkey. The Ministry Of Internal Affairs is authorized to give permission for opening a branch of foreign CSOs with the consent provided by Ministry of Foreign Affairs. This process has been assessed highly political and non-transparent with unlimited discretionary authority given to the decision-makers. Foreign organizations that went through this application process to open up a representation or branch in Turkey have reported the problems they have faced in report of TUSEV. They mostly highlight lack of transparency in this process such as receiving a rejection without providing reason, unanswered applications, and the lack of post-application follow-up procedures. The EU Progress Report 2012 indicated two foreign civil society organizations were refused permission to establish a branch office in Turkey.

## **2. Freedom of Speech and Advocacy**

The Constitution guarantees freedom and privacy of communication for all. Pursuant to the relevant law, unless there is a duly issued judicial decision based on one or more of the following; national security, public order, prevention of crime, protection of public health, public moral or rights and freedoms of others, the communication cannot be prevented or its privacy cannot be violated. However, there are regulations granting public institutions the authority to restrict such right to an extent that would be below the international standards.

Despite these safeguards, internet censorship by the government is common and has increased in the last couple of years. According to Freedom House ratings, internet freedom is “partly free” in Turkey (Freedom House, Freedom on the Net 2012 & Freedom on the Net 2013 Reports & Freedom on the Net 2014 Reports).<sup>20</sup>

The Law No. 5651 entitled, “Regulation of Publications on the Internet and Suppression of Crimes Committed by Means of Such Publication,” was adopted in 2007 which regulates the publications on the internet and suppression of crimes by means of such publication had a significant negative impact on freedom of expression. In 2011, the Information Technologies and

Communication Board (BTK) brought mandatory filtering system to protect citizens from harmful content but stepped back after series of opposing street demonstrations in May 2011. BTK had to modify its policy proposal in August 2011; the modified version of this internet filtering system came into force. Yet, this filtering system is optional instead of compulsory for the internet users (Freedom House, Freedom on the Net 2012 Report).

The government routinely blocks advanced web content and applications and prohibits access to websites with opposing views. According to data of Engelli Web [Database on blocked Websites in Turkey]<sup>21</sup>, over 61.780 websites are blocked as of December 2014. It is also reported that the reasoning of court decisions to block websites and relevant rulings are not easily accessible. Therefore such nontransparent procedures bring further challenges for those who appeal against conviction (Freedom House, Freedom on the Net 2012 Report).

Recently, on 10th of September 2014, the extraordinary authority was granted to the BTK after an amendment to the Internet Law was passed at Parliament. Amendments were made to internet regulation Law no. 5651 and extended the authority of Telecommunications Communication Presidency (TİB) to ban websites and remove web contents if there are instances of violation of privacy and if deemed necessary for matters of “national security, the restoration of public order and the prevention of crimes” without a necessity of prior court order. This bill does not ensure in depth- investigation of the cases and therefore pave way to arbitrary decisions of the government authorities. This regulation on the Internet does not define content crimes well. This in turn is leading to arbitrary court rulings. Furthermore, web hosting providers are given responsibilities to keep the data of the users and the websites they visited for two consecutive years<sup>22</sup>. However, The Constitutional Court has ruled as “unconstitutional” the TİB’s authority to close websites within four hours on the basis of national security, protecting public order, or preventing crime.<sup>23</sup>

During Gezi Park protests, in June 2013, there were instances of restrictions on broadcasting of the demonstrations. State officials openly criticized social media users and tools of social media blamed for escalating the tension and threatening the social order. As an example, 48 citizens were put under custody for posting Twitter messages about the Gezi Park protests but released later (The report of Ombudsman on Gezi Park Protests, 2013). Freedom on the Internet 2014 report reports that Turkish internet users increasingly face arrests and legal prosecution for their online activities. According to report, decisions to punish users or restrict content on

disproportionate political, social, or religious grounds continue to restrict Turkish internet freedom. In 2014, trial of 29 citizens who posted on Twitter in the first days of Gezi Park Protest continued and was monitored by Amnesty International. On the other hand, during the Gezi Park protests, some journalists and social media users were subjected to verbal abuse, detention, physical violence and other threats by the police forces (Amnesty International, 2013). The report provided by Human Right Commissioner of Council of Europe refers the data provided by Reporters Without Borders that reported 50 national and international press workers had been subjected to police violence during Gezi Park Protests.<sup>24</sup>

Turkey's media is being highly criticized for losing their impartiality. These media outlets were being highly criticized when some TV channels or newspapers remained silent against Gezi Park protests or broadcasted or reported in a biased way. Human rights Watch 2014 report indicates, in 2013, respected mainstream journalists and commentators who criticize the government or Prime Minister were fired from their jobs.<sup>25</sup> According to special report of Freedom House, at least 59 journalists were fired or forced to resign due to their coverage of Gezi Park Protests.<sup>26</sup>

Committee to Defend Journalists (CPJ) identified 211 journalists jailed for their work worldwide and CPJ highlighted more than half of all journalists imprisoned are in Turkey, Iran, and China<sup>27</sup>. As of June 2014, according to data of OSCE there are still 22 imprisoned journalists in Turkey.<sup>28</sup> These journalists are charged with organizing or participating in terror related or anti-government activities. According to Press Freedom Index 2014 published by Reporters Without Borders, Turkey ranks 154<sup>th</sup> out of 180 countries which presents there is increasing pressure on media freedom.<sup>29</sup>

### **3. Freedom of Assembly**

Right to freedom of assembly is severely restricted in Turkey since the legal framework brings several obstacles in exercising the right. In 2013, 1134 assemblies (774 assemblies are Gezi Protests) were dispersed by police forces. In 2013, in total 103 lawsuit was brought on 3773 people, 50 were minors. In the same year, a total of 24.750 years of imprisonment were charged for 1000 people, 13 were minors.<sup>30</sup> As far as the freedom of assembly is concerned, Turkey has the worst record among European countries. Between 1959 and 2013, there have been 61 violations

of Art. 11 of the European Convention on Human Rights charged by European Court of Human Rights (ECtHR).<sup>31</sup> The EU Progress Report for Turkey 2014 reported that “Civil society organizations reported that they were prevented from holding meetings and rallies on several occasions, and that they were issued fines. A number of human rights defenders continued facing legal proceedings on charges of breaking the law and of making propaganda for terrorism as a result of their presence at demonstrations and meetings and following their attendance at press conferences.”

The freedom of peaceful meetings and demonstrations as well as spontaneous assemblies is regulated in Article 34 of the Constitution which recognizes the right of citizens to organize an assembly or demonstration without a prior authorization process. The second paragraph of Article 34 of Constitution states conditions under which rights of assembly and demonstrations can be subject to restrictions such as; preservation of national security, public order, prevention of crime, protection of public moral and public health. These restrictive measures are evaluated to meet 11<sup>th</sup> clause of European Convention on Human Rights (Ayata & Karan 2014). On the other hand The Constitution does not bring any further explanations of conditions of necessity and proportionality of such restrictions which prevent overreaching interpretations and arbitrary implementations.

However, articles of secondary legislation such as Law on Meetings and Demonstrations and Law on Police Powers and Duties violate the European Convention on Human Rights. The Law on Meetings and Demonstrations (no. 2911) introduces extensive measures against freedom of peaceful assembly and demonstrations. According to this law, civilian authority has the right to cancel a specific meeting or postpone it for up to a maximum of one month for reasons of national security, public order, prevention of crime, public health and public morals or protection of rights and freedoms of others.<sup>32</sup>

The meetings and demonstrations should be planned by a committee consisting of seven people with a lead person and the members of the committee should be over 18 with the capacity to act. Based on this condition, right to assembly has been only granted to individuals over 18 years of age and children associations. Therefore the right to organize outdoor meetings and demonstrations has only been granted to individuals over 18 years of age. The assemblies are also subject to prior notification to the civilian authority. Advance notification is required to organize

an assembly, protest or public gathering. According to Article 10 of Law No. 2911 on Meetings and Demonstrations, all of the members of the organizing committee must sign a declaration 48 hours prior to the assembly and submit it to the district governor's office during work hours. Because 48 hours' notice is required, the law does not allow spontaneous demonstrations. Pursuant to the law, there are restrictions regarding time, place, manner and duration of the assembly. Article 11 of Law No. 2911 determines responsibilities of organizers of assembly including in the notification process before organizing assembly and till end of the assembly.

The legal provisions concerning the advance notification in Turkey empower the authorities to refuse to accept a notification and to ban an assembly. In practice, the notification procedure constitutes a request for permission resulting in an overly onerous and bureaucratic de facto authorization process of the authorities. Art. 23 lists the circumstances under which a meeting or demonstration will be regarded as unlawful, and includes the absence of prior notification.

The latest democratization package passed by the Turkish Grand National Assembly in March 2014 did not bring notable changes in the legislation. These amendments made to the law extended the time periods within which demonstrations may be held and provided that the authorities would consult stakeholders on the venue and route for demonstrations and on monitoring and terminating demonstrations. The amendments also enable the recording of all demonstrations, with the possibility of using these recordings to identify suspects and as criminal evidence.

With regards to freedom of assembly, the "Law amending the Law on powers and duties of the police, other laws and decrees" that is widely referred as the "Internal Security Reform package" and fiercely opposed by opposition parties, was passed in Parliament on 27th March 2015 and which amend 14 different laws and decrees. The internal security package has been widely criticized for considerably strengthening the powers of the police during demonstrators and extending the police's authority to detain anyone without the prosecutor's office requirement. During any gathering protestors will be prohibited from carrying fireworks, Molotov cocktails and slingshots and if used by protestors police officers will have rights to fire their guns. With the new bill, protestors who cover their faces fully or partially during demonstrations can face a five-year prison sentence. The most debated articles of the package also grant extensive powers to the Interior Ministry, governors and district governors.

## **What is next? The civil society agenda in Turkish national political context**

After 2008, there have not been ground-breaking legislative changes in the legal framework, which directly concerns CSO operations. As described above, in 2014-2015 Turkish government took new policy laws to restrict freedom of assembly and access to information (The Law on the Internet) and it is foreseen that restrictive and arbitrary use of measures against CSOs and citizens will continue to be a challenge for citizen action, activists and civil society organizations.

Despite EU Anchor is losing its transformative power, the Instrument for Pre-accession Assistance (IPA) continues to be EU's main financial instrument for the beneficiary countries on the way to become full members. In order to meet the specific objectives of Instrument for Pre-accession Assistance (IPA II) for the period 2014-2020 in line with the strategic programming framework, civil society is accepted as sub-sector under Governance and public administration reform.<sup>33</sup> Action addresses the three priorities of Country Strategy Paper under civil society sub-sector which are improving legislative environment for active citizenship, strengthening cooperation between public sector (at local, regional and national level) and CSOs and strengthening the capacities of and networking between organized active citizens / CSOs. Following a consultation process with CSOs, EU Delegation to Turkey designed and started to implement the "Think Civil" grant programme in 2012. This programme provided a significant support for the civil society in Turkey since it is highly adaptable to the needs of civil society, directed towards rights based actions and provides funding for activist and platforms as well the legal recognized forms of civil society.<sup>34</sup>

Moreover, the EU Ministry in Turkey continues to follow up formal procedures to align Turkish legislation with EU *acquis* and prepared Turkey's National Action Plan for the EU Accession for 2015-2019. Turkey's National Action Plan for the EU Accession (Phase- I November 2014 - June 2015) gives commitments to revise legislation on freedom of expression and on foundations in line with ECHR and the case of the ECtHR. According to the unofficial sources, six opening benchmarks are planned. As the responsible organization, Ministry of Interior will revise Law on Associations, Law on Foundations and Law on Collection of Charitable Donations by end of the first half of 2015. For the Phase II covering the period between June 2015 and June 2019, Turkey's National

Action Plan for the EU Accession has commitments to revise Law No. 2911 on Meetings and Demonstration Marches to align with the political criteria of the EU.<sup>35</sup>

One other important policy document is the 10th National Development Plan of Turkey, drafted by the Ministry of Development in 2012-2013 with consultations held with CSOs. The Plan mentions the need for legal and institutional reforms related with civil society; for a holistic policy for civil society that will also lay down the framework of public sector and CSOs relations including public funding; for increased capacity of CSOs. The Plan also mentions several goals regarding civil society, specifically at local level. Some of the goals defined are (1) increasing human, administrative and technological capacities of CSOs at local level, (2) increasing participation to civil society (getting organized), (3) increasing the participation and contribution of civil society in local level policy processes. Based on these general objectives, in the 10th National Development Plan following actions is foreseen: 1) Comprehensive legal and institutional changes to support institutional capacities of CSOs to enhance their accountability and sustainability. 2) Supporting CSOs which pursue public benefit and having operations in the same line with national priorities 3) Reviewing and revising Tax/fiscal treatments for CSOs to support their involvement in development process. 4) Revising Tax exemption and public benefit statuses in accordance to international standards and practices. 5) Determining internal and external auditing standards for CSOs to reach efficient and objective audit practices.<sup>36</sup> 10th National Plan can be assessed as a very progressive plan with regard to its civil society focus and approaches, comparing to 8th National Development Plan of Turkey covering years between 2001-2005 which had no reference to CSOs and no single policy action to civil society development<sup>37</sup> and 9th National Development of Turkey<sup>38</sup> which had only single reference to civil society.

TACSO Turkey has initiated formation of working group with participation of public officials and CSOs including TUSEV and STGM (Civil Society Development Center) to determine 2020 Civil Society objectives with reference to Civil Society Facility Guidelines to monitor and programming of reform process of legislation concerning civil society enabling environment in Turkey. As a result of several meetings and consultations, as first step Department of Associations and Directorate of Foundations have agreed to share some of the data on civil society with wider audiences. Department of Associations have provided some extensive data such as; number of volunteers in associations, the number/ types of penalties imposed upon associations and the number of associations engaging economic activities and the economic value they have created. Department

of Associations has also updated their webpage in 2015 and recently there is new database of associations available online. It is important development to base advocacy activities on data and to analyses development of the civil society sector over time period. The working group formed by TACSO Turkey will continue working together and collaborate to find the ways in which to further legislation affecting civil society environment in a participatory manner. First consultation meeting with participation of 40 CSOs was held in December 2014 to determine priority objectives to be reached in 2020 with sources and methods of verification. In 2015, it is planned to schedule meetings with public officials to agree on a plan for 2020.

## **Concluding Remarks and recommendations**

This contribution sought to assess the initiatives in the global level that acknowledges civil society as agents of democratization and development since the democratic deficit and inefficiency of public policy making are common issues in the global level. The primary contribution of such global initiatives is to define and determine conditions under which civil society to fulfill such roles and to assist states and international actors to achieve such legal and political basis. These conditions for civil society enabling environment resembles to core civil society freedoms of expression, association and assembly.

In European Union research, the democratic deficit rhetoric has prevailed in accounts of political and scholars, since there is widening gap in European public and EU institutions, the EC maintains dominance in decision-making and public opinion research has shown that citizens do not show attachments to the institutions – especially the EP - that is supposed to represent them. In return, the civil society input has been extensively analyzed in European political and normative debate the role of civil society organizations has come to the forefront of this debate, signified as a remedy to solve the democratic deficit issue. The European Commission's policy towards European civil society and initiatives to boost their participation in decision-making is replicated in its relations with civil societies beyond the EU's borders, in EU enlargement countries. There is a growing body of academic literature and real-world cases show that conditionality often fails to promote compliance and result in political/institutional changes. Thus, in this phase, the EU policies and the EU aimed to strengthen legitimacy of the ongoing accession process through transforming legal basis of civil society and their participation in policy making in Turkey.

With respect to EU- Turkey relations and the EU's transformative power on the legal and policy environment, my first finding indicates that, the EU's attachment to civil society in Turkey comes directly hand-in-hand with its political acquis conditionality. In this discourse, a flourishing civil society is an important component of a democratic society and state. With the guidance of the Copenhagen criteria, the EU held the objective of transforming the political environment to ensure freedom of expression, association and assembly. Following a series of reforms, in relative terms, Turkey was able to better provide political space and enable mobilization of civil society throughout the 2000s. Despite these steps problems still exist both in the context and implementation of primary legislation and related secondary legislation. This is also due to the fact that except a few minor improvements of relevant laws, no major improvements have been made since the 2004 and 2008 reform packages. Furthermore, in Turkey civil society ability to freely use various media to receive and share information or to express their critical opinion of public policies and actions has been significantly violated or undermined. In general, Gezi Protests in Turkey brought a momentum for growing civil society activism and search for more active citizen action. Yet, the above described actions and legislative measures taken following the Gezi Protests showed that the space for fundamental rights and freedoms is shrinking. Despite the growing opposition, result of the 2015 elections will be significant in determining the political environment of the country.

This indicates, the EU's external influence is not merely a one-way interaction or imposition of rules and norms, but rather a transformative potential that is subject to conditions in the national level.<sup>39</sup> Taking into consideration the uncertainty of the EU's institutional make-up and the halted enlargement process until 2020, the external pressure and the leverage of EU political conditionality have become almost insignificant in the region. Strengthening of civil society networks is instrumental since they have capacities to control and monitor enabling environment, provide policy recommendations to public sector and raise awareness with regard to freedoms related to civil society in the national as well as in regional context. In particular, the EU's funds allocated in this period supports civil society networks in the regional level (Balkan Civil Society Development Network), build CSO capacities that is indispensable asset for both providing the government with recommendations and initiatives, as well for increasing public support and awareness with regard to civil society enabling environment. It is also crucial to continue the EU support to facilitate both CSOs and state representatives to engage in local matters and to

cooperate in policy formulation. The ongoing CSF guidelines process brought windows of opportunities CSOs work together with public officials to determine objectives in a collaborative way and to monitor, programme and progress reporting of reform process of legislation concerning civil society enabling environment in Turkey.

In general, Gezi Protests in Turkey brought a momentum for growing civil society activism, yet the political will respond demands of citizens for further democratization with restrictive legislative measures. Such as, Internal Security Reform Package curbs the freedom of assembly. The results of the elections of 2015 will have a decisive influence over the political environment in the foreseeable future.

Turkey's 24th general election is due to be held on June 7, 2015 to elect 550 new members of the Grand National Assembly. Turkey's first popularly-elected president Tayyip Erdoğan declared that drafting a new constitution will be the priority after the elections. Erdoğan and the Justice and Development Party government has been a longtime advocate for a new Constitution, yet the opposition parties continue to raise their fear about the possibility and willingness to form a strong executive presidency under presidential system that may lead Turkey to an authoritarian, one-man regime.<sup>40</sup> Under these circumstances, drafting a new constitution can be assessed both as an opportunity or a challenge depending on the results of the Turkish General Elections.

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